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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

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|---|---|
| TERRENCE BRESSI,<br><br>Plaintiff,<br><br>vs.<br><br>MICHAEL FORD, ERIC O'DELL, GEORGE TRAVIOLIA, RICHARD SAUNDERS, and JOSEPH DELGADO,<br><br>Defendants. | Case No. CIV 04-264 TUC-AWT<br><br>**RESPONSE TO DEFENDANTS' MOTION *IN LIMINE* (SIXTH) RE: TRAVIOLIA AND ROMERO "THOUGHTS OR SUBJECTIVE INTENT"**<br><br>Assigned to Honorable A. Wallace Tashima |

Plaintiff, through undersigned counsel, responds to Defendants' "Motion *in Limine* (Sixth) RE: Evidence of Line Officers Traviolia's and Romero's Thoughts or Subjective Intent of Purposes of Checkpoint" (*Dkt #222*) and requests that this Court deny the motion.

As an initial matter, Defendants continue to seek preclusion of unfavorable evidence based on a one-sided, self-serving view of the evidence in the case. In this motion, Defendants insist that Romero's police report (*Dkt #222-2*) means something other than the express language used in the report, and that Traviolia's statement about the purpose of the

roadblock was never made. *Dkt #222, p.2*. Defendants are free to pursue their interpretation of the evidence at trial, but the fact that a piece of evidence may be interpreted in more than one manner is not a basis to preclude otherwise relevant, admissible evidence.

Regarding the "programmatic purpose" of the roadblock in question, under more ordinary circumstances Defendants' motion may be well-taken. Defendants accurately quote from *City of Indianapolis v. Edmond* that the Court instructed that "the purpose inquiry in this context is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene." 531 U.S. 32, 48, 121 S.Ct. 447 (2000) (citing *Whren v. United States*, 517 U.S. 806, 116 S.Ct. 1769 (1996)). But the distinguishing fact between *Edmond* and this case is that in *Edmond*, the programmatic purpose was clearly on display in published guidelines that were produced in court. In this case, on the other hand, Defendants not only destroyed what little documentation existed that could show what the primary purpose of the roadblock was, but Defendants have also admitted that they did not have published guidelines, that the operational plan did not specify that individual officers should follow a standardized course of action, and that individual officers were vested with unbridled discretion how to proceed with their questioning of drivers.

Because individual officers had such discretion at the roadblocks, how one officer conducts stops of motorists versus the manner in which another officer conducts those stops becomes relevant to show that not all drivers are treated the same. Fed. R. Evid. 401-402. As for Defendants' claim that the evidence should be precluded under Rule 403 as well, Defendants mistakenly believe that Plaintiff must prove that the thoughts and impressions of

Romero and Traviolia must come from a Chief of Police like Saunders or a patrol commander like Ford. The fact that these line officers held these divergent beliefs about the purposes of these roadblocks is relevant to show that they received no such guidance from Saunders or Ford or anyone else in a policymaking capacity.

As for Defendants' concern that these statements might be given too much importance if admitted before the jury, defense counsel is welcome to argue to the jury that the statements are unimportant. This goes to weight of the evidence, not its admissibility. For these reasons, For these reasons, Defendants' Motion in Limine (Sixth) should be denied.

RESPECTFULLY SUBMITTED this 10th day of May, 2012.

BY: /s/ David J. Euchner
David J. Euchner
Attorney for Plaintiff

BY: /s/ David J. Euchner, for
Ralph E. Ellinwood
Attorney for Plaintiff

ORIGINAL of the foregoing electronically
Filed May 10, 2012, with:

Clerk, U.S. District Court
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