

1 Terrence Bressi  
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5 Defendant

6 Deputy Thomas Audetat, Badge #6312  
7 Pima County Sheriff Department  
8 1750 E. Benson Highway  
9 Tucson, AZ 85714  
10 Plaintiff

11 **Pima County Justice Court**  
12 **Pima County, Arizona**

State of Arizona, ) Civil Traffic Citation No.: 684115  
 ) Case #: TR13-050961  
 Plaintiff, )  
 ) Motion To Dismiss  
 vs. )  
 )  
 Terrence Bressi, )  
 )  
 Defendant. )  
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13 Defendant, Terrence Bressi, representing himself, hereby moves this Court to dismiss the single  
14 charge alleged against him of *Stopping, standing, or parking outside business or residence district* in  
15 violation of ARS 28-871(A). In the event a ruling is not made on this motion prior to the currently  
16 scheduled hearing on July 1, 2013, oral argument on the motion at the start of the hearing is requested.

17 The alleged violation of illegally stopping along the highway took place near Milepost 146.6 along SR-  
18 86 in Southern Arizona within the boundaries of a federal suspicionless CBP roadblock where  
19 Defendant was compelled to stop by a traffic control device and armed federal agents who detained

1 Defendant against his will next to a temporary stop sign erected in the middle of the two lane highway.  
2 The points justifying dismissal are listed below and elaborated upon in separate sections of this motion:

- 3 1.) The statutory language Defendant is alleged with violating doesn't prohibit stopping, standing  
4 or parking where Defendant was cited.
- 5 2.) The statute Defendant is alleged to have violated has no legal effect within the boundaries of a  
6 federal roadblock while being detained by federal agents for federal immigration purposes.
- 7 3.) Defendant was being illegally detained by federal agents in the lane of traffic at the time &  
8 place of the alleged violation.

9 **Background:**

10 In early January of 2008, *Customs & Border Protection* (CBP) under the *Department of Homeland*  
11 *Security* (DHS) erected an inland non-permanent tactical roadblock along SR-86 in Southern Arizona  
12 near Milepost 145. In 2010, CBP moved the roadblock to its current location near Milepost 146.6. SR-  
13 86 is an East-West running highway over forty miles North of the international border with Mexico  
14 that never intersects the border at any point. As such, the roadblock is considered an inland roadblock  
15 because it is neither located at the actual border nor its functional equivalent. At inland roadblocks,  
16 CBP agents have far less legal authority to detain & search than they do at the actual border or its  
17 functional equivalent (see *United States v. Martinez-Fuerte* - 428 U.S. 543, *United States v. Ortiz* - 422  
18 U.S. 891).

19 Defendant has routinely traveled along the SR-86 corridor since 1993 while going to and from his  
20 work site no where near the border. Since its inception in 2008, Defendant estimates he has been seized  
21 & detained absent individualized suspicion by CBP agents at the roadblock approximately 300 times  
22 while traveling from work (only East-bound traffic is routinely forced to stop at the roadblock).

23 *"It is agreed that checkpoint stops are 'seizures' within the meaning of the 4th Amendment"*

24 - *United States v. Martinez-Fuerte* - 428 U.S. 543

25 During these seizures, Defendant routinely exercises his right to not answer investigatory questions

1 while being interrogated by CBP agents manning the roadblock. Defendant also records his detentions  
2 and interrogations to create a record of the compelled interactions:

3 *“The Supreme Court has repeatedly held that refusal to answer law enforcement*  
4 *questions cannot form the basis of reasonable suspicion. See Florida v. Bostick, 501 U.S.*  
5 *429, 437, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) (“We have consistently held that a*  
6 *refusal to cooperate, without more, does not furnish the minimal level of objective*  
7 *justification needed for a detention or seizure.”) - U.S. v. Santos 403 F.3d 1120 (2005)*

8 Defendant's exercise of his rights in this manner has resulted in him becoming well known at this  
9 roadblock by CBP. It has also resulted in him being the target of harassment by some CBP agents on a  
10 recurring basis.

11 One such incident resulting in a similar citation (see case #TR09-001179) as the one currently before  
12 this court, was adjudicated on April 10, 2009. During that incident, Defendant was similarly detained  
13 by CBP agents in the lane of traffic at this same roadblock. Then as now, CBP agents sought the  
14 assistance of local law enforcement to harass Defendant by requesting that local law enforcement find  
15 a reason to cite Defendant. Shortly thereafter, Defendant was charged with a single count of impeding  
16 the flow of traffic under 28-704(A) by TOPD Officer Carrasco. During the hearing, the presiding judge  
17 dismissed the charge on the basis that the statute Defendant was charged with violating was improperly  
18 applied given the presence of the federal roadblock (see attachment #1). The alleged violation  
19 currently before the court is based on a similar set of circumstances.

20 **Facts:**

21 While traveling Eastbound on SR-86 in Southern Arizona at approximately 1550 on March 29, 2013,  
22 Defendant complied with a traffic control device by stopping next to a stop sign and two armed U.S.  
23 CBP agents with *Customs and Border Protection* in the *Department of Homeland Security* (see  
24 attachment #2). The stop took place near Milepost 146.6 in the Eastbound lane of traffic at a  
25 suspicionless internal DHS/CBP roadblock where all Eastbound traffic was being stopped & seized.

1 The two armed CBP agents standing at the primary stop location & responsible for Defendant's seizure  
2 were Agents J. Grayson and R. McKnight. Defendant recognized Agent Grayson from several previous  
3 stops at the roadblock over the course of the last few years. It also became quickly apparent that Agent  
4 Grayson recognized Defendant after Grayson referred to Defendant by name within seconds of  
5 Defendant coming to a stop. As Defendant was coming to a stop at the stop sign, both agents pulled out  
6 personal recording devices, pointed them at Defendant and began recording him while Agent Grayson  
7 identified Defendant by name and loudly stated:

8 *“Hey it's Mr. Bressi. It never gets old does it?”* - CBP Agent J. Grayson

9 At no time during the initial stop did Agent Grayson or McKnight give Defendant any instructions, ask  
10 Defendant any immigration related questions or attempt to look over Defendant's vehicle making it  
11 clear that the agents were detaining Defendant for purposes having nothing to do with the stated  
12 primary purpose of the roadblock – namely immigration enforcement.

13 Having never experienced this type of unprofessional behavior at the roadblock before, Defendant  
14 beeped the vehicle's horn in the hope's of getting the attention of Agent Grayson and McKnight's  
15 supervisor sitting underneath a nearby canopy as the agents continued recording him. BP supervisor  
16 Brandon looked over momentarily and waved but appeared to take no interest in the unprofessional  
17 and, quite possibly, illegal actions of his subordinates at the primary stop location.

18 After Defendant turned back to the two agents who were still recording him, Agent Grayson once again  
19 stated:

20 *“It never gets old huh.”* - CBP Agent J. Grayson

21 Given that Agent Grayson & McKnight obviously knew who Defendant was and were more interested  
22 in harassing him then visually inspecting the exterior of Defendant's vehicle or asking him any  
23 immigration-related questions, Defendant made it clear he wished to go on his way by slowly moving  
24 his vehicle forward while Agent's Grayson and McKnight continued recording him. As soon as

1 Defendant's vehicle began moving, Agent Grayson yelled for defendant to stop despite having no legal  
2 basis to continue the detention given that Grayson knew Defendant and his immigration status.  
3 Defendant quickly stopped his vehicle & Grayson stormed up to Defendant while barking conflicting  
4 orders in short succession.

5 First, Grayson ordered Defendant to back his vehicle up but Grayson's supervisor had stood up and was  
6 starting to walk towards the rear of Defendant's vehicle and Defendant didn't have a clear line of sight  
7 to backup safely. Agent Grayson then pointed towards secondary inspection off to the side of the road  
8 & slightly behind defendant's vehicle on the passenger side while yelling, "pull it over" multiple times.

9 Seeing his supervisor approaching the scene, Agent Grayson was also hastily trying to obscure the  
10 recording device he had used to videotape Defendant at primary by placing it back in his shirt pocket.  
11 Agent Grayson then indicated that, *'he could do this all day long'* while pointing to the secondary  
12 inspection area despite the presence of another CBP agent standing next to Defendant's vehicle making  
13 it unsafe to move in that direction. Additionally, there was a CBP vehicle located along the shoulder of  
14 the road slightly ahead of Defendant's vehicle preventing Defendant from pulling off the road without  
15 moving forward past the vehicle first.

16 All of this had transpired very quickly with only about one minute having passed from the time of  
17 Defendant's initial stop until Agent Grayson began radioing dispatch for assistance from the Pima  
18 County Sheriff's Dept. (PCSD). About two minutes after Grayson radioed dispatch, sheriff's deputy T.  
19 Audetat arrived onscene. After speaking to the CBP agents, Deputy Audetat approached Defendant and  
20 asked why he was stopped in the road. Defendant told him he was ordered to stop by federal agents  
21 and that they were not allowing him to go on his way. A brief discussion with Deputy Audetat followed  
22 in which the deputy asked Defendant to pull his vehicle off to the side of the road. The Defendant did  
23 so at which point Deputy Audetat walked back to the CBP agents for further collaboration.

24 A few minutes after Defendant pulled off to the side of the road, CBP Supervisor Brandon approached  
25 him and stated that CBP's inspection of Defendant was complete despite the fact they had made no  
26 attempt to look over Defendant's vehicle or ask Defendant any immigration-related questions. This

1 further highlighted the dubious nature of Defendant's detention and Agent Grayson's actions. If Agent  
2 Grayson had a lawful reason for extending Defendant's detention while directing him to secondary  
3 inspection, that reason had not been satisfied merely because Deputy Audetat had arrived onscene. The  
4 primary reason for the extended detention and the presence of Deputy Audetat quickly became  
5 apparent however when Supervisor Brandon told Defendant that even though CBP's 'inspection' was  
6 complete, he still wasn't free to leave because the deputy was going to write Defendant a citation for  
7 impeding traffic.

8 Several minutes later, Deputy Vatterrodt, Badge #6111, approached Defendant and requested his  
9 driver's license. Defendant is unsure when Deputy Vatterrodt arrived onscene. Soon after, Deputy  
10 Audetat issued a citation for allegedly violating ARS 28-871(A). Defendant asked the deputy how such  
11 a citation could be valid considering Defendant had been stopped next to a stop sign while being  
12 detained by federal agents at a federal roadblock specifically designed to stop cars in the lane of traffic.  
13 Deputy Audetat merely indicated Defendant would have to raise the issue in court if he disagreed with  
14 the citation. Defendant then requested the names & badge numbers of both deputies along with the  
15 names of the CBP agents present at the roadblock. Deputy Audetat & Vatterrodt provided their  
16 information and then had CBP Agent Grayson come over to speak to Defendant.

17 While speaking to Defendant, Agent Grayson admitted he knew Defendant along with Defendant's  
18 immigration status. He then told Defendant that in past encounters he had just waved Defendant  
19 through the roadblock because he knew who he was but this time around he decided to detain  
20 Defendant at the roadblock to videotape him because Defendant was videotaping Agent Grayson. After  
21 leaving the scene and checking his records, Defendant did indeed identify four previous roadblock  
22 encounters involving Agent Grayson. These previous encounters spanned a three year time frame and  
23 took place on March 6, 2010, November 18, 2012, January 5, 2013 & March 3, 2013.

24 After Defendant finished speaking with Agent Grayson, he asked to speak with his supervisor, Agent  
25 Brandon. During the ensuing conversation, Brandon acknowledged the following:

- 26 • CBP recognized Defendant and his vehicle as it was entering the roadblock

- 1 • The immigration inspection with regards to Defendant was complete before Defendant even
- 2 came to a stop next to the roadblock's stop sign since the agents already knew who he was
- 3 • The recording devices used by Agent Grayson and McKnight to record Defendant were not
- 4 agency-issued
- 5 • No agency policy governed the actions that Agent Grayson and McKnight took against
- 6 Defendant at the roadblock
- 7 • The supervisor was not happy with the way Agent Grayson conducted himself at primary &
- 8 didn't understand Agent Grayson's rationale for recording Defendant to begin with
- 9 • The supervisor intended to address the issue with his subordinates at a later date

10 After Defendant finished talking with Agent Brandon, he left the scene.

11 **1.) The statutory language Defendant is alleged with violating doesn't prohibit stopping, standing**  
12 **or parking where Defendant was cited:**

13 Defendant is charged with violating *ARS 28-871(A)* for allegedly stopping, standing or parking on a  
14 highway outside a business or residential district. *ARS 28-871(A)* is a statute that prohibits stopping,  
15 standing or parking in certain locations. The statute does not address the amount of time an individual  
16 may stop in a location in which stopping, standing or parking is otherwise permissible and it does not  
17 apply to scenarios in which an individual has been compelled to stop by a traffic control device or by  
18 government agents. Additionally, given that *ARS 28-871(A)* doesn't explicitly prohibit stopping,  
19 standing or parking in all places under all circumstances, if the statute stood alone it would be void on  
20 its face due to vagueness. The statute does not stand alone however. To find out where exactly an  
21 individual is prohibited from stopping, standing or parking and under what circumstances, one needs to  
22 look to *ARS 28-873* where the specifics are defined.

23 *ARS 28-873* states any prohibitions don't include circumstances in which an individual is in compliance  
24 with the law, the directions of a police officer or complying with a traffic control device. Additionally,  
25 *ARS 28-873* only prohibits stopping, standing or parking along sidewalks, in front of driveways, in  
26 intersections, near fire hydrants, on or near crosswalks, near flashing safety beacons, near safety zones,

1 near railroad crossings, near fire stations, near road excavation sites, on bridges, on controlled access  
2 highways, etc. Defendant was located no where near any of the locations referenced in the statute  
3 however. Indeed, Defendant was located at Milepost 146.6 along SR-86 in Southern Arizona within the  
4 boundaries of a federal DHS/CBP roadblock where one of the fundamental purposes of the roadblock  
5 is, in fact, to stop all vehicular traffic on the highway.

6 Further, Defendant did not stop voluntarily and after stopping Defendant did in fact want to go on his  
7 way. He was prevented from doing so however by armed federal agents. In stopping, Defendant was  
8 initially complying with a traffic control device (stop sign) erected in the middle of the highway.  
9 Afterwards when Defendant wanted to leave, federal agents prevented him from doing so by explicitly  
10 ordering him not to. Given these facts, Defendant did not violate ARS 28-871(A) because:

- 11 • The location where Defendant was involuntarily stopped was not one of those locations listed  
12 in ARS 28-873 where stopping is prohibited
- 13 • In stopping, Defendant was complying with a traffic control device along with federal agents  
14 who were stopping & seizing all Eastbound traffic within the boundaries of a federal roadblock.

15 **2.) The statute Defendant is alleged to have violated has no legal effect within the boundaries of a**  
16 **federal roadblock while being detained by federal agents for federal immigration purposes:**  
17

18 In United States v. Brignoni-Ponce - 422 U.S. 873, the U.S. Supreme Court ruled that:

19 *“Border Patrol agents have no part in enforcing laws that regulate highway use, and*  
20 *their activities have nothing to do with an inquiry whether motorists and their vehicles*  
21 *are entitled, by virtue of compliance with laws governing highway usage, to be upon the*  
22 *public highways.”*

23 ARS 28-871 is an Arizona statute that regulates highway use along Arizona highways and therefore, by  
24 default, falls outside the lawful enforcement scope of CBP/BP agents operating federal roadblocks  
25 along state highways. ARS 28-871 and related statutes make no reference to circumstances



1 surrounding individuals being compelled to stop in the lane of traffic by federal agents operating  
2 federal roadblocks along Arizona highways. Indeed, there is no explicit statutory authority in Arizona  
3 for conducting roadblocks along Arizona highways by any agency for any reason – be it a local, state  
4 or federal agency.

5 Nonetheless ARS 28-873 does make reference to directions given by 'police officers'. To analyze this  
6 however, we must first determine whether or not CBP agents operating federal roadblocks along  
7 Arizona highways are 'police officers' for purposes of the statute.

8 ARS 28-601(17) defines 'police officer' as follows:

9 *“Police officer’ means an officer authorized to direct or regulate traffic or make arrests*  
10 *for violations of traffic rules or other offenses.”*

11 In Arizona, only peace officers have the authority to direct or regulate traffic or make arrests for  
12 violations of traffic rules along Arizona highways. Under normal conditions, federal agents operating  
13 in Arizona do not possess Arizona peace officer powers which means they have no inherent authority  
14 to direct or regulate traffic or make arrests for traffic-related violations. To lawfully possess such  
15 powers, they must first be cross-certified by the sheriff in the county they're operating in. See ARS 13-  
16 3875 regarding cross-certification of federal peace officers.

17 To determine whether or not the agents at the roadblock had such powers, Defendant submitted a  
18 public records request to *Arizona's Peace Officer Standards & Training Board* (AZ POST) on April 4,  
19 2013 (see attachment #3). The documentation Defendant received in response to his request revealed  
20 that none of the federal agents Defendant was forced to interact with at the federal checkpoint on  
21 March 29, 2013 were cross-certified by Sheriff Dupnik (see attachment #4). As such, none of the  
22 interaction Defendant had at the roadblock in question has any relevance regarding ARS 28-871(A).  
23 The only directions given to Defendant by a peace officer with authority to direct or regulate traffic in  
24 Arizona on March 29, 2013 came from Deputy Audetat and Defendant complied with Audetat's  
25 directions.

1 Given that ARS 28-871(A) & 28-873 make no reference to federal roadblock scenarios and create no  
2 special exceptions for them, it could be construed that every time a federal agent instructs a person to  
3 stop at a federal roadblock, the federal agent is in fact violating ARS 28-871(A). A more palatable  
4 interpretation for the court however is that ARS 28-871(A) has no business being applied in  
5 circumstances where an individual has been stopped and detained by federal agents for federal  
6 purposes within the boundaries of a federal roadblock. Indeed, a determination that the state may  
7 intercede on behalf of federal agents who seize individuals in the lane of traffic by citing individuals  
8 compelled to stop for, in fact, stopping would be counter-productive at best.

9 **3.) Defendant was being illegally detained by federal agents in the lane of traffic at**  
10 **the time & place of the alleged violation:**

11 In the event the court is unpersuaded by Defendant's arguments that ARS 28-871(A) and supporting  
12 statutes do not prohibit Defendant from stopping where he was stopped and are not applicable within  
13 the boundaries of a federal roadblock in which federal agents are detaining individuals in the lane of  
14 traffic, then the court must consider whether Defendant was being illegally detained by federal agents  
15 given that Defendant was not stopped voluntarily in the lane of traffic.

16 **A.) CBP Checkpoints Must Be Limited In Scope and Intrusiveness:**

17 While the U.S. Supreme Court has upheld permanent immigration checkpoints setup along nexus  
18 points for border traffic within a reasonable distance of the border, the court acknowledged that all  
19 checkpoint stops represent seizures within the meaning of the 4<sup>th</sup> amendment and as such, the stop must  
20 be limited in scope, minimally intrusive and after the initial immigration questions, individuals stopped  
21 must be free to go in the absence of consent or probable cause:

22 *"The principal protection of Fourth Amendment rights at checkpoints lies in appropriate*  
23 *limitations on the scope of the stop" - United States v. Martinez-Fuerte - 428 U.S. 543*

1       *"Our prior cases have limited significantly the reach of this congressional authorization,*  
2       *requiring probable cause for any vehicle search in the interior & reasonable suspicion*  
3       *for inquiry stops by roving patrols. Our holding today, approving routine stops for brief*  
4       *questioning is confined to permanent checkpoints. We understand, of course, that neither*  
5       *longstanding congressional authorization nor widely prevailing practice justifies a*  
6       *constitutional violation"* - United States v. Martinez-Fuerte - 428 U.S. 543

7       *"...We have held that checkpoint searches are constitutional only if justified by consent or*  
8       *probable cause to search....& our holding today is limited to the type of stops described in*  
9       *this opinion. '[A]ny further detention . . . must be based on consent or probable cause.'*  
10       *United States v. Brignoni-Ponce, supra, at 882. None of the defendants in these cases*  
11       *argues that the stopping officers exceeded these limitations."*  
12       - United States v. Martinez-Fuerte - 428 U.S. 543

13 In this case, agents knew who Defendant was, knew his immigration status and had no consent or  
14 probable cause to extend the detention for any other purpose.

15 **B.) Agent Grayson's Detention of Defendant Exceeded Checkpoint's Lawful Scope:**

16 In authorizing certain types of roadblock operations, SCOTUS indicated any stops at such roadblocks  
17 had to be limited to brief immigration queries with any further detention based on consent or probable  
18 cause. In the case before this court, Agent Grayson knew exactly who Defendant was before he even  
19 came to a stop and referred to Defendant by name within seconds of him stopping.

20               *"Hey it's Mr. Bressi. It never gets old does it?"* - CBP Agent J. Grayson

21 Even though Agent Grayson knew who Defendant was along with his immigration status, he continued  
22 detaining Defendant in the lane of traffic against his will. When Defendant later asked Grayson why he  
23 didn't ask Defendant any immigration related questions, Grayson stated:

1           *“Because I know you...you come through here....yeah...I decided since you like to*  
2           *videotape me I decided to videotape you and you don't personally seem to like that very*  
3           *much”* - CBP Agent J. Grayson

4 When talking with Agent Grayson's supervisor, the supervisor also made it clear CBP recognized  
5 Defendant by stating:

6           *“I saw you come up and I waved at you because most of us recognize you”* - CBP  
7           Supervisory Agent Brandon

8 When Defendant asked Supervisor Brandon what the lawful scope of the checkpoint is, he stated:

9           *“Any further detention after we already know your status, the agent would have to*  
10          *explain...I don't know what he was looking for....”* - CBP Supervisory Agent Brandon

11 When Defendant asked Supervisor Brandon what is was Agent Grayson saw that allegedly prompted  
12 him to continue detaining Defendant despite knowing his immigration status, Supervisor Brandon  
13 asked Agent Grayson and then stated the following to Defendant:

14          *“This is what I've surmised from Agent Grayson. He's waved you through on several*  
15          *occasions. He's familiar with your vehicle and you. More or less this time he was*  
16          *basically trying to get a better look at you. He says the window sort of obscures that. I*  
17          *think he was more or less trying to initiate a conversation”* - CBP Supervisory Agent  
18          Brandon

19 When Defendant asked Supervisor Brandon about CBP policy regarding filming individuals seized at  
20 primary, he stated:

21          *“I'm not sure the mentality of filming you. I don't know operationally why we would need*

1           *to do that*” - CBP Supervisory Agent Brandon

2   When Defendant asked Supervisor Brandon if the recording equipment used at primary by Agent's  
3   Grayson and McKnight were agency issued, Supervisor Brandon stated:

4           *“I think that was just their own cell phone....”* - CBP Supervisory Agent Brandon

5   When Defendant asked Supervisor Brandon whether he approved of Agent Grayson's actions at  
6   primary, he stated:

7           *“From the information I have at this time, I would...not agree with the personal cell*  
8           *phones being used to film. I'm not sure the rationale behind that”* - CBP Supervisory  
9           Agent Brandon

10  
11   Given these exchanges between Defendant and Agent Grayson along with his supervisor, it's clear  
12   Agent Grayson had no legal basis for continuing to hold Defendant at primary after he recognized  
13   Defendant. It's also clear that Agent Grayson's actions were not based on any existing CBP policy or  
14   guidelines and that his supervisor did not approve of Agent Grayson's or McKnight's actions. As such,  
15   it's also clear Defendant was being illegally seized by Agent Grayson in the lane of traffic so that Agent  
16   Grayson could use his authority to act out his personal animosity towards Defendant under color of  
17   law. If Agent Grayson had not engaged in this illegal behavior, Defendant would not have been stopped  
18   in the lane of traffic when deputy Audetat arrived. Indeed, deputy Audetat would never have been  
19   called to the roadblock to begin with.

20   **C.)   CBP is in violation of their Arizona Department of Transportation (AZ DOT)**  
21   **Encroachment Permit:**

22   Under AZ law at ARS 28-332 & 28-363, AZ DOT has exclusive control and jurisdiction over state  
23   highways. Based upon these statutes along with rules and regulations promulgated by AZ DOT, CBP is  
24   required to apply for an encroachment permit before operating a federal roadblock along a state

1 highway. Additionally, the agency is required to keep a copy of that permit at the roadblock at all  
2 times, abide by all conditions attached to the permit and renew the permit annually.

3 To determine whether CBP is in compliance with their obligations under AZ law and AZ DOT  
4 requirements, Defendant submitted a public records request to AZ DOT for copies of all  
5 documentation associated with CBP encroachment permits from the last year and a half (see  
6 attachment #5). In response, Defendant received over 600 pages of documents. The current  
7 documentation associated with the roadblock defendant was cited at is included with this motion (see  
8 attachment #6). As part of the specifications associated with the encroachment permit issued to CBP  
9 for a tactical roadblock located at Milepost 146.5 along SR-86 on March 5, 2013, AZ DOT noted the  
10 following on page 2 of the permit's attachment:

11 *“This permit is issued to allow establishment of a temporary immigration checkpoint on*  
12 *irregular dates and for irregular periods of time and is valid for a period of one year as*  
13 *dated on the application.”*

14 Defendant has been traveling through this roadblock since its inception in January of 2008 on a regular  
15 basis at all manner of dates and times. Defendant is also aware of several other individuals who travel  
16 through the roadblock on a regular basis to get to and from their work site. In violation of the  
17 restrictions imposed on CBP roadblock operations by AZ DOT, the roadblock has been in operation  
18 continuously twenty four hours a day, seven days a week since it's inception. The encroachment permit  
19 only allows operation on irregular dates and for irregular periods of time however. Given that CBP is in  
20 violation of the terms of the encroachment permit issued to it covering the date Defendant was cited,  
21 the detention of Defendant at the roadblock by Agent Grayson for any amount of time or for any  
22 reason on March 29, 2013 was illegal for purposes of Title 28 of Arizona's Revised Statutes.

23 **D. ) Pima County Sheriff's Department Conducting Joint Operations with CBP At Roadblock**

24 On May 16, 2013 after Defendant passed through this same roadblock, Defendant pulled over on the  
25 outskirts of the roadblock to talk with a PCS D Deputy who appeared to be stationed on the North side

1 of the roadblock. During the ensuing conversation where Defendant inquired as to what the PCSD was  
2 doing at the roadblock, Deputy Wren (Badge #6315) indicated that it was a joint operation, that the  
3 PCSD was being paid from a federal grant to assist CBP with their operations in Pima County and that  
4 she was specifically being paid from that grant on that day to be there for an eight hour shift. Deputy  
5 Wren also indicated that she was there for general law enforcement concerns that fell under her  
6 jurisdiction such as speeding and other traffic violations along with writing citations for things like  
7 marijuana possession if discovered by agents at the roadblock.

8 When Defendant submitted a Public Records request to the PCSD for a copy of the federal grant  
9 referred to by Deputy Wren amongst other documentation (see attachment #7), Defendant was told  
10 there were no records responsive to his request (see attachment #8) even though the records personnel  
11 Defendant talked with admitted there was a federal grant currently in effect between DHS and the  
12 PCSD. Defendant has since made additional Public Records requests to the PCSD for copies of the  
13 records improperly withheld but is still waiting for the PCSD's response to those requests (see  
14 attachment #9).

15 Given what Defendant knows now however, there is obviously a formal agreement in place between  
16 DHS and the PCSD that involves PCSD deputies having a presence at and providing some level of  
17 assistance at the federal immigration roadblock where Defendant was cited. Given that the PCSD Dept.  
18 is not empowered to assist CBP agents with enforcing federal immigration law, it's clear that when  
19 PCSD deputies are engaging in joint operations with CBP they are doing so for general law  
20 enforcement and drug interdiction purposes as indicated by Deputy Wren. The U.S. Supreme Court  
21 however has struck down roadblocks where one of the purposes is general law enforcement or drug  
22 interdiction:

23 *"We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol*  
24 *checkpoint designed to intercept illegal aliens, Martinez-Fuerte, supra, & at a sobriety*  
25 *checkpoint aimed at removing drunk drivers from the road, Michigan Dept. of State Police v.*  
26 *Sitz...In none of these cases, however, did we indicate approval of a checkpoint program*  
27 *whose primary purpose was to detect evidence of ordinary criminal wrongdoing." - City of*

1 **Indianapolis v. Edmond**, 531 U.S. 32 (2000)

2 • *“Petitioner city operates vehicle checkpoints on its roads in an effort to interdict unlawful*  
3 *drugs.... Because the checkpoint program’s primary purpose is indistinguishable from the*  
4 *general interest in crime control, the checkpoints violate the Fourth Amendment”* - City of  
5 Indianapolis v. Edmond, 531 U.S. 32 (2000)

6 As such, whenever a PCS D deputy is either dispatched to the roadblock to render assistance or stations  
7 him/herself there for a period of time under the terms of this grant, they are illegally expanding the  
8 scope of roadblock operations for general law enforcement purposes:

9 *"The principal protection of Fourth Amendment rights at checkpoints lies in appropriate*  
10 *limitations on the scope of the stop"* - United States v. Martinez-Fuerte - 428 U.S. 543

11 The existence of this federal grant between DHS/CBP and the PCS D provides a plausible explanation  
12 of why deputy Audetat was so quick to respond to Agent Grayson's call and ready and willing to cite  
13 Defendant at the beheadst of Agent Grayson for allegedly stopping illegally in the lane of traffic  
14 despite the fact all East-bound traffic was being compelled to stop in the first place.

15 **Conclusion**

16 On March 29, 2013, Defendant was cited by PCS D Deputy Audetat with allegedly, “stopping  
17 unnecessarily on hwy” in violation of ARS 28-871(A) (see attachment #10). A cursory review of the  
18 facts surrounding the alleged violation however show that no such violation of ARS 28-871(A) took  
19 place or could have taken place given the location of the alleged violation and the wording of the  
20 statute. Specifically, the location Defendant was alleged to have illegally stopped was within the  
21 boundaries of a federal roadblock in which Defendant stopped while complying with a traffic control  
22 device placed in the lane of traffic and was subsequently detained by federal agents.

23 These facts in and of themselves invalidate the application of ARS 28-871(A) against Defendant since  
24 Defendant was not stopped voluntarily and the State of Arizona has obviously seen fit to allow federal



1 agents to setup a federal roadblock and stop traffic at the location where Defendant was cited.

2 Further, the specific exceptions and prohibitions defined in ARS 28-873 for stopping, standing or  
3 parking along AZ roads do not support a charge under ARS 28-871(A), no CBP agent at the roadblock  
4 was cross-certified to enforce state law and CBP is currently in violation of the encroachment permit  
5 issued to it for the roadblock in question. Finally, Defendant's detention at the roadblock by Agent  
6 Grayson was illegal to begin with given the fact that roadblock seizures must be limited in scope and  
7 intrusiveness. Agent Grayson failed to limit the stop's scope & intrusiveness when he continued to  
8 detain Defendant to record him with a personal cell phone despite having no legitimate suspicions  
9 regarding Defendant's immigration status. Further, by entering into a formal agreement with the PCSD  
10 via a federal grant that pays sheriff deputies to provide assistance at the roadblock for general law  
11 enforcement duties, the scope of the roadblock has been expanded outside lawful parameters.

12 Given these facts, Defendant requests that this court grant Defendant's Motion to Dismiss, or failing  
13 that, allow oral argument regarding the motion during the hearing scheduled for July 1, 2013.

14 Respectfully submitted this \_\_\_\_\_ day of June, 2013.

15 BY: \_\_\_\_\_  
16 Terrence Bressi  
17 Defendant

18 Copy of foregoing mailed certified #  
19 mailed/served June 21, 2013 to:

20 Pima County Justice Court  
21 115 N. Church Ave.  
22 Tucson, AZ 85701-1130

23 Copy of foregoing mailed certified #  
24 mailed/served June 21, 2013 to:

25 Deputy Thomas Audetat, Badge #6312

1 Pima County Sheriff Department  
2 1750 E. Benson Highway  
3 Tucson, AZ 85714  
4 Plaintiff

5 BY: \_\_\_\_\_

6 Attachments:

- 7 1.) Case #TR09-001179 Disposition
- 8 2.) March 29, 2013 Roadblock Photos
- 9 3.) AZ POST Public Records Request
- 10 4.) AZ POST Public Records Response
- 11 5.) AZ DOT Public Records Request
- 12 6.) AZ DOT Public Records Response
- 13 7.) PCSD Public Records Request (first)
- 14 8.) PCSD Public Records Response (first)
- 15 9.) PCSD Public Records Request (second)
- 16 10.) Citation #684115