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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MANOLO DÍAZ CORRADA, **Plaintiff,** **v.** **CORY GREER, Chief of Police, City of Goodyear Police Department, in his official and individual capacities; THOMAS FUENTES, Officer, City of Goodyear Police Department, in his official and individual capacities; and CITY OF GOODYEAR,** **Defendants.**	**No. 22-cv-3352 SPL** **Civil Action**

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

INTRODUCTION

"The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards." *Almeida–Sanchez v. United States*, 413 U.S. 266, 273 (1973). Plaintiff Manolo Díaz Corrada, a law-abiding citizen with deep roots in Goodyear, Arizona, was on his way to work when he was stopped at an unannounced, warrantless highway checkpoint. Pursuant to protocols authorized by the City of Goodyear and its chief of police, a narcotics officer inspected Mr. Díaz Corrada's truck for contraband and asked him about his itinerary and potential use or possession of marijuana. The officer's probing questions and conduct, along with the nature of the stop, engendered so much anxiety and fear in Mr. Díaz Corrada that he suffered a panic attack that required hospitalization. As a result, Mr. Díaz Corrada missed his shift, and his employment was subsequently terminated. He brings this lawsuit alleging that the warrantless checkpoint stop violated his Fourth Amendment right against unreasonable searches and seizures.

Law enforcement may obviate the Fourth Amendment's safeguards and implement suspicionless checkpoint regimes under two requirements: (1) the checkpoints' purpose is not related to ordinary crime control, and (2) the checkpoints are, on balance, reasonable. Weaponizing this "special needs" exception, the Goodyear Police Department stopped thousands of motorists for the espoused purpose of promoting highway safety. However, a reasonable jury could find that the program's stated purpose was merely a guise for a regime focused on ordinary crime control through the discovery and interdiction of narcotics. Moreover, a reasonable jury could also conclude that the program was overly intrusive when considering the unsubstantiated public interests at stake and the program's inefficacy in improving highway safety. For both reasons, or either in the alternative, summary judgment must be denied.

STATEMENT OF MATERIAL FACTS

I. Mr. Díaz Corrada's Checkpoint Seizure

Plaintiff Manolo Díaz Corrada is a sixty-five-year-old grandfather who has lived in Goodyear, Arizona for thirty-seven years. (Compl. ¶ 4, August 30, 2022, attached as Ex. A; Díaz Corrada Dep. 3:8-9, attached as Ex. B). For the past nine years, he worked as a full-time technician at the Arizona General Hospital urgent care in Goodyear. (Díaz Corrada Dep. 3:18-22). Mr. Díaz Corrada valued his job for its provision of overtime shifts and benefit scheme, which included family health insurance. (Díaz Corrada Dep. 13:3-6).

On April 24, 2022, Mr. Díaz Corrada left his house at 11:15 pm to make a scheduled shift that started at midnight. (Díaz Corrada Dep. 4:12-29). He borrowed his son's pickup truck which was fitted with California license plates. (Díaz Corrada Dep. 5:8-11, 7:10-13). Mr. Díaz Corrada traveled eastbound on I-10, one of his preferred commuting routes that got him to the hospital in around fifteen minutes. (Díaz Corrada Dep. 5:1-6). As was characteristic of Mr. Díaz Corrada's commutes on a weekend night, there were few cars on I-10 on this particular Sunday night. (Díaz Corrada Dep. 15:7-19). At approximately 11:30 pm, as he approached the exit off-ramp, Mr. Díaz Corrada noticed a traffic backup, roadside flares, and traffic cones. (Díaz Corrada Dep. 5:17-22). A flashing sign warned "REDUCE SPEED – SOBRIETY CHECK AHEAD." (Compl. ¶ 55). Mr. Díaz Corrada, who had never been stopped at a checkpoint in Arizona, had heard that the City of Goodyear was "cracking down" and "checking cars for drugs," but he was surprised by the unannounced roadblock. (Díaz Corrada Dep. 5:26-32, 15:26-29, 16:29-31).

As he waited in line, Mr. Díaz Corrada became nervous about the impending police encounter and the prospect of being late for his shift. (Díaz Corrada Dep. 16:27-17:2, 17:19-22). Ahead, he noticed the flashing lights of police cars and officers "swarming around" in yellow vests that obscured their uniforms. (Díaz Corrada Dep. 5:26-6:12). Only a few cars were ahead

of Mr. Díaz Corrada on the off-ramp, yet he waited approximately ten minutes before he made it to the front. (Díaz Corrada Dep 16:18-25).

Defendant Thomas Fuentes, a seasoned member of the Goodyear Police Department's narcotics division, eventually approached the truck. (Fuentes Dep. 3:3-13, 13:1-2, attached as Ex. C). Officer Fuentes asked Mr. Díaz Corrada if he was coming from California. (Díaz Corrada Dep. 7:2-4). Mr. Díaz Corrada said he was not, explaining that the truck and its California plates were his son's. (Díaz Corrada Dep. 7:2-13). Officer Fuentes then asked Mr. Díaz Corrada if he had recently smoked marijuana and if he had purchased marijuana in California. (Fuentes Dep. 13:4-8). Mr. Díaz Corrada, who has never used marijuana, declined to answer. (Díaz Corrada Dep. 7:15-28). Officer Fuentes proceeded to point his flashlight around the exposed areas of the truck and at Mr. Díaz Corrada's face, momentarily blinding him. (Díaz Corrada Dep. 9:1-8; Fuentes Dep. 13:13-15). Officer Fuentes leaned closer to the open window to detect the smell of marijuana or alcohol. (Fuentes Dep. 13:15-18). Mr. Díaz Corrada, unsettled by Officer Fuentes's probing questions and actions, felt his heart race and had trouble breathing. (Díaz Corrada Dep. 9:5-8, 9:17-18). Approximately a minute had passed since the encounter began. (Fuentes Dep. 13:20-23).

Officer Fuentes then walked around the truck, shining his flashlight into the other parts of the truck. (Díaz Corrada Dep. 9:22-25). Mr. Díaz Corrada's symptoms worsened: his right arm began to tingle, his chest felt tight, and his vision became blurry. (Díaz Corrada Dep. 9:29-10:6). Mr. Díaz Corrada warned Officer Fuentes of his pain, but Officer Fuentes continued to walk around the vehicle for approximately half a minute longer. (Fuentes Dep. 13:27-14:9). Returning to the driver's side window, Officer Fuentes saw that Mr. Díaz Corrada was "even more distressed . . . ." (Fuentes Dep. 14:13-16). Mr. Díaz Corrada said he believed that he was having

a heart attack. (Díaz Corrada Dep. 9:29-10:6). After paramedics were called, Mr. Díaz Corrada was taken to University Medical Center where he was diagnosed as having experienced a panic attack. (Fuentes Dep. 14:15-21; Díaz Corrada Dep. 11:12-31).

As a result of his ordeal, Mr. Díaz Corrada missed his shift. (Díaz Corrada Dep. 11:30-12:2). Though he justified his absence, the hospital fired Mr. Díaz Corrada for being late or missing a shift for a third time that year. (Díaz Corrada Dep. 12:6-21). Mr. Díaz Corrada is currently unemployed. (Díaz Corrada Dep. 13:10-12).

II. The City of Goodyear's Warrantless Checkpoint Program

Defendant Cory Greer of the Goodyear Police Department was promoted to chief of police in 2019 after serving twenty-two years with the Department. (Greer Dep. 3:1-10, attached as Ex. D). He was responsible for the creation and management of Goodyear Police Department's Marijuana Impairment Task Force ("MITF"). (Greer Dep. 13:6-8, 17:5-16).

The MITF was formed in 2019 against a backdrop of events. (City of Goodyear Marijuana Impairment Task Force Report, Mar. 15, 2022 ("Task Force Report"), 5, attached as Ex. E). First, following California's legalization of marijuana and confiscations of marijuana that appeared "more commercial in appearance," the Goodyear Police Department believed that I-10 had become a popular trafficking corridor that saw a concomitant spike in marijuana-impaired driving. (Task Force Report 3; Greer Dep. 9:20-23). Chief Greer admitted, however, that there were no "hard 'statistics'" to substantiate the Department's belief about a rise of marijuana-impaired driving. (Greer Dep. 6:20-23).

Second, the Goodyear Police Department documented an eight percent increase in petty crime in Maricopa County after California's legalization of marijuana, which Chief Greer attributed to the trafficking and distribution of California-procured marijuana. (Greer Dep. 6:9-21). Third, in 2019, the Goodyear Police Department responded to a fatal crash on I-10 that

involved three friends driving home from a music festival in California. (Task Force Report 3). The Goodyear Police Department could not conclude that the driver was high at the time of the crash, but an official report nonetheless claims "[t]he cause of the accident, put simply, was potent California marijuana . . . ." (Greer Dep. 8:12-14; Task Force Report 3). Notably, epidemiological studies examining the relationship between marijuana use and crash risk contradict the report's causal conclusion. (DAVID RANDALL PETERMAN, CONG. RSCH. SERV., R45719, MARIJUANA USE AND HIGHWAY SAFETY 5-6 (2019) ("CRS Report"), attached as Ex. F) (observing that studies have "inconsistent" results, with one study finding no association between marijuana use and crash risk and another estimating the risk of crashing from high driving to be the same as someone with a blood alcohol content of between 0.01% and 0.05%).

Fourth, in the wake of the accident, Chief Greer led a town hall in which Goodyear residents demanded action from the Goodyear Police Department on the issue of "California's loose [marijuana] laws . . . ." (Greer Dep. 10:19-11:4). Finally, in 2020, Arizona legalized the recreational possession and use of marijuana for people over the age of twenty-one. (Greer Dep. 3:18-4:7). Though a goal of legalizing marijuana was to generate tax revenues, the results were "disappointing." (Greer Dep. 4:21-5:4). Chief Greer suggests that "black market" sales of California-procured marijuana were responsible for this "undermining [of Goodyear's] financial interests." (Greer Dep. 10:29-11:1).

In response, the City of Goodyear approved the MITF's proposal to organize a suspicionless highway checkpoint program along the I-10 corridor in Goodyear. (MITF Checkpoint Policy, attached as Ex. G). The stated primary purpose of the checkpoints was "to identify, arrest, and deter marijuana-impaired drivers" (MITF Checkpoint Policy at 2). A secondary goal was "to identify, arrest, and deter those in possession of illegal quantities of

marijuana for sale or trafficking." (MITF Checkpoint Policy at 2). However, Deputy Chief Hannah Haridy, a senior officer in the Goodyear Police Department and a member of the MITF, circulated an email prior to the program's start which harped on its crime-deterring and revenue-generating functions as "an effective and highly visible interdiction tool." (Email from Deputy Chief Haridy to MITF, Narcotics, Patrol Officers, March 1, 2022 ("Haridy Email"), attached as Ex. H). The email was silent on the checkpoint program's roadway safety purpose. (Haridy Email). Chief Greer, who did not approve Deputy Chief Haridy's email, did not ask her to withdraw or amend it. (Greer Dep. 24:11-18). Regardless of the Goodyear Police Department's internal discrepancies, Officer Fuentes was unable to describe the program's primary or secondary purposes when asked in his deposition. (Fuentes Dep. 5:16-24).

The MITF developed a protocol that governed officers' checkpoint conduct. (Greer Dep. 16:14-17-3). The protocol included the following mandates:

- Officers had to stop every passing car for brief questioning and inspection, unless a traffic backup developed, in which case a strictly formulaic approach could be used temporarily;
- When a vehicle reached a checkpoint, officers were authorized to ask three questions: (1) "if the driver is/was traveling from California," (2) "if the driver used marijuana within the last four hours," and (3) if the answer to either of the first two questions was yes, or if the driver refused to answer either of them, "whether the driver currently possess[ed] over 2.5 ounces of marijuana"; and
- Officers were "further authorized" to conduct a brief visual inspection for signs of impairment and to look inside the windows for plain view evidence of contraband. (MITF Checkpoint Policy at 2-3).

The protocol anticipated that cars would be stopped for approximately forty-five seconds to one minute on average, though in practice, Officer Fuentes estimated that inspections lasted between fifteen seconds to two minutes. (MITF Checkpoint Policy at 3; Fuentes Dep. 15:20-24). To avoid giving drivers an opportunity to evade the checkpoints, the MITF resolved to not announce the specific times and locations of the checkpoints. (Greer Dep. 18:10-16).

The Goodyear Police Department implemented a checkpoint on every Sunday night in April 2022, including two on I-10 itself. (Fuentes Dep. 7:24-26, 10:20-24; Greer Dep. 19:30-20:3). The checkpoints' dates and locations were allegedly chosen to coincide with the "influx of activity" resulting from the return of a California music festival—the same one attended by the driver of the fatal crash in 2019—taking place about three and a half hours drive from Goodyear on April 15-17 and April 22-24, 2022. (Greer Dep. 10:13-17, 15:7-21; Driving Directions from Indio, CA to Goodyear, AZ, GOOGLE MAPS, https://www.google.com/maps (follow "Directions" hyperlink; then search starting point field for "Indio, CA" and search destination field for "Goodyear, AZ") ("Driving Time Map"); 2022 Coachella Valley Music and Arts Festival Flyer ("Coachella Flyer"), attached as Ex. I).

The April 24th checkpoint involving Mr. Díaz Corrada ran from 8 pm to midnight. (Fuentes Dep. 11:20-23). Using their authorized discretion, the officers located the checkpoint on a down-ramp highway exit that minimized the potential for traffic back-ups but was completely out of sight from vehicles driving on I-10. (Fuentes Dep. 12:1-5, 15:1-8).

Officers stopped 2,875 cars over the course of the program. (Greer Dep. 20:14-15). They made twenty-six arrests for DUI: ten for marijuana impairment only, eight for alcohol impairment only, and eight for a combination of marijuana and alcohol impairment. (Greer Dep. 20:15-21:1). Furthermore, officers made thirty-three arrests for either marijuana possession over the legal limit in Arizona or under-aged possession. (Greer Dep. 20:15-17).

SUMMARY JUDGMENT STANDARD

A court may grant a motion for summary judgment only if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A material fact is one that is essential under the governing law and, as such, can affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248

(1986). The moving party has the burden of "citing to particular parts of materials in the record" to prove "that a fact cannot be . . . genuinely disputed." Fed. R. Civ. P. 56(c). At the summary judgment stage, the judge's sole role is determining if, when viewing the evidence in the light most favorable to the nonmoving party and without weighing it, a reasonable jury could find for the nonmoving party. *Nolan v. Heald College*, 551 F.3d 1148, 1154 (9th Cir. 2009); *see also Collins v. Ainsworth*, 382 F.3d 529 (5th Cir. 2004) (affirming the denial of defendants' summary judgment motion in a case alleging Fourth Amendment violations stemming from a police force's use of roadblocks and vehicle checkpoints).

ARGUMENT

Summary judgment must be denied because the checkpoints' espoused primary purpose was a pretext for a regime of narcotics interdiction and the program, in its inception and effectuation, unreasonably infringed upon the privacy rights of law-abiding citizens. The Fourth Amendment, which applies to the City of Goodyear through the Fourteenth Amendment, guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; U.S. Const. amend. XIV. "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000) (citing *Chandler v. Miller*, 520 U.S. 305, 308 (1997)). However, the Supreme Court has upheld certain regimes of suspicionless searches and seizures that are designed to "serve special needs, beyond the normal need for law enforcement." *Edmond*, 531 U.S. at 37; *see also, e.g., Vernonia School Dist. 47J v. Acton*, 515 U.S. 646 (1995) (random drug testing of student-athletes); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (suspicionless seizures of motorists at highway checkpoints near the United States-Mexico border designed to intercept undocumented individuals).

It is well established that "a Fourth Amendment 'seizure' occurs when a vehicle is stopped at a checkpoint." *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 450 (1990). In cases involving suspicionless seizures of motorists at vehicle checkpoints, the Ninth Circuit uses a two-step analysis to determine if the challenged regime serves a "special need" that warrants an exception to Fourth Amendment's ordinary requirement of individualized suspicion. *United States v. Faulkner*, 450 F.3d 466, 470 (9th Cir. 2006). First, the court determines whether a checkpoint is "per se invalid" because its "primary purpose" is to "to advance the general interest in crime control." *United States v. Fraire*, 575 F.3d 929, 932 (9th Cir. 2009). Second, if the checkpoint is not a general crime control device, then the court assesses its "reasonableness, hence, its constitutionality, on the basis of the individual circumstances." *Illinois v. Lidster*, 540 U.S. 419, 426 (2004).

Here, summary judgment should be denied because a reasonable jury could conclude that the primary purpose of the City of Goodyear's checkpoint program was the identification and interdiction of narcotics. Additionally, or in the alternative, a reasonable jury could find that the program was, on balance, unreasonable given the unsubstantiated concerns that prompted its creation, its inefficacy in advancing highway safety, and the high degree of intrusiveness that resulted from its design and implementation.

I. DEFENDANTS' MOTION MUST BE DENIED BECAUSE A REASONABLE JURY COULD FIND THAT THE PROGRAM'S PRIMARY PURPOSE WAS A PRETEXT FOR AN UNCONSTITUTIONAL REGIME.

The court should deny summary judgment because a reasonable jury could conclude that the primary purpose of the City of Goodyear's checkpoint initiative was to advance the ordinary interests of law enforcement through narcotics interdiction and deterrence. In special needs cases involving warrantless checkpoints, courts must first perform a "purpose inquiry . . . as a means of sifting abusive government conduct from that which is lawful." *Edmond*, 531 U.S. at 46-47. The

goal of a purpose inquiry is to ensure that the warrantless searches are motivated by a purpose other than "detect[ing] evidence of criminal wrongdoing." *Id.* at 41. The Supreme Court recognizes that there are inherent challenges in such an inquiry because special needs regimes involve general law enforcement techniques, such as interrogative questions and arrests, which lead to the detection of criminal wrongdoing. *See Id.* at 42, 46-47. Notwithstanding these difficulties, courts consider "all the available evidence to determine [if] the relevant *primary* purpose" at the programmatic level is impermissibly related to a general interest in crime control. *Ferguson v. City of Charleston*, 532 U.S. 67, 81 (2001) (emphasis added); *see also Edmond*, 531 U.S. at 47, n. 2 (suggesting that a warrantless checkpoint regime can constitutionally have a "secondary purpose" related to crime control). Here, where it is necessary to look beyond the defendants' crafted justifications for the checkpoint regime, summary judgment should be denied because a reasonable jury could find that the checkpoint program was related to a general crime control interest in narcotics detection and interdiction.

A. The record strongly suggests that narcotics interdiction was the primary purpose of the City of Goodyear's checkpoint program.

Upon review of the City of Goodyear's checkpoint program, the record suggests that the program's espoused primary purpose was a pretext for a regime that was actually focused on narcotics detection and interdiction.

Checkpoint programs whose primary purpose is the discovery and interdiction of illegal narcotics unconstitutionally encroach on individuals' rights to privacy under the Fourth Amendment. *Edmond*, 531 U.S. at 48. In *Edmond*, law-abiding citizens challenged the constitutionality of a warrantless highway checkpoint program. *Id.* at 35-36. The defendants conceded that the program's primary purpose was interdiction of illegal narcotics. *Id.* at 40. Moreover, their pleadings, written protocols, and roadway warning signs referred to the

roadblocks as "drug checkpoints" and "narcotics checkpoint[s]." *Id.* at 35. The Court ruled that the drug interdiction program violated the guarantees of the Fourth Amendment because its primary purpose was indistinguishable from a program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. *Id.* at 48. In so holding, the Court ruled that the city's anti-narcotics agenda could not be rationalized in terms of highway safety concerns because there was not a "close connection" between the use of suspicionless seizure regime and the harm it sought to prevent—in this case, drug interdiction. *Id.* at 42; *but cf. Sitz*, 496 U.S. at 455 (upholding a warrantless highway checkpoint combatting drunk driving).

In addition, scrutiny of a suspicionless search regime's impetus, protocols, and effectuation can reveal that a program's express purpose is a pretext for general law enforcement action. *Ferguson*, 532 U.S. at 81-86. In *Ferguson*, the Court reviewed a state hospital's practice of testing pregnant women for cocaine without their consent, which the hospital argued served a "special need" of protecting the health of both mother and child. *Id.* at 73, 77, 81. Undertaking a "close review" of the stated purpose, the court noted that prosecutors and police were extensively involved in developing and administering the program. *Id.* at 70-71, 82. Moreover, the program's guidelines devoted attention to the chain of custody and the logistics of police notification and arrest, yet they minimally discussed medical treatments for mothers and infants. *Id.* at 82. The Court invalidated the program on the grounds that, in practice, it was "designed to obtain evidence of criminal conduct by the test patients." *Id.* at 85-86.

Here, a cursory review of the checkpoint program's primary purpose suggests the program is constitutional, but a closer analysis prompts significant doubts about the espoused purpose. Unlike the checkpoint program in *Edmond*, which had a primary purpose of drug interdiction, the City of Goodyear asserts that the primary purpose of its program is "to identify,

arrest, and deter marijuana-impaired drivers." (MITF Checkpoint Policy at 2). Unlike the roadblocks in *Edmond*, termed "drug" and "narcotics" checkpoints, the City of Goodyear warned drivers of "sobriety" checkpoints. (Compl. ¶ 55).

However, there are several indications that the primary purpose of the City of Goodyear's checkpoints is other than the one espoused. To begin, Deputy Chief Haridy's email referred to the program as "an effective and highly visible *interdiction tool*." (Haridy Email) (emphasis added). Like the policy guidelines in *Ferguson*, which minimally touched on the medical treatments for mothers and infants who tested positive for cocaine, Deputy Chief Haridy's email does not mention roadside safety, but it does emphasize the revenue-generating benefits of interdiction. (Haridy Email). In any case, Officer Fuentes, a narcotics officer who conducted Mr. Díaz Corrada's stop, was not aware of the checkpoint's primary or secondary purposes. (Fuentes Dep. 5:16-24). Furthermore, like the hospital procedures in *Ferguson*, which were fashioned to facilitate criminal prosecution of mothers who tested positive for drug use, officers' use of visual inspections and the order and nature of the mandatory questions suggest that the program here was structured around interdiction. (MITF Checkpoint Policy at 2-3). Lastly, while not dispositive, Mr. Díaz Corrada personally believed the checkpoints were part of a "crack[] down" on narcotics that involved officers "checking cars for drugs." (Díaz Corrada Dep. 5:26-32).

B. Summary judgment should be denied when the record casts doubt on the primary purpose of a warrantless search and seizure program.

Because the record suggests that the primary purpose of the checkpoint program was other than the one espoused, summary judgment should be denied here. Summary judgment is inappropriate when there is material evidence that suggests another programmatic purpose for a warrantless roadblock regime. *Bressi v. Ford*, No. CV 04-264 TUC-AWT, 2012 WL 13114802, at *3 (D. Ariz. Jan. 23, 2012). In *Bressi*, defendants argued that the primary purpose of their

checkpoint in southern Arizona pertained to sobriety, licenses, and registrations, supporting their contention with their own affidavits and deposition testimony. *Id.* at *3. Plaintiff challenged the expressed primary purpose, noting that the presence of Customs and Border Patrol agents, officers' requests to search trunks on a road "notorious" for smuggling, and officers' policy of conducting criminal wants and warrants check on stopped motorists suggested that defendants had ulterior motives. *Id.* at *2. The court denied defendants' motion for summary judgment because, "[t]aking the facts in the light most favorable to Plaintiff, a reasonable trier of fact could find that the primary purpose of the checkpoint was general crime control." *Id.* at *3; s*ee also Collins,* 382 F.3d at 534-35, 543-44 (affirming the denial of defendants' motion for summary judgment because the record facially suggested that a sheriff implemented a roadblock regime as a personally motivated, retaliatory tool).

The record here suggests that general law enforcement concerns were central to the creation and implementation of City of Goodyear's checkpoint program. Like the defendants in *Bressi,* defendants here can only point to their own testimony and documents to support their contention that highway safety was their programmatic purpose. But even defendants' internal materials suggest that general crime control was at the forefront of the MITF's initiative. (Haridy Email). Like the sheriff in *Collins,* Chief Greer is facially motivated by perceived threats to financial and law enforcement interests, allegedly posed by marijuana entering Arizona from California. (Greer Dep. 6:9-21, 10:29-11:1). A reasonable trier of fact could conclude that the City of Goodyear program's actual purpose was narcotics interdiction.

II. SUMMARY JUDGMENT MUST BE DENIED BECAUSE THE CHECKPOINT PROGRAM IS UNREASONABLE GIVEN ITS MOTIVES, INEFFICACY, AND INTRUSIVENESS.

Even if the court finds that primary programmatic purpose of Goodyear's checkpoint program is related to highway safety, summary judgment should still be denied because a

reasonable jury could find that, on balance, the checkpoint program was unreasonable when considering the motivations for its enactment, inefficacy in advancing public interests, and intrusive nature. To protect individuals' privacy rights, courts determine the reasonableness of suspicionless checkpoints programs using a three-prong balancing test that weighs "[1] the gravity of the public concerns served by the seizure, [2] the degree to which the seizure advances the public interest, and [3] the severity of the interference with individual liberty." *Brown v. Texas*, 443 U.S. 47, 50-51 (1979). The central concern of these considerations is to ensure that "an individual's reasonable expectation of privacy is not subject to arbitrary invasions . . . ." *Id.* at 51. On balance, the City of Goodyear's program is unreasonable because it was motivated by unsubstantiated concerns, empirically and analytically ineffective at advancing the public interest, and objectively and subjectively intrusive to law-abiding motorists.

A. The checkpoint program did not address grave public interests because there was no documented problem of marijuana-impaired driving.

The City of Goodyear's program was borne from anecdotal and uncorroborated beliefs about the risks of driving while high, which weighs against its reasonableness. Conversely, a finding of legitimate and pressing public concern weighs in favor of a regime's reasonableness. *See, e.g., Fraire*, 575 F.3d at 933.

Demonstration of an actual, rather than merely speculative, problem is a hallmark of establishing the gravity of the public concern addressed by a "special needs" regime. *Sitz*, 496 U.S. at 451. In *Sitz*, a police department established sobriety checkpoints to identify and arrest intoxicated drivers. *Id.* at 447. The Court credited the public interest at stake in such a regime, noting statistical evidence about the annual death toll and property damage resulting from drunken driving in the U.S. corroborated a "legion" of media reports on the issue. *Id.* at 451 ("The anecdotal is confirmed by the statistical"). On the other hand, in *Chandler*, the Court

assessed the constitutionality of Georgia's requirement that candidates for designated state offices pass a drug test. *Chandler,* 520 U.S. at 308-09. Georgia presented no evidence of a drug problem among the state's elected officials. *Id.* at 321. In holding the program unconstitutional, the Court acknowledged that a demonstrated problem was "not in all cases necessary to the validity of a [suspicionless] testing regime," but the lack of such evidence weighed against the program's reasonableness. *Id.* at 318-19.

Here, Mr. Díaz Corrada acknowledges that highway safety is an important concern of law enforcement, but defendants have failed to demonstrate a grave problem associated with marijuana-impaired driving. Unlike the police force in *Sitz*, which provided nationwide data on the human and property costs of intoxicated driving, the defendants have no data to vindicate their concerns about high driving. (Greer Dep. 6:20-23). Moreover, epidemiological studies are inconclusive about whether driving while high poses any kind of risk. (CRS Report). The anecdotal is unconfirmed by the statistical here. However, even defendants' anecdotal evidence, the heartbreaking story of a 2019 car collision, could only speculatively suggest that marijuana-impaired driving was a problem for the community. (Greer Dep. 8:12-14; Task Force Report 3). As in *Chandler*, the program here is unreasonable given the absence of a documented problem related to its espoused primary purpose.

B. <u>The checkpoint program ineffectively advanced public interests considering its empirical results and the tension between its structure and the problem it sought to address.</u>

The court should find that the City of Goodyear's program was unreasonable because it was ineffective in identifying and deterring marijuana-impaired driving and, in its inception, not structured to effectively do so. Generally, a warrantless seizure regime is considered more reasonable to the extent it advances the public interest. *See, e.g.*, *Fraire*, 575 F.3d at 933.

Checkpoints can effectively advance the public interest despite a low arrest rate. *Sitz*, 496 U.S. at 454-55. In *Sitz*, the Court said that a police force's sobriety checkpoint was effective though just 1.6 percent of the drivers passing through it were arrested for alcohol impairment. *Id.* at 454-55. Similarly, in *Martinez-Fuerte*, the Court reviewed the constitutionality of a suspicionless highway checkpoint looking for undocumented persons. *Martinez-Fuerte*, 428 U.S. at 545. Individuals were found hiding in approximately 0.12 percent of the vehicles that passed through the stop, and the ratio of individuals arrested to vehicles stopped was about 0.5 percent. *Id.* at 554. The Court found the checkpoints to be constitutional under the Fourth Amendment. *Id.* at 566; *see also Faulkner*, 450 F.3d at 473 (concluding seizures at an information station advanced the public interest in part because "there was a reduction at least in broken glass").

Here, the City of Goodyear's checkpoint program is empirically ineffective. The ratio of vehicles stopped to arrests in *Sitz* and *Martinez-Fuerte* was 1.6 percent and 0.5 percent respectively. Here, the ratio of stops to arrests for marijuana impairment was approximately 0.35 percent. (Greer Dep. 20:15-21:1). The defendants may argue that, as suggested by the reasonableness analysis in *Faulkner*, the absolute value of the ratio is less important than the fact there was a relative improvement in highway safety because of the program. However, the court in *Faulkner* resorted to such a comparison only because there was "no way to measure the total volume of litter." *Faulkner* at 473. In contrast, the available data here suggests that the checkpoints were most effective at advancing a public interest in narcotics control: officers made more arrests for illegal marijuana possession than for impairment of any kind, and approximately 1.15 percent of stopped motorists were arrested for marijuana possession. (Greer Dep. 20:15-17).

In the alternative to an empirical measure of efficacy, checkpoints can also advance the public interest if there is a high degree of connection between the checkpoint and its objective.

Lidster, 540 U.S. at 427. In *Lidster*, police established a highway checkpoint to obtain information from motorists about a hit-and-run accident. *Id.* at 419. The checkpoint took place approximately a week after the accident, on the same highway near the location of the accident, and at about the same time of night to coincide with motorists most likely to have seen something relevant. *Id.* at 427. The court held that the stop advanced the public interest because the checkpoint was tailored to fit the police's criminal investigatory needs. *Id.*

The degree of connection between the checkpoints here and their purpose is more tenuous than in *Lidster*. Like the checkpoint in *Lidster,* which was implemented on the same highway near the location of the hit-and-run, the City of Goodyear established checkpoints within city limits on I-10, where police had responded to a fatal crash that was wrongfully attributed to marijuana use. (Task Force Report 3). Officers in the Goodyear Police Department, however, also made several narcotics interdictions in 2019 that led to a belief that I-10 had become a trafficking corridor. (Task Force Report 3; Greer Dep. 9:20-23). Moreover, like in *Lidster*, where the checkpoint was strategically timed to coincide with the time of the hit-and-run, the defendants allegedly started their program to coincide with the resumption of a California musical festival. (Greer Dep. 10:13-17). Of the program's four checkpoints, just two coincided with the dates of the festival. (Greer Dep. 19:30-20:3; Coachella Flyer). And rather than implement the checkpoint directly on I-10, to maximize highway safety when supposedly there was the greatest danger to the public, officers chose to place the April 24th checkpoint on a highway off-ramp located about *three and a half hours away* from the festival. (Fuentes Dep. 12:1-5, 15:1-8; Driving Time Map). Comporting with commonsense expectations, Mr. Díaz Corrada testified that there were few cars on I-10 and the exit off-ramp that night. (Díaz Corrada

Dep 15:7-19, 16:18-25). Overall, the program's empirical results and disconnect between its design and stated purpose weigh against its reasonableness.

C. The checkpoint program was objectively and subjectively intrusive as a result of its design and effectuation.

A reasonable jury could find that the checkpoint was unreasonably intrusive because it was protracted, intensive, and prone to creating significant fear and surprise. The third factor of the reasonableness analysis, the severity of the interference with individual liberty, considers both the "objective" and "subjective" intrusiveness of a suspicionless seizure. *See, e.g.*, *Sitz*, 496 U.S. at 452. Subjective intrusion is evaluated with respect to the "fear and surprise engendered in law-abiding motorists by the nature of the stop." *Id.* A high degree of objective and subjective intrusion weighs against a program's reasonableness. *See, e.g.*, *Fraire*, 575 F.3d at 933.

There is minimal objective intrusiveness at a warrantless checkpoint when seizures are brief and the investigation is not intensive. *Id.* at 934. In *Fraire*, plaintiffs challenged a vehicle checkpoint intended to mitigate illegal poaching in a national park. *Id.* at 930. The court ruled that the objective intrusion of seizures at the checkpoint was slight because "[c]ontact between drivers and rangers often lasted only about fifteen to twenty-five seconds, drivers would wait in line about one minute, and the rangers merely asked the drivers whether they had been hunting but did not search the vehicles . . . ." *Id.* at 934; *see also Lidster*, 540 U.S. at 422, 427 (finding minimal objective intrusion because motorists waited in line "a very few minutes at most" and contact with the police lasted ten to fifteen seconds); *Martinez-Fuerte*, 428 U.S. at 547 (ruling there was minimal objective intrusion because the seizures, occurring in a "secondary inspection area," lasted between three to five minutes).

Here, Goodyear's program subjected motorists to a greater degree of objective intrusions than in other regimes of suspicionless searches. Unlike the motorists in *Fraire*, who waited in

line for about one minute, Mr. Díaz Corrada waited for ten minutes before Officer Fuentes approached him. (Díaz Corrada Dep 16:18-25). Unlike the police encounters in *Fraire* and *Lidster*, which lasted less than half a minute, the City of Goodyear's protocols anticipated stops would last approximately forty-five seconds to one minute. (MITF Checkpoint Policy at 3). In practice, Mr. Díaz Corrada's encounter with Officer Fuentes lasted for a minute and half, and Officer Fuentes testified that some encounters lasted up to two minutes. (Fuentes Dep. 13:20-14:9, 15:20-24). Meanwhile, the seizures in *Martinez-Fuerte* lasted between three to five minutes, but that threshold is an inappropriate benchmark because, unlike in the instant case and cited precedents, only certain motorists passing through the immigration checkpoint were asked to pull aside into the "secondary inspection area" where the seizures occurred. Lastly, unlike the investigations in *Fraire*, which consisted of merely asking questions, Goodyear officers conducted a visual inspection of the car and motorists, searching for signs of impairment or plain view evidence of contraband. (MITF Checkpoint Policy at 2-3).

In addition, subjective intrusion is modest when motorists have notice of the presence and procedures of the checkpoint. *Fraire*, 575 F.3d at 934. In *Fraire*, the anti-poaching checkpoint was accompanied by signs announcing it, the rangers operating it were uniformed, and all approaching vehicles were systematically stopped. *Id.*; *see also Martinez-Fuerte*, 428 U.S. at 545 (noting that a warning was placed a mile before the checkpoint). The checkpoint was also located at one of the national park's entrances, where visitors expected to be stopped. *Fraire*, 575 F.3d at 934. The court held the subjective intrusion was minimal because there "little reason for anxiety or alarm." *Id.* (citing *Lidster*, 540 U.S. at 428).

In its conception and implementation, the City of Goodyear's checkpoint program was prone to engendering substantial fear and surprise in law-abiding motorists such as Mr. Díaz

Corrada. The anti-poaching checkpoint in *Fraire* was accompanied by signs announcing it and located at an entrance, where motorists likely had an expectation of being stopped. Here, the MITF intended for there to be a degree of surprise when motorists encountered the roadblocks, as it resolved to not announce the checkpoints' specific times and locations and the April 24th checkpoint was completely out of sight from the highway. (Greer Dep. 18:10-16; Fuentes Dep. 15:1-8). Moreover, unlike the motorists in *Martinez-Fuerte*, who had a one-mile notice of the checkpoint, motorists here were not given notice until they approached the exit off-ramp. (Díaz Corrada Dep. 5:17-22). Though a sign announced a "sobriety checkpoint," Mr. Díaz Corrada, and likely other citizens, was surprised by questions about his point of origin, questions about his potential use or possession of marijuana, and Officer Fuentes's intensive search for evidence of contraband. (MITF Checkpoint Policy at 3). Mr. Díaz Corrada is a law-abiding citizen who has never smoked marijuana in his life, yet the surprise and intensity of the checkpoint caused nervousness, fear, and medical distress that required hospitalization. (Díaz Corrada Dep. 7:15-28, 17:10-17, 11:12-31). The court should hold that the checkpoints were unreasonably intrusive.

CONCLUSION

The Fourth Amendment's requirement of individualized suspicion can only be waived for "special needs" regimes that are reasonable and unrelated to ordinary crime control. The defendants claim that Goodyear's warrantless seizure program served a special need of improving highway safety. However, they are not entitled to summary judgment because, viewing the evidence in the light most favorable to the plaintiff, a reasonable jury could conclude that the checkpoint program was an ordinary crime control device focused on narcotics control and interdiction or that the program was unreasonable considering the uncorroborated concerns that impelled its creation, its inefficacy in improving highway safety, and significant intrusiveness. Accordingly, their motion must be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment was served this day via email to counsel for the Defendants at the following address:

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