

1 **Case #: TR14-015674-CV**  
2 **Defendant Statement**  
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5 **PCSD Public Records Request:**

6 Please note that on May 12<sup>th</sup>, 2014, I submitted a public records request to the Pima  
7 County Sheriff's Dept seeking all documentation the department has regarding its  
8 participation in the Operation Stonegarden federal grant program along with deputy Avila's  
9 participation in the program (**see exhibit #10**). This documentation request also included  
10 deputy Avila's incident report associated with this case. Indeed, all of the documentation  
11 requested by me is related to this case. Nearly two months later, my public records request  
12 has gone unanswered. Under the state open record's law, such a failure to respond to a  
13 public records request and fulfill it in a timely manner represents a violation of state law at  
14 Title 39-121 & in this case has interfered with my ability to properly prepare for this  
15 hearing.

16  
17 **Background:**

18 In early January of 2008, *Customs & Border Protection (CBP)* under the *Department of*  
19 *Homeland Security (DHS)* erected an inland tactical roadblock along SR-86 in Southern  
20 Arizona near Milepost 145. In 2010, CBP moved the roadblock to its current location near  
21 Milepost 146.6. SR-86 is an East-West running highway over forty miles North of the  
22 international border with Mexico that never intersects the border at any point. As such, the  
23 roadblock is considered an inland roadblock because it is neither located at the actual  
24 border nor its functional equivalent. At inland roadblocks, CBP agents have far less legal  
25 authority to detain & search than they do at the actual border or its functional equivalent  
26 (see *United States v. Martinez-Fuerte* - 428 U.S. 543, *United States v. Ortiz* - 422 U.S.  
27 891).

28  
29 I have routinely traveled along the SR-86 corridor since 1993 while going to and from my  
30 work site no where near the border. Since its inception in 2008, I estimate I have been

31 seized & detained absent individualized suspicion by CBP agents at the roadblock  
32 approximately 350 times while traveling from work.

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34 *"It is agreed that checkpoint stops are 'seizures' within the meaning of the 4th*  
35 *Amendment"* - **United States v. Martinez-Fuerte - 428 U.S. 543**

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37 During these seizures, I routinely exercise my right to not answer investigatory questions  
38 while being interrogated by CBP agents manning the roadblock. I also record these  
39 detentions & interrogations to create a record of the compelled interactions:

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41 *"The Supreme Court has repeatedly held that refusal to answer law*  
42 *enforcement questions cannot form the basis of reasonable suspicion. See*  
43 *Florida v. Bostick, 501 U.S. 429, 437, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991)*  
44 *("We have consistently held that a refusal to cooperate, without more, does not*  
45 *furnish the minimal level of objective justification needed for a detention or*  
46 *seizure.")* - **U.S. v. Santos 403 F.3d 1120 (2005)**

47 The exercise of my rights in this manner has resulted in me becoming well known at this  
48 roadblock. It has also resulted in me being the target of harassment by some CBP agents on  
49 a recurring basis. In recent years, the harassment has expanded to include not just Border  
50 Patrol agents but also officers & deputies from local law enforcement agencies such as the  
51 Tohono O'odham Police Dept. and the Pima County Sheriff's Dept. who work with Border  
52 Patrol agents in an attempt to compel individuals seized at the roadblock to cooperate with  
53 agents when they have no legal obligation to do so. Oftentimes this results in local law  
54 enforcement personnel finding questionable reasons to cite travelers with dubious  
55 applications of state law to compel individuals to identify themselves to federal agents who  
56 don't have the authority to compel identification otherwise & to harass individuals for  
57 exercising their rights while being seized by federal agents at the roadblock.

58

59 In the past few years, I've been cited in just such a manner on three separate occasions with  
60 this one being the third. The previous two cases (case #TR09-001179 & TR13-050961)  
61 were adjudicated on April 10, 2009 and July 1, 2013 respectively. During these prior  
62 incidents, I was similarly detained by CBP agents in the lane of traffic at this same  
63 roadblock. Then as now, CBP agents sought the assistance of local law enforcement to  
64 harass me by requesting that they find a reason to cite me while detaining me in the lane of  
65 traffic against my will. Shortly thereafter in both cases, I was charged with impeding the  
66 flow of traffic under 28-704(A) by TOPD Officer Carrasco in the first case and stopping  
67 unnecessarily in the lane of traffic under ARS 28-871(A) by deputy Audetat with the PCSD  
68 in the second. Both cases were dismissed by the presiding judge or hearing officer. The  
69 alleged violation currently before this court is based on a similar set of circumstances &  
70 represents a continuation of the harassment I've been subjected to at this federal roadblock  
71 while just trying to drive home from work unmolested since January of 2008.

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#### **Account:**

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75 While traveling Eastbound on SR-86 in Southern Arizona at approximately 1320 on April  
76 30, 2014, I complied with several traffic control devices by stopping next to two stop signs  
77 & two armed federal agents with *Customs & Border Protection* in the *Department of*  
78 *Homeland Security* (**see exhibit #1, photo #2**). The stop took place near Milepost 146.6 in  
79 the Eastbound lane of traffic at a suspicionless internal Customs & Border Protection  
80 (CBP) roadblock where all Eastbound traffic was being stopped, seized & vehicle  
81 occupants interrogated by armed federal agents. As I approached the roadblock, I noted the  
82 presence of PCSD deputy Avila in his patrol car deployed within the boundaries of the  
83 roadblock along the south side of the road (**see exhibit #1, photo #1**). I later verified that  
84 Deputy Avila was deployed at the roadblock under the terms of Operation Stonegarden, a  
85 federal Department of Homeland Security Grant Program, in order to assist federal agents  
86 at the roadblock with general crime control issues (**see exhibit #2**).

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88 Avila's presence & participation in roadblock operations however is problematic because  
89 the U.S. Supreme Court has ruled that general crime control & drug interdiction  
90 checkpoints are illegal in City of Indianapolis V. Edmond:

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92 *"We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol*  
93 *checkpoint designed to intercept illegal aliens...& at a sobriety checkpoint aimed at*  
94 *removing drunk drivers from the road...In none of these cases, however, did we indicate*  
95 *approval of a checkpoint program whose primary purpose was to detect evidence of*  
96 *ordinary criminal wrongdoing."* - **City of Indianapolis v Edmond**

97

98 Additionally, SCOTUS has ruled that because every roadblock stop represents a 4<sup>th</sup>  
99 amendment seizure & roadblock stops are suspicionless at their inception, such stops must  
100 be limited in scope, limited in duration, minimally intrusive & individual officers and/or  
101 agents must be limited in their discretion with any further detention or searching after the  
102 initial stop based on consent or probable cause.

103

104 The Tucson Sector Border Patrol has been coming under fire lately for operating their  
105 internal roadblocks & roving patrols in a fashion that does not comport to the limitations  
106 imposed on such operations by the courts. This has recently resulted in three formal  
107 complaints from the ACLU of Southern Arizona along with one lawsuit against the Border  
108 Patrol (**see exhibit #4**). The circumstances surrounding this citation in which deputy Avila  
109 and the Border Patrol worked closely together during my detention and subsequent citation  
110 provides more evidence that the Border Patrol is operating their roadblocks illegally.

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112 In addition to Deputy Avila's participation in the Operation Stonegarden program, he was  
113 being paid overtime from the federal grant program in order to deploy at the roadblock.  
114 Under the terms of the federal grant, Deputy Avila's deployment at the federal roadblock  
115 had to be pre-approved by the Border Patrol making his deployment a joint task force  
116 operation in which general crime control played a primary role:

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*“All overtime deployments must be pre-coordinated with the Border Patrol in order for your agency to be eligible for reimbursement.” - Operation Stonegarden Grant Program Award Letter, Exhibit #2*

***“What is the role of the Customs & Border Protection (CBP)/Border Patrol (BP) in OPSG?”***

*Border Patrol is the lead agency for operations under the Operation Stonegarden program. Consistent with grant guidance, OPSG funded activities & equipment shall support the Border Patrol mission. All OPSG activities must be pre-coordinated with your local Border Patrol Station OPSG Coordinator.” - Arizona Department of Homeland Security Operation Stonegarden (OPSG) Grant Program FAQ, Exhibit #3*

After stopping at the roadblock, the agent at primary merely stared at me for several seconds without saying a word. I asked the agent his name since most of his name tag was obscured behind a vest with only his first initial, J, visible. The agent then stated his last name (Tackett). Agent J. Tackett then questioned me regarding my citizenship. When I didn't respond, the agent stated my last name making it clear he already knew who I was. When I asked Agent Tackett for his first name, he stated he was the one asking the questions, not me. When I indicated I was also asking questions, Tackett became angry, picked up a spike strip & placed it in front of my vehicle (**see exhibit #1, photo #3**). Tackett then indicated I was being detained despite already knowing who I was & having no probable cause to justify a detention. Existing case law and Border Patrol legal guidance makes it clear such detentions are illegal. In fact, a CBP Law Bulletin issued in 2012 stated agents cannot legally extend a detention at a roadblock merely because someone refuses to answer questions or because an agent doesn't like their attitude:

145           *"A subject's 'bad attitude' or refusal to answer questions, without more, does*  
146           *not constitute 'reasonable suspicion' & does not justify 'detention'."* - **2012 Law**  
147           **Bulletin For Border Patrol Agents, Exhibit #5**

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149 Even more compelling, U.S. Supreme Court case from 1976 makes it clear that agents  
150 need consent or probable cause to extend the initial detention at roadblocks:

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152           *"...We have held that checkpoint searches are constitutional only if justified by*  
153           *consent or probable cause to search....& our holding today is limited to the*  
154           *type of stops described in this opinion. -'[A]ny further detention...must be*  
155           *based on consent or probable cause.'"* - **U.S. V Martinez-Fuerte (1976)**

156

157 After Agent Tackett created an unsafe condition on the roadway by placing a spike strip in  
158 front of my vehicle & illegally extending the detention, I honked my horn in order to warn  
159 other motorists of the unsafe conditions created by Agent Tackett & to get the attention of  
160 his supervisor who was sitting underneath a canopy on the south side of the road. When  
161 not setup correctly, roadblocks can pose a significant safety risk to the traveling public  
162 since they directly interfere with the natural flow of traffic. Drivers who either aren't  
163 expecting a roadblock in the area or aren't paying attention, can easily cause an accident by  
164 slamming into vehicles stopped at the roadblock. When agents like Tackett further hold up  
165 traffic by illegally extending detentions in the lane of traffic, the danger to motorists is  
166 increased. In fact, just such an incident occurred at a roadblock I was stopped at several  
167 years ago within one mile of the location of the current CBP roadblock:

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169           *"But in this case, while Bressi was at the front of the line speaking with*  
170           *officers for only a minute, an accident occurred toward the back of the*  
171           *line."* - **Exhibit #6, Plaintiff's Motion For Summary Judgment, Case #CIV 04-264**  
172           **TUC-AWT**

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174 A quick google search online also reveals that accidents occur across the country due to  
175 suspicionless roadblocks setup along highways (**see exhibit #7**).

176

177 When I asked Agent Tackett if he was detaining me, he answered in the affirmative. At the  
178 same time, supervisory agent G. Serrano walked over to the driver side door of my vehicle  
179 (**see exhibit #1, photo #4**) while another agent began running to Deputy Avila's patrol car  
180 (**see exhibit #1, photo #5**).

181

182 I asked Agent Serrano why his subordinate was detaining me in the lane of traffic. The  
183 supervisor indicated I was being detained for not answering their questions – this despite  
184 CBP policy that prohibits detention for failing to answer questions. Agent Serrano then  
185 walked to the back of my vehicle & began talking on his radio. Given that I was being  
186 illegally detained in the lane of traffic & unable to move due to the spike strip placed in  
187 front of my vehicle, I honked the horn again to warn other motorists of the unsafe  
188 conditions that still existed in the roadway, to protest the detention & to get the attention of  
189 Deputy Avila so he could put a stop to the Border Patrol's unsafe, illegal activity.

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191 It should be noted that the statute I was eventually charged with violating by Deputy Avila  
192 in this case, ARS 28-954(B), explicitly allows for the honking of a horn to warn other  
193 driver's of dangerous conditions:

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195 *“If reasonably necessary to ensure the safe operation of a motor vehicle, the*  
196 *driver shall give an audible warning with the driver's horn but shall not*  
197 *otherwise use the horn when on a highway” - ARS 28-954(B)*

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199 Since one of the primary purposes in honking the horn was to warn other drivers of the  
200 obstruction created by Agent Tackett in the highway, my use of the horn within this context  
201 was perfectly lawful.

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203 Additionally, my other purposes for honking the horn – to get Deputy Avila's attention and  
204 to protest the Border Patrol's illegal detention – are similarly protected as expressive  
205 speech under federal case law associated with the 1<sup>st</sup> Amendment and Arizona's  
206 Constitution. Because the honking of the horn was designed to convey a message and that  
207 message was likely to be understood by those hearing it within the context of the situation,  
208 the horn honking qualifies as expressive speech which is entitled to 1<sup>st</sup> amendment  
209 protections. This is especially true in this situation since the honking was directly related to  
210 the illegal actions of federal agents, served as a warning to other motorists of unsafe  
211 conditions created by federal agents, drew attention to my vehicle from other motorists  
212 who could then act as witnesses regarding the encounter and couldn't be considered a noise  
213 disturbance for the general public given that the honking took place within the boundaries  
214 of a federal roadblock miles away from any private residence or business.

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216 Indeed, given the way the statute is being enforced, it should be struck down as overly  
217 broad since its construction & enforcement violates free speech protections. There are  
218 many instances during the course of a day when a honk represents protected expressive  
219 speech. Some of these include honking to let someone know it's time to leave, a driver  
220 honking in support of a picketer on a street corner, another driver honking in support of the  
221 troops as a street corner sign may request, wedding guests celebrating a marriage, etc.  
222 Since the construction of the statute in this case creates no exceptions for such  
223 constitutionally protected expressive speech & there are many instances where honking  
224 would constitute protected speech, the statute should be considered overly broad resulting  
225 in prior restraint and hence unconstitutional. Regardless, in my case, there's no question  
226 that the statute, as applied by Avila, violated my 1<sup>st</sup> amendment rights while also interfering  
227 with my right to warn other motorists of unsafe conditions on the highway.

228

229 As Avila approached my vehicle from the rear, Agent Serrano came back over & told me I  
230 would be allowed to go on my way after the sheriff's deputy had spoken to me about  
231 impeding traffic. In so doing, Serrano essentially admitted CBP had no legitimate basis for



232 detaining me & were most likely doing so in order to give the deputy an opportunity to  
233 find a reason to charge me with something. After Avila arrived (**see exhibit #1, photo #6**),  
234 Agent Tackett moved to the front of my vehicle & removed the spike strip he had placed  
235 down earlier (**see exhibit #1, photo #7**). Deputy Avila made no indication he saw what  
236 Tackett had done or even knew that the Border Patrol had thrown a spike strip down in  
237 front of my vehicle to begin with.

238

239 After Avila walked up to my window, he asked me to roll it down. After partially rolling it  
240 down, Avila noted my recorder & set the tone for the rest of the encounter by asking me if I  
241 was a constitutionalist, a strange question coming from a man who swore an oath to the  
242 Constitution in order to wear the uniform he wears. I responded by asking him if he was  
243 detaining me & Avila said it was the Border Patrol that was detaining me & he just wanted  
244 to know why I was blocking traffic. I told Avila that he had answered his own question  
245 when he indicated the Border Patrol was detaining me & that I merely wanted to go on my  
246 way.

247

248 Avila then started asking for my driver's license. With each demand I asked him if he was  
249 detaining me. After the second time, Avila stated he wasn't detaining me but that he wanted  
250 to know my name. In return, I asked him why he needed to know. This went on several  
251 times before Avila stated he just wanted to know who he was talking to. Avila then turned  
252 to a Border Patrol agent & asked him if they wanted me to go to secondary. The agent  
253 responded that I wouldn't answer their questions. While Avila appeared to mull over what  
254 to do next, I asked him if he was taking jurisdiction over the stop since he seemed to be  
255 actively assisting the Border Patrol with my detention at this stage.

256

257 Up to this point, Deputy Avila's actions left me somewhat confused as to what his intent  
258 was given that I was being detained by federal agents at a federal roadblock yet Avila was a  
259 county deputy. His next two statements removed any ambiguity as to his intent however.  
260 After asking an agent whether or not he wanted me to move to secondary, Avila turned to

261 me & stated I had to follow the lawful orders of the Border Patrol making it clear he was  
262 actively assisting the federal agency with their illegal detention & interrogation. This  
263 despite the fact that Avila is not a federal agent, has no training or certification in federal  
264 immigration enforcement, was granted no lawful authority to participate in a federal  
265 immigration checkpoint & had no lawful authority to intercede on the Border Patrol's  
266 behalf. When I responded that I had indeed followed every LAWFUL order from the  
267 Border Patrol, Avila clearly stated, No you have not". When I stated I have no legal  
268 obligation to answer their questions & they can't lawfully detain me for failing to do so,  
269 Avila responded with:

270

271 *"You need to follow their orders OK You are blocking traffic. You are now*  
272 *violating traffic laws here."* - **Roadblock Encounter Transcript, Exhibit #8**

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274 By so doing, Avila made it clear he intended to use state traffic laws as a pretext to compel  
275 me to cooperate with the Border Patrol while they were illegally detaining me in the lane  
276 of traffic. At this point, the Border Patrol supervisor sensed things were getting out of  
277 control & told Deputy Avila twice to cut me loose (**see exhibit #1, photo #8**):

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279 *"Cut him loose. I know who he is"* - **Roadblock Encounter Transcript, Exhibit #8**

280

281 Avila ignored Supervisory Agent Serrano's order however & instead of cutting me loose as  
282 the Border Patrol instructed him to do, he instead began demanding my name again. I  
283 asked Avila why he was questioning me & whether or not he was being paid overtime from  
284 the federal Operation Stonegarden grant program.

285

286 At this stage, Avila told me to go on my way. Somewhat surprised by the sudden about-  
287 face, I asked him if I was free to go & Avila said he wasn't stopping me. I said all right,  
288 thanked him & began pulling away. As I pulled away however, Avila said, "I will in a  
289 moment".

290

291 Sure enough, after I left the roadblock heading towards Tucson, Deputy Avila came up  
292 behind me in his patrol car & turned on his lights (**see exhibit #1, photo #9**). I pulled over &  
293 Avila came up to the passenger side window demanding that I roll it all the way down  
294 while stating, "I'm stopping you now" (**see exhibit #1, photo #10**).

295

296 I asked him why he pulled me over & initially he refused to tell me. After I persisted  
297 however, he said he pulled me over for honking my horn at the roadblock, something he  
298 never mentioned while I was being detained by the Border Patrol at the roadblock. Avila  
299 then demanded that I get out of the vehicle because my phone was active (**see exhibit #1,**  
300 **photo #11**). I got out & we moved to the front of his vehicle. I asked Avila if he was  
301 operating under Operation Stonegarden & he said yes. He then asked for my driver's  
302 license just when a Border Patrol agent pulled in behind Avila's patrol car, got out &  
303 walked over towards us (**see exhibit #1, photo #12**). The agent was the same agent who had  
304 been working at the roadblock on the south side of the road & initially ran to Avila's parked  
305 patrol car after I entered the roadblock.

306

307 I asked Avila why the agent was there, & despite the obvious absurdity in his response, he  
308 stated the agent was not involved with the traffic stop even though he had clearly left his  
309 duty station at the Border Patrol roadblock in order to be present during the traffic stop.  
310 When I asked Avila what the agent's name was, Avila became agitated & ordered me to  
311 ignore the agent despite the agent being an obvious witness.

312

313 After I gave Avila a driver's license & other documentation, he went back to his patrol car.  
314 I in turn asked the Border Patrol agent what he was doing there & what his name was. The  
315 agent indicated he was there as backup for the deputy when Avila came rushing over &  
316 told me to back up, clearly not wanting me to talk with the agent.

317

318 As I waited for Avila to return with my documentation, two more Border Patrol vehicles

319 pulled in behind Avila's patrol car (**see exhibit #1, photo #13**) & two agents got out & went  
320 over to talk with the other agent resulting in at least three federal agents, one county  
321 deputy, three Border Patrol vehicles & one PCSD vehicle on the side of the road in  
322 response to a traffic stop for horn honking. It was undoubtedly quite a sight for anyone  
323 passing by.

324

325 After several minutes, the late coming Border Patrol agents left leaving only the first agent  
326 still on-scene. Several minutes later, Avila returned with a ticket for allegedly using my  
327 horn in excess at the roadblock (**see exhibit #1, photo #14**). After Avila issued me the ticket, I  
328 asked him if he had checked the Border Patrol's encroachment permit to see if their  
329 roadblock was in compliance with state law & ADOT regulations. Avila feigned ignorance  
330 of any such requirement & refused to look into it further despite me pointing out that the  
331 encroachment permits issued by ADOT to the Border Patrol from the roadblock were  
332 required to be kept on sight for review and that the Border Patrol was in violation of  
333 several provisions including a provision that only allowed the roadblock to be operated at  
334 irregular times and on irregular dates (**see exhibit #9**). I then asked Avila if he was being  
335 paid time & a half under the federal grant & he responded in the affirmative. After that,  
336 Avila refused to answer any more questions, returned to his vehicle & drove off.

337

338 I turned to the Border Patrol agent while Avila was returning to his vehicle & asked the  
339 agent his name & star number. The agent refused to answer & instead left the scene in the  
340 same direction that Deputy Avila was leaving (**see exhibit #1, photo #15**).

341

342 I returned to my vehicle & began traveling back to Tucson once again when I saw both  
343 Deputy Avila & the Border Patrol agent parked in front of the Border Patrol substation in  
344 Three Points, AZ (**see exhibit #1, photo #16**). I pulled in next to them & asked Deputy Avila  
345 the name of the Border Patrol agent he was talking with. Avila feigned ignorance, refused  
346 to provide the agent's name & accused me of harassing the federal agent before driving off  
347 (**see exhibit #1, photo #17**). When I turned to the federal agent to try & get his name directly

348 again, the agent put his vehicle in reverse & drove off as well (see exhibit #1, photo #18).

349

350

### Summary:

351 In summary, I was illegally detained by federal agents at a federal roadblock in the lane of  
352 traffic with a spike strip for exercising my right to not answer questions despite the  
353 stopping agent already knowing who I was and despite CBP legal guidance and case law  
354 making it clear agents can't detain based upon a 'bad attitude' or an invocation of one's right  
355 not to answer questions. CBP agents then enlisted the aid of deputy Avila who was being  
356 paid overtime from a federal grant to assist federal Border Patrol agents at the roadblock in  
357 trying to compel me to answer their questions under the false pretense of blocking traffic.

358

359 Avila's presence & participation in roadblock operations in this manner impermissibly  
360 expanded the scope & intrusiveness of the roadblock in violation of existing SCOTUS  
361 guidance on roadblocks. Additionally, deputy Avila, who has no training or certification  
362 regarding federal immigration law or federal roadblocks, actively assisted the Border  
363 Patrol in their illegal detention & went so far as to insist that I obey the Border Patrol even  
364 after the on-scene Border Patrol supervisor ordered Avila to 'cut me loose' because he knew  
365 who I was. After Avila did cut me loose, he compounded his legally questionable actions  
366 by following me in his patrol car in order to stop me outside the boundaries of the  
367 roadblock & write me a citation for honking my horn at the roadblock. This despite the  
368 fact, the horn was used in compliance with state law to warn other motorists of unsafe  
369 conditions created by the Border Patrol & to warn supervisory personnel about the  
370 situation. This despite the fact the horn honks also represented 1<sup>st</sup> amendment protected  
371 expressive speech by protesting an illegal detention by Border Patrol agents in a way that  
372 would be readily understandable to everyone present while not creating a noise disturbance  
373 for the general public due to the location of the roadblock.

374

375 Avila's collusion with the Border Patrol continued during the traffic stop when several  
376 agents from the roadblock came out to the traffic stop to assist him. At all times, Avila

377 refused to identify the agents to me on request while allowing the agents full access to the  
378 traffic stop site. The collusion continued at the Border Patrol Substation in Three Points,  
379 AZ where Avila and an agent from the roadblock were observed conversing side by side  
380 after the traffic stop & where Avila continued to deny any knowledge of the identity of the  
381 agent while claiming harassment on my part for attempting to identify a potential witness.