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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MILA VORKOSIGAN,	:	
	:	**No. 17-cv-3352 SPL**
Plaintiff,	:	
	:	
v.	:	
	:	
COLE SHOCKLEY, Chief of Police, City of Goodyear Police Department, in his official and individual capacities; CHARLES VILLANUEVA, Officer, City of Goodyear Police Department, in his official and individual capacities; and CITY OF GOODYEAR,	:	
	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Police must be allowed to take reasonable steps to protect their communities from senseless, preventable death. When three men from Goodyear, Arizona flipped over the median while driving on Interstate 10, killing one of the men, a 24-year-old woman and her baby, the people of Goodyear demanded action. The Goodyear Police Department (GPD) found that the men had purchased and smoked marijuana in California before driving back to Arizona, and that impaired driving was the likely cause of the crash. Under the leadership of GPD Chief Cole Shockley, the City of Goodyear established a highway checkpoint program designed primarily to discourage impaired driving. Mila Vorkosigan was stopped at a GPD checkpoint, where she met Officer Charles Villanueva. Officer Villanueva conducted the checkpoint in compliance with all protocols, but Mrs. Vorkosigan suffered a panic attack during the encounter and lost her job because she missed her shift at work and failed to report her absence in a timely manner.

Under the Fourth Amendment, searches and seizures need only be reasonable. U.S. Const. amend. IV. A suspicionless checkpoint is a reasonable seizure under the Fourth Amendment if it meets two criteria. *United States v. Fraire*, 575 F.3d 929, 932 (9th Cir. 2009). First, (A) its primary purpose must not be to advance the general interest in crime control. *City of Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000). If the checkpoint is not per se invalid as a crime control device, then (B) it must be reasonable based on the individual circumstances. *Illinois v. Lidster*, 540 U.S. 419, 426 (2004). The primary purpose of the GPD checkpoints was roadway safety because Goodyear implemented the checkpoints in response to a deadly crash, official statements and the checkpoint's execution point to this purpose, and roadway safety was not a pretext for drug interdiction. The checkpoints were reasonable because they addressed a serious public concern, advanced the public interest in mitigating the concern, and minimally interfered

with Mrs. Vorkosigan's liberty. The court should grant the defendants' motion for summary judgment because, as a matter of law, the checkpoints were valid under the Fourth Amendment.

STATEMENT OF MATERIAL FACTS

Goodyear and the GPD launched a highway checkpoint program after three young people died in a tragic crash on I-10. (Goodyear Marijuana Impairment Task Force Report, dated April 1, 2017, at 1 ("MITF"), attached as Ex. A). An investigation did not conclusively attribute the crash to marijuana impairment but found that it was likely the primary culprit. (Shockley Dep. 6:24-26, attached as Ex. B). After the crash, the city convened a Marijuana Impairment Task Force (MITF) comprised of local officials. (MITF at 1). Chief Shockley, a 25-year veteran of the GPD and its chief since 2017, led MITF and oversaw the checkpoint program. (Sho. Dep. 3:8-10, 22:8-10); (MITF at 4). Officer Villanueva, a narcotics officer, operated the checkpoint when Mrs. Vorkosigan was stopped. (Villanueva Dep. 3:9, 11:15-31, attached as Ex. C).

The crash on January 15, 2017 upset many in Goodyear. (Sho. Dep. 8:26-28). Anthony Ignatius, 21, and two other Goodyear residents drove to Blythe, California – less than two hours from Goodyear – where they purchased and smoked marijuana. (Sho. Dep. 4:30, 6:4-11). While driving home on I-10 East, they hit a car driven by Erica Kleeson, 24, with her eight-month-old son Liam in tow. (Arizona Capitol Times Article ("Article"), attached as Ex. D). Ignatius, Kleeson, and baby Liam were all killed, and Ignatius's two passengers were injured. (Article).

The crash galvanized Goodyear residents to urge the city and the GPD to address marijuana-impaired driving. (Sho. Dep. 7:8-11). They called a town hall in mid-February 2017, and an overflow crowd of nearly 500 people attended. (Sho. Dep. 7:8-11); (MITF at 3). Virtually everyone there was outraged by the tragedy and implored the GPD to take action. (MITF at 3).

Responding to the demands of the citizens he is sworn to protect, Chief Shockley organized the MITF. (Sho. Dep. 11:1-3). He oversaw development of a formal suspicionless checkpoint policy that was approved by the MITF and the Goodyear City Council on April 19, 2017. (MITF Checkpoint Policy at 1 ("Policy"), attached as Ex. E).

The approved checkpoint policy states that the primary goal was to "identify, arrest, and deter marijuana-impaired drivers." (Policy at 1). The secondary goal was "to identify, arrest, and deter those in possession of marijuana for personal consumption or trafficking." (Policy at 1). Marijuana is illegal in Arizona, so the GPD hoped to use the checkpoints, as a secondary aim, to discourage drug users and traffickers from bringing marijuana legally obtained from California into Arizona via I-10. (MITF at 3). Although Chief Shockley has publicly expressed interest in drug interdiction, and his subordinate Deputy Hannah Pearl encouraged interdiction and forfeiture in an internal memo, it is undisputed that all statements about the program in the record indicate that the program's primary goal was highway safety, and no documents approved by Chief Shockley or the city expressly indicate any other primary purpose. (Sho. Dep. 22:8-18); (MITF at 5); (Policy at 1); (Deputy Pearl Memo ("Pearl"), attached as Ex. F).

The focus of the checkpoints was I-10 East, where the January tragedy occurred. (Policy at 2). The GPD chose times and locations that would advance the goals of the program while minimizing traffic delays. (Sho. Dep. 15:23-25). To maximize the deterrent effect of the checkpoints, locations were not announced in advance. (Policy at 2); (Sho. Dep. 16:13-20). GPD sought to minimize the fear and anxiety the checkpoints would produce for law-abiding drivers by ensuring that they were well-marked with cones, lit with flares and flashing lights on police cars, and staffed by uniformed officers. (Policy at 2). A large flashing sign reading "REDUCE SPEED – SOBRIETY CHECK AHEAD" was to be placed on the side of the road in reasonable

advance locations for off-ramp checkpoints like the one in question. (Policy at 2). Officers had no discretion over which cars to stop – they were to stop all cars, unless there was a severe traffic delay, in which case they would use a formulaic approach (e.g. every fifth car). (Policy at 2). Officers were to complete a training for operating the checkpoints in compliance with protocol. (Sho. Dep. 14:13-20). Officer Villanueva completed the training. (Vill. Dep. 6:11-23).

Over four Sundays in May 2017, police stopped 2,875 cars and made twenty-six impaired driving arrests at the checkpoints. (Sho. Dep. 17:15-17). Of these, ten involved solely marijuana impairment, eight marijuana and alcohol, and eight solely alcohol. (Sho. Dep. 17:15-18:1).

Mrs. Vorkosigan approached the checkpoint on the off-ramp to I-10 East Exit 126 on May 7, 2017 at around 11:30pm, roughly five minutes from her workplace. (Vorkosigan Dep. 5:2-3, attached as Ex. G). She was to report to work at midnight. (Vor. Dep. 4:17-19). As she exited, she saw the large, flashing "sobriety check" sign notifying her of the checkpoint. (Vor. Dep. 5:20-22); (Vill. Dep. 11:27-31). This is a heavily used exit for motorists entering Goodyear, but there was not significant traffic that night. (Vill. Dep. 12:10-12); (Vor. Dep. 15:14-26). Mrs. Vorkosigan was unaware of the checkpoint until she saw the sign at the off-ramp, but she observed flares, cones, flashing lights, and people she knew were police. (Vor. Dep. 5:20-6:25). Officers stopped all cars prior to Mrs. Vorkosigan before she reached the checkpoint. (Vill. Dep. 12:10-11). Mrs. Vorkosigan knew that other cars were being stopped. (Vor. Dep. 5:20-32).

Mrs. Vorkosigan reached the checkpoint at 11:40pm. (Vor. Dep. 8:20-21). Complying with protocol, Officer Villanueva greeted her and asked her three questions. (Policy at 3); (Vor. Dep. 7:1-8:13). When asked (1) if she was coming from California, she said she was not and that she had borrowed her son's car. (Vor. Dep. 7:1-12). When asked (2) if she had used marijuana that day, she refused to answer. (Vor. Dep. 7:14-23). Because the car had California plates, and

because she refused to answer (2), following protocol Officer Villanueva asked (3) whether she possessed marijuana from California. (Policy at 3); (Vor. Dep. 8:1-6). She refused to answer. (Vor. Dep. 8:10-13). At this point, the stop had lasted about one minute. (Vill. Dep. 13:21-24).

After Mrs. Vorkosigan refused to cooperate with Officer Villanueva, he followed protocol by briefly using a flashlight to check Mrs. Vorkosigan for signs of impairment, such as glassy or bloodshot eyes or nervousness. (Policy at 3); (Vill. Dep. 14-19). He shined the flashlight in her eyes and she instinctively recoiled. (Vor. Dep. 8:17-19). As authorized, he then used his flashlight to inspect the vehicle for plain-view evidence of contraband. (Policy at 3); (Vor. Dep. 8:30-9:2); (Vill. Dep. 9:30-10:2). The inspection lasted roughly thirty seconds. (Vill. Dep. 14:6-11). No drug-sniffing dogs or devices were used. (Policy at 3). Mrs. Vorkosigan was nervous due to her concern about being late for work, and her nervousness worsened during the inspection. (Vor. Dep. 9:26-27). She waved Officer Villanueva over and told him she was having a heart attack. (Vor. Dep. 10:2-3). He immediately radioed for a paramedic to urgently respond, asked if she wanted to walk around or lie in the backseat, and offered her water. (Vor. Dep. 10:21-23); (Vill. Dep. 14:22-25). She did not respond. (Vor. Dep. 10:15-16). He monitored her condition until paramedics arrived to take her to an emergency room. (Vill. Dep. 14:26-28).

After Mrs. Vorkosigan was discharged, having had a panic attack, she did not report to work or call to report her absence until the following day. (Vor. Dep. 11:26-12:3). She was later terminated for being late or missing a shift for the third time in five months. (Vor. Dep. 12:5-16).

ARGUMENT

I. SUMMARY JUDGMENT STANDARD

Summary judgment must be granted when there is no genuine dispute of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The substantive

governing law will determine which facts are material, and only genuine disputes over facts that might affect the outcome of the suit are relevant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The court should not make credibility determinations or weigh conflicting evidence. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). Rather, it draws justifiable inferences in favor of the non-moving party. *Anderson*, 477 U.S. at 255. To defeat a motion for summary judgment, the non-movant must present specific facts indicating a genuine issue for trial. *Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1035 (9th Cir. 2007). If a reasonable jury could not find for the non-movant given the record as a whole, the court should grant summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

II. DEFENDANTS SHOULD PREVAIL ON THEIR MOTION FOR SUMMARY JUDGMENT BECAUSE THE GOODYEAR CHECKPOINT PROGRAM'S PRIMARY PURPOSE WAS NOT GENERAL CRIME CONTROL AND BECAUSE THE CHECKPOINTS WERE REASONABLE.

The Fourth Amendment requires only that searches and seizures be reasonable. U.S. Const. amend. IV. Vehicle stops at highway checkpoints are seizures within the meaning of the Fourth Amendment. *Edmond*, 531 U.S. at 40. A seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. *Id.* at 37 (citing *Chandler v. Miller*, 520 U.S. 305, 308 (1997)). However, there are circumstances in which suspicion is not required for a seizure to be reasonable. *Id.* The special needs doctrine describes one class of such circumstances and allows for suspicionless seizures that serve special needs, beyond the normal need for law enforcement, when suspicion is impracticable. *United States v. Scott*, 450 F.3d 863, 868-69 (9th Cir. 2006). There is a two-step analysis to determine whether a suspicionless checkpoint is valid under the special needs doctrine and the Fourth Amendment. *Fraire*, 575 F.3d at 932. First, (A) the primary purpose of the checkpoint must not be to advance the general interest in crime control. *Edmond*, 531 U.S. at 48. If so, the stop is per se invalid under the Fourth Amendment.

Id. If the checkpoint is not per se invalid as a crime control device, then (B) the court judges the checkpoint's reasonableness based on the individual circumstances. *Lidster*, 540 U.S. at 426.

The primary purpose of the checkpoint program was highway safety, not general crime control, because the city implemented the checkpoints in response to a fatal car crash involving marijuana, all documents approved by the program's leadership stated that the primary purpose was to prevent impaired driving, and the checkpoints were not pretextual. The program is not per se invalid. The checkpoint at issue was reasonable because the gravity of public concerns and the checkpoint's advancement of the public interest outweigh its interference with individual liberty.

A. The primary purpose of the checkpoint program was valid because the checkpoints were not a general crime control device.

The primary purpose of the GPD checkpoints was valid because the checkpoints primarily served to promote highway safety. A constitutionally valid suspicionless special needs checkpoint is distinguishable from an unconstitutional one by its primary purpose. *Edmond*, 531 U.S. at 40. If the primary purpose is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment. *Id.* at 42, 44. Highway safety is a valid primary purpose. *Id.* at 43. A connection between a law enforcement practice and its special-needs objective is evidence of a valid primary purpose. *Id.* at 39, 43. A police department's checkpoint protocols and descriptions of its checkpoints in the record and via communications are also probative of the primary purpose. *Id.* at 41. If a valid primary purpose is not a pretext for obtaining evidence of general criminal activity, even if it includes aspects of general crime control, the program is valid. *United States v. Orozco*, 858 F.3d 1204, 1212 (9th Cir. 2017).

A clear connection between a highway checkpoint and the imperative of highway safety is evidence of the checkpoint's valid primary purpose. *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 451 (1990). In *Sitz*, the state police operated suspicionless highway sobriety

checkpoints. *Id.* at 447. The Court agreed with the police that the primary purpose was to deter drunk driving because of the clear connection between the highway checkpoint and its goal of addressing the immediate threat of highway drunk driving deaths. *Id.* at 451.

A checkpoint's location can also indicate a primary purpose distinct from crime control. *United States v. Martinez-Fuerte*, 428 U.S. 543, 553, 562 (1976). In *Martinez-Fuerte*, Border Patrol operated suspicionless checkpoints aimed at curbing unauthorized immigration. *Id.* at 546-47. The Court upheld this primary purpose because of the government's interest in border security and the reasonable location of the checkpoints on highways near the border. *Id.* at 562.

Here, there is a clear connection between the GPD sobriety checkpoints and their primary purpose of highway safety. Like the sobriety checkpoint in *Sitz*, which was connected to its purpose of stopping highway drunk driving deaths, and the immigration checkpoint in *Martinez-Fuerte* connected to its purpose of border enforcement, the GPD sobriety checkpoints have a connection to their primary purpose of stopping deaths due to marijuana-impaired driving. It is undisputed that the city focused on deterring impaired driving on I-10, where the January crash occurred. (Policy at 2). Like the immediate threat of drunk driving addressed by the checkpoints in *Sitz*, here the checkpoints' location and sobriety testing are tailored to address the immediate threat of impaired driving on I-10. (Policy at 3). Although there is not a clear link between marijuana use and crash risk, the involvement of marijuana in the January crash is undisputed. (Congressional Research Service Report, dated May 14, 2019, at 4 ("CRS"), attached as Ex. H); (Sho. Dep. 6:24-26). Given the public's desire to deter marijuana-impaired driving, the city and the GPD logically established checkpoints where the risk of such driving is high.

Statements from law enforcement leadership and city officials as to a checkpoint program's valid primary purpose are indicative of a valid primary purpose. *United States v.*

Faulkner, 450 F.3d 466, 471 (9th Cir. 2006). In *Faulkner*, a Chief Ranger established a suspicionless checkpoint at the entrance to a federal recreation area, where he informed visitors of rules prohibiting littering and starting fires in the area. *Id.* at 468. He referred to the checkpoint as an "information station" or "mobile information station." *Id.* at 471. Although the ranger arrested the defendant for driving with an open alcohol container, the court held that the station's primary purpose was to protect the use and enjoyment of the recreation area, not general crime control, finding that the Chief Ranger's nomenclature was probative of this primary purpose. *Id. See also Edmond*, 531 U.S. at 41 (holding that the primary purpose of a city's checkpoint program was drug interdiction because the city and police referred to them verbally and in writing as "drug checkpoints" and described them as an effort to interdict drugs).

Here, it is undisputed that all statements made by Chief Shockley and the City of Goodyear about the primary purpose of the checkpoints indicate that the primary purpose was roadway safety. Like the Chief Ranger in *Faulkner*, who described the checkpoints as information stations, Chief Shockley described them as "marijuana sobriety checkpoints," or "sobriety checkpoints." (Sho. Dep. 12:22-23, 14:30-31). He described the primary purpose as "curbing marijuana-impaired driving" and "roadside safety." (Sho. Dep. 22:10-11, 25:4-5). The official checkpoint policy states that the primary purpose was to "identify, arrest, and deter marijuana-impaired drivers." (Policy at 1). The record and official documentation thus unambiguously describe the checkpoints as having the valid primary purpose of roadway safety.

Police operation of a checkpoint in a manner distinct from a general search for ordinary wrongdoing is also evidence of a valid primary purpose. *Sitz*, 496 U.S. at 447 (describing a valid suspicionless sobriety checkpoint that required officers to examine drivers for signs of intoxication).

In contrast, only when a checkpoint operates with clear intent to search for ordinary criminal wrongdoing is the primary purpose invalid. *Edmond*, 531 U.S. at 41. In *Edmond*, a city operated suspicionless checkpoints at which police informed motorists that their vehicles would be checked for drugs. *Id.* They identified checkpoints with lighted signs reading "NARCOTICS CHECKPOINT___MILE AHEAD, NARCOTICS K-9 IN USE, BE PREPARED TO STOP." *Id.* The Court held that the primary purpose was drug interdiction (and thus invalid) because such statements by police and signage labeling the checkpoint are indicative of this purpose. *Id.* at 41.

The GPD sobriety checkpoints operated in a manner distinct from a general crime control device. Like the sobriety checkpoint in *Sitz*, at which officers visually checked drivers for signs of alcohol impairment, officers operating the GPD checkpoints visually checked drivers for signs of alcohol and marijuana impairment. (Policy at 3). Drivers approaching GPD checkpoints encountered a sign that read "REDUCE SPEED – SOBRIETY CHECK AHEAD." (Policy at 2). Although officers also inquired about the driver's use and possession of marijuana, this is consistent with undisputed documentation and statements on the record indicating drug interdiction as the checkpoints' secondary purpose. (Policy at 1). The operation of the GPD checkpoints is distinguishable from that of the checkpoints in *Edmond*, wherein signs and officers informed drivers that they were at a drug checkpoint. Moreover, unlike the checkpoints in *Edmond*, Goodyear's sobriety checkpoints did not employ drug-sniffing dogs. (Policy at 3).

A valid checkpoint may have multiple purposes, including drug interdiction, so long as the primary purpose is valid and even if the checkpoint's operation depends in part on intelligence about drug trafficking. *United States v. Soto-Camacho*, 58 F.3d 408, 412 (9th Cir. 1995). In *Soto-Camacho*, the defendant was arrested at a suspicionless immigration checkpoint when Border Patrol agents cross-designated for immigration and narcotics found cocaine in his

vehicle. *Id.* at 411. The decision to implement the checkpoint at issue was based in part on intelligence about a potential increase in drug trafficking. *Id.* The court upheld the checkpoint because operational decisions based on drug intelligence, officers' cross-designations in narcotics and brief scans for drugs did not exceed the scope of the independent, valid immigration enforcement purpose. *Id.* at 412.

Here, it is not disputed that the checkpoint program had two purposes: roadway safety and deterrence of drug possession and trafficking in Arizona. (Policy at 1). Like the checkpoint in *Soto-Camacho*, which had a valid independent purpose but was implemented based on drug intelligence in the area of the checkpoint, the Goodyear checkpoints had a valid independent primary purpose of roadway safety and were implemented on I-10, which the police believed was at risk of becoming a drug trafficking corridor. (MITF at 1). Although Officer Villanueva is a narcotics officer, like the cross-designated officers in *Soto-Camacho*, he enforces both narcotics and highway sobriety laws. (Vill. Dep. 3:9, 6:27-7:6). Moreover, the decision as to the location and timing of the Goodyear checkpoints also served their valid primary purpose: they were implemented in response to the January crash on I-10, where that crash took place, much as the checkpoint in *Soto-Camacho* was located in southern California near the border to serve its independent primary purpose of deterring unauthorized immigration. (Policy at 2).

When a checkpoint is motivated both by a valid independent purpose and drug interdiction, if the valid purpose justifies the seizure then it is not a pretext for general criminal investigation, even if it includes a brief examination for illicit drugs. *United States v. Watson*, 678 F.2d 765, 770 (9th Cir. 1982). In *Watson*, the Coast Guard ordered officers to stop all small vessels for suspicionless document and safety inspections. *Id.* at 765. During one such inspection, officers found a box of marijuana on board a vessel. *Id.* at 766. The officers

discovered the drugs in a minimally intrusive, plain-view inspection that was necessary to serve the valid purpose. *Id.* at 772. The court held that the valid "independent administrative justification" for the seizure – checking for documentation and safety equipment – was not a pretext to interdict drugs because the valid purpose was justifiable given the Coast Guard's duty to enforce vessel documentation laws, and the inspection for drugs did not exceed the scope of what was permissible under the administrative justification. *Id.* at 771.

In contrast, a dual-purpose checkpoint is only pretextual if it would not have been executed but for the underlying motive. *Orozco*, 858 F.3d at 1216. In *Orozco*, a state implemented a suspicionless vehicle inspection policy. *Id.* at 1206. In the course of enforcing it, officers detained the defendant for drug possession. *Id.* The court held that the ostensibly valid administrative purpose was a pretext for drug interdiction because police would not have stopped the defendant had they not received a tip that he was hiding drugs in his truck. *Id.* at 1216.

Here, the GPD checkpoints had a valid independent administrative purpose – promoting highway safety. Like the seizure in *Watson*, in which the Coast Guard's duty to inspect ships for document and safety compliance justified the seizure in question, the GPD's duty to protect the people of Goodyear from impaired driving justified the seizure of cars at checkpoints. Just as a plain-view scan for drugs made in the course of the administrative inspection in *Watson* was within the scope of what was permissible, a plain-view scan for drugs and brief questioning made in the course of a sobriety checkpoint is within the permissible scope of such a checkpoint. Moreover, there is no relevant evidence to suggest that the highway safety purpose is a pretext for drug interdiction. Although Chief Shockley is personally opposed to marijuana use and legalization and Deputy Pearl encouraged interdiction and forfeiture in an internal memorandum, witness credibility is irrelevant to motions for summary judgment. (Pearl); (Sho. Dep. 4:5-19).

Unlike the stop in *Orozco*, which would not have been made but for police knowledge that the suspect was smuggling drugs, here it is beyond dispute that one but-for cause of the checkpoints was the January crash and public response demanding action to save lives. (MITF at 1).

Since it is undisputed that highway safety is a valid primary purpose, there is a logical connection between the checkpoints and the need for highway safety, all statements on the record and approved official documents and evidence point to a primary purpose of highway safety, and the operation and implementation of the checkpoints suggest that this purpose is not pretextual, defendants are entitled to judgment as a matter of law that the primary purpose of the program is highway safety. The program is not per se unconstitutional as a crime control device.

B. The checkpoint in question was reasonable and thus constitutional because it addressed grave public concerns, advanced the public interest, and interfered minimally with individual liberty.

The checkpoint at the I-10 East Exit 126 off-ramp was reasonable because stopping highway deaths due to impaired driving is a grave public concern, the checkpoint effectively advanced this public interest, and it minimally intruded with Mrs. Vorkosigan's individual liberty. If a suspicionless seizure is not per se invalid as a crime control device, the court judges its reasonableness, and hence its constitutionality, given the individual circumstances. *Lidster*, 540 U.S. at 426. A seizure's reasonableness is determined by: (1) the gravity of public concerns served by the seizure, (2) the degree to which the checkpoint advances the public interest, and (3) the severity of the interference with individual liberty. *Id.* at 426-27. A central concern in balancing these considerations is to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions at the unfettered discretion of police. *Faulkner*, 450 F.3d at 472. The gravity of public concerns served by the GPD checkpoint, (1), was high because the issue is one of local and national importance and the community demanded that the GPD take

action to stop highway deaths due to marijuana impairment. The checkpoint advanced the public interest, (2), because it was related to its purpose of stopping marijuana-impaired driving. The severity of its interference with Mrs. Vorkosigan's individual liberty, (3), is low because it was short in duration, involved brief questioning and plain-view inspection, provided clear signs of officers' authority, and officers had no discretion over whom to stop or how to conduct the stop.

(1) The gravity of public concerns served by the checkpoint was high because of the national and local urgency of the issue of marijuana-impaired driving.

The checkpoint served grave public concerns because the people of Goodyear raised these concerns in response to a tragedy and because of the national scope of the issue. The gravity of public concerns can be measured impact using a variety of metrics, including death, injury and property damage. *Faulkner*, 450 F.3d at 472.

The gravity of public concern justifying a checkpoint is high when it is established to deter loss of life. *Lidster*, 540 U.S. at 427. In *Lidster*, police established a suspicionless checkpoint after a motorist hit and killed a bicyclist, asking all drivers if they had information that might identify the culpable motorist. *Id.* at 422. The court held that the public concern was grave because police were investigating a crime that resulted in a loss of life. *Id.* at 427.

Here, the gravity of the public concern justifying the checkpoints was high because, like the checkpoint in *Lidster*, the city established them to deter loss of life after a fatal crash. (MITF at 1). Concerns about impaired driving are grave because such driving could result in death.

Public concerns are also grave when the issue receives media attention and the local public requests that police take action to address the issue. *Faulkner*, 450 F.3d at 472. Such public concern is also high when the issue the checkpoint aims to address is one of national importance. *Sitz*, 496 U.S. at 451 (measuring the gravity of public concerns served by a suspicionless highway sobriety checkpoint by the nationwide effects of drunk driving).

Here, the gravity of public concerns was high because the Goodyear community directly raised the issue at the February town hall, the January crash was publicized in the media and marijuana impairment is an issue of national import. An overflow crowd supported police action to stop tragedies like the January crash. (MITF at 3). The Arizona Capitol Times published an article about the crash. (Article). Nationally, the Congressional Research Service published a "Marijuana Use and Highway Safety" report in 2019. (CRS). It describes trends of increasing marijuana use and legalization, justifying concern about higher rates of impaired driving. (CRS at 2). Although the report is inconclusive as to the effects of marijuana use on crash risk, it is not disputed that prior to the January crash, Mr. Ignatius and his friends smoked marijuana, and that this crash sparked local demand to curb marijuana-impaired driving. (CRS at 4); (MITF at 1); (Sho. Dep. 6:4-11). Whether marijuana causes risky driving is immaterial. What is material (and undisputed) is that marijuana use is an issue of national significance, and its involvement in a tragic car accident led to a public outcry. (MITF at 1). Thus, the public concerns are grave.

(2) The checkpoint advanced the public interest because the checkpoint was closely related to its primary purpose and because of quantitative evidence of its effectiveness.

The checkpoints advanced the public interest because it was related to its primary purpose of preventing deaths due to impaired driving and there is empirical evidence of its effectiveness. Yet no such data about a program's efficacy is necessary to find that it advances the public interest. *Lidster*, 540 U.S. at 427. The checkpoint need only be sufficiently related to its objective. *Id.* Absent data, courts use common sense to predict whether a checkpoint advances the public interest. *Delaware v. Prouse*, 440 U.S. 648, 659 (1979). When data does exist, very low levels of productivity advance the public interest. *Faulkner*, 450 F.3d at 472-73.

A checkpoint is sufficiently related to its objective and advances the public interest if its location, timing and implementation are related to its objective. *Lidster*, 540 U.S. at 427 (holding

that a suspicionless checkpoint at which police asked drivers for information related to a recent hit-and-run crash that killed a bicyclist advanced the public interest because the checkpoint was in operation just after the crash, on the same highway near the location of the crash, at roughly the same time of night, to find the motorist who killed the bicyclist).

Here, the GPD checkpoint at issue was sufficiently related to its primary purpose of deterring marijuana-impaired driving and its secondary purpose of interdiction. Like the checkpoint in *Lidster*, which was established after a highway death on the same highway where the bicyclist was killed, the sobriety checkpoint in question was also established after a highway death on the same highway where three people lost their lives. (Policy at 2). Although it is not clear that the GPD operated the checkpoints at the same time of day as the January crash, this was only relevant in *Lidster* because motorists on the road at that time might have had more information about the driver who killed the bicyclist. (Policy at 2). Such timing concerns are irrelevant here because impaired driving can happen at any time of day. The Exit 126 checkpoint at issue was narrowly tailored to address the direct threat of drivers legally using marijuana in California and driving impaired through Arizona on I-10 East. (Policy at 2).

Highway checkpoints with productivity rates as low as 0.12 percent advance the public interest. *Martinez-Fuerte*, 428 U.S. at 554 (holding that a suspicionless immigration checkpoint advanced the public interest because it found deportable aliens in 0.12 percent of cars stopped).

Here, the checkpoint's productivity meets the low bar required for a checkpoint to advance the public interest as measured quantitatively. During the four Sundays over which the checkpoints operated, officers stopped 2,875 cars and made twenty-six arrests for driving under the influence (DUI), of which eighteen (0.63 percent) involved marijuana impairment. (Sho. Dep. 17:15-18:1). Of these, ten (0.35 percent) involved solely marijuana, eight (0.28 percent)

involved both marijuana and alcohol, and eight involved solely alcohol. (Sho. Dep. 17:15-18:1). Even if all arrests involving alcohol are excluded, the rate of marijuana impairment-only arrests, 0.35 percent, still exceeds the 0.12 percent rate that advanced the public interest in *Martinez-Fuerte*. Thus, as a matter of law, the checkpoint advanced the public interest as measured both by the connection of the checkpoint to its purpose and by the program's empirical results.

(3) The severity of the checkpoint's interference with individual liberty was low because it was short in duration, did not involve an intense investigation, and would not generate unreasonable concern or fright on the part of lawful travelers.

The checkpoint at Exit 126 interfered minimally with Mrs. Vorkosigan's liberty because it only lasted a few minutes, involved brief questioning and inspection, and would not be expected to generate substantial concern or fear for law-abiding motorists. The severity of a suspicionless checkpoint's interference with individual liberty is measured by objective intrusion – the duration of the seizure and the intensity of the investigation – and by subjective intrusion, measured by the fear and surprise engendered in law-abiding motorists and by the nature of the stop. *Faulkner*, 450 F.3d at 473. A checkpoint's subjective intrusion is appreciably less in the case of a checkpoint stop, in comparison to random or roving patrol stops. *Id.* at 558.

Objective intrusion is low where a suspicionless checkpoint requires up to five minutes of police interaction. *Martinez-Fuerte*, 428 U.S. at 547. Such intrusion is also low when officers ask a few questions and conduct an inspection of the motorist's vehicle limited to what can be seen without a search. *Id.* at 558. *See also United States v. Ruiz-Perez*, 2012 U.S. Dist. LEXIS 44505 at *11-12 (D. Ariz. Mar. 30, 2012) (finding that it was not objectively intrusive for officers to ask motorists four questions at a suspicionless immigration checkpoint). A police officer's use of a flashlight to briefly observe the inside of a car at night is also not objectively intrusive. *Texas v. Brown*, 460 U.S. 730, 740 (1983).

Here, the interaction between Officer Villanueva and Mrs. Vorkosigan was not objectively intrusive. Mrs. Vorkosigan waited roughly ten minutes in line before she approached the checkpoint. (Vor. Dep. 5:2-3, 8:20-21). Although this is slightly longer than the wait times at the checkpoints in *Lidster*, *Faulkner*, and *Fraire*, it is the time of police interaction, not waiting in line, that is dispositive as to the degree of objective intrusion. It is undisputed that Officer Villanueva took about one minute to ask Mrs. Vorkosigan three brief questions. (Vor. Dep. 7:1-8:13); (Vill. Dep. 13:21-24). Then, for about thirty seconds, he used a flashlight to examine her for signs of intoxication and to inspect the car for evidence of contraband. (Vor. Dep. 8:30-9:2); (Vill. Dep. 14:6-11). The number of questions (three) and time of police contact (about ninety seconds) do not exceed the four questions in *Ruiz-Perez* and the five minutes at the checkpoint in *Martinez-Fuerte*. The brief scan of Mrs. Vorkosigan's vehicle is similar in length and intensity (plain-view only) to the brief scan in *Martinez-Fuerte*. As in *Brown*, Officer Villanueva's use of a flashlight to observe the inside of Mrs. Vorkosigan's vehicle was also not objectively intrusive.

The degree of subjective intrusion of a suspicionless checkpoint is low, even if drivers do not have advance warning or opportunity to avoid it, when officers do not have discretion over whom to stop or how to operate the checkpoint, motorists can see other vehicles stopped, and officers display visible signs of authority. *Sitz*, 496 U.S. at 447, 452-53. In *Sitz*, officers running a suspicionless sobriety checkpoint stopped all cars passing through it. *Id.* at 447. They acted in compliance with checkpoint protocols, including location, time, and procedures, established by an advisory committee. *Id.* They were uniformed and their patrol cars were present. *Id.* at 453. The Court held that the checkpoints were not subjectively intrusive because motorists could see other vehicles being stopped and visible signs of the officers' authority and were thus less likely to be as frightened or annoyed as they would be during a roving-patrol stop. *Id.*

A checkpoint that stops motorists systematically is only subjectively intrusive if it does not provide advance notice and it is unclear to motorists that it is operated by law enforcement. *United States v. Maxwell*, 565 F.2d 596, 598 (9th Cir. 1977). In *Maxwell*, Border Patrol operated a suspicionless immigration checkpoint. *Id.* at 596. There was a small "stop ahead" sign 100-200 yards in advance of the stop with blinking lights, traffic cones, a stop sign, and one patrol vehicle that turned on its lights when vehicles approached. *Id.* The court held that the checkpoint generated high subjective intrusion because it was located on a rural and isolated road, it was unexpected, and drivers could not tell that the blinking lights belonged to police. *Id.* at 598.

Here, it is undisputed that the checkpoint policy required the GPD to minimize surprise and anxiety for law-abiding drivers. (Policy at 2). Like the officers conducting the checkpoint in *Sitz*, who were required to stop all cars, GPD officers were required to stop all cars or to stop them formulaically without discretion in the event of traffic delays. (Policy at 2). Just as an advisory committee promulgated the sobriety checkpoint's protocols in *Sitz* and officers complied with them, the MITF promulgated the protocols here and Officer Villanueva complied with them when he stopped Mrs. Vorkosigan. (Sho. Dep. 14:4-6); (Vill. Dep. 11:2-6). Although Mrs. Vorkosigan was unaware of the checkpoint, even if the GPD failed to adequately message the existence of the checkpoints to the public, such notice was not required. (Sho. Dep. 16:1-20). Minimizing subjective intrusion at a checkpoint, like the one in *Sitz*, only requires officers to act without discretion in targeting motorists – so that motorists see police stopping other vehicles – and to display visible signs of authority. Likewise, here Officer Villanueva lacked discretion to target motorists. (Vill. Dep. 12:10-11); (Policy at 2). Mrs. Vorkosigan knew that other vehicles were being stopped. (Vor. Dep. 5:20-32). And she saw visible signs of police authority: the sign alerting her of the sobriety checkpoint, multiple people she knew were uniformed police officers,

flares, cones, and patrol cars with flashing lights. (Vor. Dep. 5:20-6:25). Although she only realized that she would be stopped a few hundred yards before the checkpoint, like motorists approaching the checkpoint in *Maxwell*, a lack of notice is immaterial for determining subjective intrusion. (Vor. Dep. 16:24-28). Unlike the *Maxwell* stop, which was on an isolated road and motorists did not know police were operating it, here the checkpoint was on the most frequently used exit for drivers traveling into Goodyear, there were other drivers present, and Mrs. Vorkosigan knew police were managing it. (Vill. Dep. 12:10-12); (Vor. Dep. 5:20-6:25).

Finally, although Mrs. Vorkosigan suffered an unfortunate panic attack, her reaction to the checkpoint is legally irrelevant. (Vor. Dep. 11:26-27). Since a law-abiding motorist would feel minimal subjective intrusion when encountered with a checkpoint at which officers have no discretion over whom they stop, drivers see police stop other vehicles, and police display visible signs of authority, the Exit 126 checkpoint was not subjectively intrusive as a matter of law.

CONCLUSION

The court should grant defendants' motion for summary judgment because, as a matter of law, the checkpoint program is constitutional under the Fourth Amendment. Its primary purpose is to deter marijuana-impaired drivers and protect the people of Goodyear. There is a clear connection between the checkpoints on I-10 and a primary purpose designed to prevent future tragedies like the January crash on that highway, official statements from city and GPD leadership indicate this purpose, and a brief scan for illegal drugs is within the scope of what was permissible under the valid, non-pretextual justification for the checkpoint. The checkpoints are reasonable because they addressed the grave concern of highway fatalities, effectively advanced the public interest in addressing this concern and interfered minimally with Mrs. Vorkosigan's individual liberty. It follows that summary judgment should be granted.

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Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum of Law in Support of the Motion for Summary Judgment of Defendants, Cole Shockley, Charles Villanueva, and the City of Goodyear, was served this day via email, to counsel for Plaintiff at the following address:

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