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**WELTON JUSTICE COURT**  
**YUMA COUNTY**

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN ANDERSON,

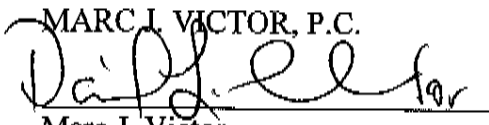
Defendant.

) Case No. J1403IA2009-00072

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)  
) DEFENDANT'S REPLY TO STATE'S  
) RESPONSE TO DEFENDANT'S MOTION TO  
) DISMISS WITH PREJUDICE

COMES NOW, Defendant Steven Anderson, by and through undersigned counsel, and replies to the States Response to the defendant's Motion to Dismiss. This Reply is supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of June, 2009.

MARC J. VICTOR, P.C.  
 By:   
 Marc J. Victor  
 Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Fourth Amendment to the United States Constitution reads:

3 The right of the people to be secure in their persons, houses, papers,  
4 and effects, against unreasonable searches and seizures, shall not be  
5 violated, and no Warrants shall issue, but upon probable cause,  
6 supported by Oath or affirmation, and particularly describing the place  
7 to be searched, and the persons or things to be seized.

7 The State is correct in admitting that requiring Mr. Anderson to stop at a checkpoint is a  
8 "seizure" under the Fourth Amendment. *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976).  
9 That seizure started at the moment Mr. Anderson was required to slow his car because of the  
10 approaching checkpoint. The defendant admits that the holding of *United States v. Place* makes a  
11 K-9 sniff not a "search" under the Fourth Amendment. 462 U.S. 696, 707 (1983). The question for  
12 this Court, then, is whether the seizure of Mr. Anderson's person by stopping him at this checkpoint  
13 was "reasonable" under the Fourth Amendment.  
14

15 The only reason Mr. Anderson was stopped in the roadway, and thus the only way he could be  
16 obstructing a highway and in a position to refuse to move his car to secondary inspection, was that he  
17 was seized by Border Patrol agents. If that seizure is unreasonable it should be suppressed. If it is  
18 suppressed, the fruits of that seizure—the presence of Mr. Anderson stopped in the roadway—should  
19 be suppressed. *Mapp v. Ohio*, 367 U.S. 643 (1961). Without the legal presence of Mr. Anderson in  
20 the roadway, this Complaint is insufficient as a matter of law pursuant to Rule 16.6(b),  
21 *Ariz.R.Crim.P.*

22 ***Was the Seizure of Mr. Anderson "Reasonable?"***  
23

24 The seizure of Mr. Anderson at the border checkpoint was unreasonable under the Fourth  
25 Amendment because it far exceeded the limited scope allowed in *United States v. Martinez-Fuerte*.  
26 428 U.S. 542 (1976).

1 The Supreme Court of the United States has held a "seizure" by requiring a vehicle to stop at  
2 a border checkpoint away from the actual border is "reasonable," but only for narrowly defined  
3 reasons. *Id.* The Court reasoned that the seizure "involves only a brief detention during which all  
4 that is required of the vehicle's occupants is a response to a brief question or two and possibly the  
5 production of a document..." *Id.* at 558. The Court further reasoned that "[r]eferrals [to secondary  
6 inspection] are made *for the sole purpose* of conducting a routine and limited inquiry into residence  
7 status..." *Id.* at 560 (emphasis added).

9 In this case, the seizure required more than "a brief question or two," it required Mr.  
10 Anderson's car be sniffed by a K-9 dog. The decision to refer Mr. Anderson to secondary inspection  
11 was made *before* any question could be asked. Mr. Anderson was directed to secondary inspection  
12 not "for the *sole purpose* of conducting a routine and limited inquiry into residence status," he was  
13 sent to secondary inspection because, and only because, of the K-9 alert.

15 The Court, in *Martinez-Fuerte*, carved out a narrow exception to the rule that a stop, and  
16 therefore a seizure, can only be made with at least reasonable suspicion that crime is afoot. This case  
17 far exceeds that narrow exception. Mr. Anderson was not subjected to a border checkpoint just  
18 because the Border Patrol was operating it, he was subjected to a checkpoint designed and run as a  
19 narcotics checkpoint.

20 ***This Checkpoint was a Narcotics Checkpoint Cloaked as a Border Checkpoint.***

21 Agent Gomez, the agent at the primary inspection stop, stated he only sent cars to the  
22 secondary inspection area when Agent Spoonamore, or another K-9 handler, signaled him that there  
23 was a K-9 alert. Agent Spoonamore stated his K-9 is trained to alert to "concealed humans and  
24 certain narcotics." However, Agent Spoonamore could not describe how his K-9 could distinguish  
25  
26

1 between "concealed humans" and "unconcealed humans." It is common sense that a K-9 alerting to a  
2 human scent would alert to every vehicle passing, but this K-9 did not alert to every vehicle.

3 As the K-9 alerted to only some cars, it must be alerting to the detected odor of "certain  
4 narcotics." This leads to the conclusion that Mr. Anderson was seized for the purpose of a K-9  
5 sniffing his vehicle for the purpose of detecting narcotics. A checkpoint set up for the purpose of  
6 detecting narcotics causes an unreasonable seizure under the Fourth Amendment. *City of*  
7 *Indianapolis v. Edmund*, 531 U.S. 32, 48 (2000).  
8

9 **CONCLUSION:**

10 The defendant moves that the Court find that his Fourth Amendment rights were violated  
11 resulting in an illegal seizure of his person. The defendant further moves that the fruits of that  
12 seizure, his body being present at the scene, be suppressed. In addition, the defendant moves the  
13 court to dismiss the charges with prejudice as they are then insufficient as a matter of law pursuant to  
14 Rule 16.6(b), *Ariz.R.Crim.P.*  
15

16 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of June, 2009.

17 MARC J. VICTOR, P.C.

18 By: 

19 Marc J. Victor

20 Attorney for Defendant

21 Original mailed to the Court, and a  
22 copy mailed June 29, 2009, to:

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