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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Leesa Jacobson, *et al.*,

13 Plaintiffs,

14 v.

15 U.S. Department of Homeland Security,
16 *et al.*,

17 Defendants.

No. CV-14-02485-TUC-BGM

**DEFENDANTS' STATEMENT OF
FACTS NOT IN GENUINE
DISPUTE**

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19 Pursuant to Local Civil Rule 56.1, Defendants respectfully submit the following
20 statement of facts not in genuine dispute. As explained in Defendants' motion to dismiss
21 or, in the alternative, for summary judgment, this case turns not on the resolution of any
22 disputed facts, but on whether the Border Patrol's policy is reasonable given the public
23 safety and law enforcement interests at stake, which the Court has concluded are
24 significant and undisputed. See slip op. at 16-17 (Doc. No. 54). Thus, there are no
25 disputed facts material to the resolution of Defendants' motion that would preclude the
26 entry of summary judgment in Defendants' favor. Nevertheless, the following facts,
27 though not material, are not in genuine dispute.
28

The Arivaca Checkpoint

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2 1. The eastbound approach to the Arivaca checkpoint is marked as follows: at
3 about 0.4 mile out, “Border Patrol Checkpoint Ahead”; at 1,350 feet, “Speed Limit 35”
4 mph, reduced from 45 mph; at 900 feet, “Speed Limit 25” mph; at 600 feet, “All Vehicles
5 Must Stop Ahead”; at 320 feet, “No Passing Zone”; at 300 feet, “K-9 on Duty, Please
6 Restrain Your Pets”; at 250 feet, “Use Low Beams”; and at 180 feet, “Speed Limit 15”
7 mph and a digital speed board, with traffic cones and pylons along the center stripe
8 beginning at 200 feet out, a series of three rumble strips beginning at 110 feet out, and a
9 stop sign at the primary inspection area, in the center of the checkpoint. See McLain
10 Decl. Ex. 2 (Pls.’ Mot. Prelim. Inj., Doc. No. 29-3) (map from satellite image); San
11 Martin Decl. (Defs.’ Ex. C) ¶ 8 & Attach. 1-18 (photographs).

12 2. At the primary inspection area, there are two plastic barricades along the
13 center stripe, where a Border Patrol agent stands. See McLain Decl. Ex. 2 (map from
14 satellite image); San Martin Decl. ¶¶ 8-9 & Attach. 1-18 (photographs).

15 3. On the northern roadside are a portable lighting unit and often several
16 Border Patrol vehicles. See McLain Decl. Ex. 2 (map from satellite image); San Martin
17 Decl. ¶¶ 8-9, 23 & Attach. 1-18 (photographs); Spencer Decl. (Defs.’ Ex. D) ¶ 6 &
18 Attach. 6-7 (photographs); Huey Decl. (Defs.’ Ex. E) ¶ 4 & Attach. 1-2 (photographs).

19 4. On the southern roadside is an 8-by-40-foot storage container used for
20 administration, processing, and detention, beside which are a canopy and a portable
21 kennel. See McLain Decl. Ex. 2 (map from satellite image); San Martin Decl. ¶ 8 &
22 Attach. 1-18 (photographs).

23 5. East of the primary inspection area on the southern roadside is an
24 approximately 100-foot-long secondary inspection area, at the eastern end of which is a
25 Border Patrol sedan used to give chase. As motorists exit the checkpoint, traffic pylons
26 extend about 160 feet east of its center. See McLain Decl. Ex. 2 (map from satellite
27 image); San Martin Decl. ¶ 8 & Attach. 1-18 (photographs); Ragan Decl. (Pls.’ Mot.
28 Prelim. Inj., Doc. No. 29-2) ¶ 15 & Diagram A.

1 6. Also on the southern roadside are two portable lighting units, restrooms, a
2 sink, a water tank, and a variety of other equipment. See McLain Decl. Ex. 2 (map from
3 satellite image); San Martin Decl. ¶¶ 8, 23 & Attach. 1-18 (photographs).

4 7. To encourage westbound motorists to slow to the posted speed limit of 15
5 mph, and to prevent them from driving off the road to avoid the rumble strips, agents
6 often park Border Patrol vehicles on the northern roadside beside the primary inspection
7 area. See San Martin Decl. ¶¶ 8-9, 23 & Attach. 1-18 (photographs); Spencer Decl.
8 (Defs.' Ex. D) ¶ 6 & Attach. 6-7 (photographs); Huey Decl. (Defs.' Ex. E) ¶ 4 & Attach.
9 1-2 (photographs).

10 8. Motorists sometimes fail to yield at checkpoints or will flee when referred
11 to the secondary inspection area. The pursuit vehicle located at the eastern end of the
12 secondary inspection area at the Arivaca checkpoint may swerve, fish tail, and kick up
13 rocks when leaving the unpaved, dirt roadside at the start of a high-speed chase. See
14 McLain Decl. Ex. 2 (map from satellite image); San Martin Decl. ¶ 11 & Attach. 1-18
15 (photographs).

16 9. In the past 5 years, there have been at least 28 significant safety incidents at
17 the three checkpoints within Tucson Station. Nine of those incidents involved either a
18 failure to yield at the primary inspection area or a flight from the secondary inspection
19 area. Five others involved driving under the influence or reckless driving, two of which
20 resulted in accidents. In March 2014, a drunk motorist traveling westbound through the
21 Arivaca checkpoint drove off the roadway and crashed into license plate readers located
22 on the northern roadside near the primary inspection area. See San Martin Decl. ¶ 10.

23 10. It is a standard weapon-retention technique for law enforcement officers to
24 keep other persons in their line of sight when in close proximity to avoid being snuck up
25 on from behind and assaulted or disarmed. See San Martin Decl. ¶ 20.

26 11. Canines used in the primary and secondary inspection areas of Border
27 Patrol checkpoints can be distracted by unfamiliar surroundings and people, and have
28 bitten handlers, agents, and civilians. See San Martin Decl. ¶ 11.

Event on December 8, 2013

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2 12. On December 8, 2013, the organization People Helping people staged a
3 rally at the Arivaca checkpoint with more than 100 participants, who carried signs and
4 banners and gave speeches. See San Martin Decl. ¶ 12; Spencer Decl. ¶ 3; Press Release,
5 People Helping People (“PHP”), Community Members Shut Down Border Patrol
6 Checkpoint (Dec. 20, 2013), at <http://phparivaca.org/?p=262>.

7 13. During the rally, protesters entered the roadway within and around the
8 checkpoint. See Spencer Decl. ¶ 4 & Attach. 1-5 (photographs).

9 14. Due to safety concerns, the Border Patrol suspended checkpoint operations
10 from about 12:30 pm to 4:50 pm, during which time traffic was permitted to pass
11 uninspected. See San Martin Decl. ¶ 12; Spencer Decl. ¶¶ 3-4 & Attach. 4 (photograph);
12 Press Release, PHP, Community Members Shut Down Border Patrol Checkpoint (Dec.
13 20, 2013), at <http://phparivaca.org/?p=262>.

Event on February 26, 2014

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15 15. On February 26, 2014, Plaintiff Ragan, five other “monitors,” and about
16 two dozen protesters visited the checkpoint. See San Martin Decl. ¶ 13; Spencer Decl.
17 ¶ 5; Ragan Decl. ¶ 13.

18 16. The group approached the Arivaca checkpoint from the east and stopped
19 approximately 100 feet from the center of the checkpoint, past the checkpoint’s
20 easternmost traffic pylon. When asked by Border Patrol agents to move back to a spot
21 about 150 feet east of the center of the checkpoint, the group repeatedly refused. See San
22 Martin Decl. ¶ 13; Spencer Decl. ¶¶ 5-6 & Attach. 6-7 (photographs); Ragan Decl. ¶¶ 13-
23 19.

Event on March 1, 2014

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25 17. On March 1, 2014, a group of at least five individuals visited the
26 checkpoint. At that time, rope barriers had been strung across the northern and southern
27 roadsides about 150 feet east of the center of the checkpoint. See San Martin Decl.
28 ¶¶ 13-14; Huey Decl. ¶ 3.

1 18. The group approached the checkpoint from the east, continued past the rope
2 barriers, and stopped approximately 20-30 feet west of the barriers. When asked by
3 Border Patrol agents to move back behind the rope barriers, the group repeatedly refused.
4 See Huey Decl. ¶ 3-4 & Attach. 1-2.

5 19. During this incident, agents parked Border Patrol vehicles on the northern
6 and southern roadsides, just inside the barriers, as directed by agent San Martin. See San
7 Martin Decl. ¶ 14.

8 20. On March 7, 2014, agent San Martin stated in an email that, during the
9 incident, “The vehicles were parked there to provide an additional barrier because some
10 monitors refused to move. If the monitors had moved when agents asked them to the
11 vehicles would have never been placed there.” See Compl. Ex. C at 2.

12 21. In the same email, agent San Martin stated that “agents do not have the
13 desire or intention to challenge or stop PHP from monitoring as long as it’s done from
14 outside the marked perimeter of the checkpoint.” See Compl. Ex. C at 3.

15 22. On March 11, 2014, during a community meeting, PHP members
16 complained that Border Patrol vehicles parked beside the cordons interfered with their
17 view of the checkpoint. In response, agent San Martin stated that, as a show of good
18 faith, if the PHP members would agree to respect the cordons, he would direct the agents
19 not to park vehicles beside the cordons (unless that space was needed for parking or other
20 operational needs). The next day, on March 12, 2014, he relaxed his previous order
21 accordingly. See San Martin Decl. ¶¶ 14-15, 21.

22 **Other Information**

23 23. During a 24-hour rally at the checkpoint on December 7, 2014, after PHP
24 members complained that fumes, light, and noise from a generator that powered portable
25 light units were interfering with their sleep, Border Patrol agents moved the generator to
26 the opposite side of the road, away from the PHP members’ tents. See San Martin Decl.
27 ¶ 21.

1 24. From the western cordons, PHP members have handed out “know your
2 rights” fliers to motorists entering the checkpoint to advise them of their legal rights.
3 From the eastern cordons, they have flagged down motorists leaving the checkpoint to
4 discuss their views. See San Martin Decl. ¶ 22.

5 25. Other citizen groups have erected large signs on private land adjacent to the
6 checkpoint reading “Keep Our BP Checkpoint Open” and “Citizens of Arivaca, Moyza,
7 and Amado Support Our BP Checkpoint.” See San Martin Decl. ¶ 8 & Attach. 19-21.

8
9 DATED this 23rd day of October, 2015.

Respectfully submitted,

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11 JOHN TYLER
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12
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2015, I electronically transmitted the foregoing document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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