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6 **IN THE UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 LAURA LEIGH,

9 Plaintiff,

10 **Case No. 3:10-cv-0597-LRH-VPC**

11 vs.

12 KEN SALAZAR, in his official capacity as
Secretary of the U.S. DEPARTMENT OF
THE INTERIOR, BOB ABBEY, in his official
13 capacity as Director of the BUREAU OF
LAND MANAGEMENT; RON WENKER in his
14 official capacity as Nevada State Director of
the BUREAU OF LAND MANAGEMENT, et
15 al.,

16 Defendants.
17 _____/

18 **AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER**

19 Plaintiff LAURA LEIGH amends her request for a temporary restraining order
precluding Defendants from the harmful conduct described herein below.

20 This Motion is again made in accordance with Fed.R.Civ.P. 65(b). The Motion is
21 based on the pleadings and papers on file herein, the accompanying Memorandum of
22 Points and Authorities and supporting documents, the Order entered September 27,
23 2010 (Doc 13) and on such other matters as may be presented before the court.

24 Dated this 1st Day of October 2010

25 RESPECTFULLY SUBMITTED,
26 LAW OFFICE OF GORDON M. COWAN

27 /S/

28 _____
Gordon M. Cowan Esq. (SBN 1781)
Attorney for Plaintiff LAURA LEIGH

1 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF**
2 **AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER**

3 Plaintiff LAURA LEIGH submits the following Memorandum of Points &
4 Authorities in support of her Amended Motion for a Temporary Restraining Order
5 (“TRO”):
6

7 **Denial of TRO Motion (Doc 6) by Order (Doc 13); Discussion**

8 On September 27, 2010 this court denied “without prejudice,” Plaintiff’s TRO
9 motion (Doc 6). See Order (Doc 13). For purposes of this discussion Plaintiff
10 incorporates her TRO Motion (Doc 6) as though fully set forth at length herein, together
11 with exhibits attached thereto and including the Supplement to Motion for TRO (Doc 11)
12 together with exhibits attached thereto.
13

14 *Items “a” through “f” sought sua sponte relief*

15 The court instructed that Plaintiff had not satisfied requirements for relief for
16 Items “a” through “f” found at the beginning of Plaintiff’s TRO Motion (Doc 6). See
17 Order denying relief (Doc 13 at p. 2, lines 16-18).

18 Plaintiff sought the court’s *sua sponte* relief for items “a” through “f” to at least
19 keep the *status quo* or to place a “band aid” on the hemorrhaging ongoing at Silver King
20 and related facilities, until such time as the court is able to hear the TRO Motion. This
21 is exactly how the court handled the companion case (3:10-cv-417). Items “a” through
22 “f” are accordingly, *not* the requested TRO relief.

23 In *Leigh v. Salazar, 3:10-cv-417*, a companion case involving roundups in Elko
24 County this past July (“companion case”) this very court entered its own motion *sua*
25 *sponte*, July 14, to temporarily stop all activity in the Owyhee, the Rock Creek and Little
26 Humboldt roundups until the court could hear the TRO motion brought in that case.
27 [See, companion case, 3:10-cv-417, Order at Doc 10 entered July 14, 2010 (“IT IS
28 THEREFORE ORDERED that the defendants are prohibited from carrying out the

1 gathering of any wild horses from within the Owyhee, the Rock Creek and Little
2 Humboldt Herd Management Areas in the northwest of Elko County, Nevada until
3 further order of the court”)]. Three days later in that case, the court heard the matter.

4 Meanwhile, the *status quo* is not preserved in the instant matter where one party
5 forges onward with harmful conduct to the irreparable detriment of the Plaintiff and to
6 the public.

7 Irreparable harm to the Plaintiff is no less in the instant matter than what faced
8 Plaintiff in the companion matter when the court said, “the defendants are prohibited
9 from carrying out the gathering of any wild horses . . .” before the court heard the
10 matter. [Companion case, 3:10-cv-417, Order (Doc 10) entered July 14, 2010].

11 *No Relief is sought based on “humane” issues such as rounding up “pregnant*
12 *mares” or “young foals”*

13 The court’s Order states the TRO Motion (Doc 6) challenges the decision of the
14 defendants, “to use helicopters to gather the horses while there are pregnant mares
15 and young foals in the herds” [Order (Doc 13) page 1, line 24 – page 2, line 1].

16 Not so. This TRO Motion does *not* seek injunctive relief because the
17 Defendants’ roundup and related methods are inhumane. They *are* inhumane although
18 that subject is not the point of the TRO Motion. In fact, neither “pregnant mares” nor
19 “young foals” are mentioned in the TRO Motion (Doc 6).

20 Contrary to the court’s impression, this is strictly a First Amendment case. This
21 case challenges the preclusion of the Plaintiff and public from the following:

- 22 1. access to roundups based on historical and repetitive conduct effectively
23 precluding or unduly restricting true access by Plaintiff, to observe
24 roundup capture activities, the effective preclusion of which amounts to a
25 prior restraint to Plaintiff’s First Amendment rights;
- 26 2. “equal access” to roundups where the Plaintiff had been singled-out since
27 the filing of the companion case and censored from observing roundups in
28 the same manner and to the extent others equally credentialed, enjoyed,

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which is retaliatory from her having brought the companion case, which is retaliatory from her having published stories and video of the government Defendants' activities with horses and which the government Defendants dislike, the effective preclusion of which amounts to a prior restraint to Plaintiff's First Amendment rights;

3. access to observe how the defendants load and ship horses, the effective preclusion of which amounts to a prior restraint to Plaintiff's First Amendment rights;

4. access to observe facilities where captured wild horses are shipped and housed the effective preclusion of which amounts to a prior restraint to Plaintiff's First Amendment rights;

5. access to view roundups such that Plaintiff is able to truly assess the health and well being of those wild horses captured by the Defendants, the effective preclusion of which amounts to a prior restraint to Plaintiff's First Amendment rights; and

6. uncensored documentation concerning captured wild horses' travels through the Defendants' system, from the time of the capture of these wild horses to the time of their ultimate disposition or demise, the effective denial of which amounts to a prior restraint to Plaintiff's First Amendment rights;

Specifically, this case seeks access to all aspects of how the government Defendants handle the horses taken from Silver King, from the time of their capture to their ultimate disposition and demise. Plaintiff does *not* seek a cessation of these roundups because of the Defendants' employ inhumane methods. They do; they don't care; that's not this case. Rather, this suit seeks transparency in government activity which is authorized and expected when granting credence to fundamental notions guaranteed by the First Amendment to the U.S. Constitution to uncensored free speech, thought and expression, and to freedom of the press and journalists to report

1 on government activity. See, *U.S. Constitution*. First Amend.

2 The Defendants succeeded thus far, to trample on those rights, to make a
3 mockery of “free speech,” “freedom of expression” and have denigrated the freedom of
4 the press where they continue, as they have historically, to conduct their sordid affairs
5 under a shroud of secrecy and where they exclude the Plaintiff from these activities.
6 The Defendants are succeeding at nearly every step of their wild horse removal
7 program to regulate the content of fully protected speech.

8 To be clear, this case defends against the continued offenses to the First
9 Amendment and to the Plaintiff’s rights protected therein. “Inhumane” treatment,
10 although ongoing, is not the issue herein.

11 ///

12 Purported Lack of Notice

13 The court believes Plaintiff didn’t give the government Defendants copies of the
14 TRO Motion. The court assumed *ex parte* relief was requested and denied the Motion.
15 Again, such is not the case.

16 The moment the Complaint was filed September 22, Mr. Erik Peterson, Esq. of
17 the U.S. Dept. of Justice (“USDOJ”) received a copy. Mr. Peterson acknowledged his
18 receipt of same that same day.

19 The undersigned also gave a copy of the TRO Motion (with all Exhibits) to Mr.
20 Peterson when the TRO Motion was filed September 24. Once again, Mr. Peterson
21 acknowledged his receipt of same the same day. Mr. Peterson also entered his
22 appearance for all government Defendants that same day, September 24 (see Doc 7).
23 Also, a certificate of service accompanying the TRO Motion confirms Mr. Peterson
24 received a copy of the TRO Motion that same day. (See last page, Doc 6). He also
25 received the accompanying Preliminary Injunction. In fact, Mr. Peterson received all
26 documents filed in this case thus far without delay.

27 To alleviate apparent concern by the court on the issue, it became necessary to
28 prepare a Declaration of Service (Doc. 14).

1 The implication or impression that the undersigned somehow attempted to seek
2 relief without providing the opposition a copy, is unfortunate and unfounded. To the
3 contrary, because as it turns out, Mr. Peterson was committed to family activities over
4 the weekend, the undersigned forwent filing a prepared Motion for *ex parte* Order
5 Shortening Time for him to oppose the Motion, this past Friday. Mr. Peterson is
6 certainly available as a verifiable source should the court continue to question whether
7 Mr. Peterson didn't receive copies of the Motion.

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9 Relief Denied Because Harm has "yet to happen"

10 The court denied the requested relief purportedly because the offensive conduct
11 had not yet occurred. [Order (Doc 13) page 3, lines 2-3].

12 Is it not the purpose of injunctive relief to stop harmful conduct before harm
13 occurs? Must someone suffer first from a prior restraint on speech as the prerequisite
14 to seeking injunctive relief? See, e.g., *City of Lakewood v. Plain Dealer Publ'g Co.*, 486
15 U.S. 750, 755-56, 108 S.Ct. 2138 (1988) (holding, a plaintiff need not have applied and
16 been denied a newspaper rack license before challenging a city ordinance as an
17 unconstitutional prior restraint on speech). Is it not the duty of the courts to adjudicate
18 and uphold the legitimate constitutional rights of litigants who have properly invoked
19 federal jurisdiction?

20 In comparison, in the companion case (3:10-cv-417) when on July 15 this very
21 court heard the matter involving the Owyhee roundup, the Plaintiff had yet to have her
22 constitutional freedoms infringed upon. But, because the court anticipated
23 constitutional First Amendment harm would occur in Owyhee, *before the harm*
24 *occurred*, the court granted relief in that case. [See, Order (Doc 18), filed July 16, 2010
25 in 3:10-cv-417].

26 How does one correlate the court's prior ruling (i.e. *granting* injunctive relief
27 *before* harm occurs) with the same court's Order in the instant case (i.e. *denying*
28 injunctive relief because the harm *has yet to occur*) on similar facts?

1 **Requested Relief for TRO**

2 Plaintiff clarifies and modifies the relief she seeks through this motion, as follows:

- 3 1. That an injunction issue mandatorily precluding or mandating, as the case may
4 be, the Defendants concerning the following relative to all horses captured from
5 Silver King:
- 6 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
7 also others similarly situated, from accessing trap sites and holding pen
8 sites, whether placed on public property or intentionally placed on private
9 property;
 - 10 b. Should the Defendants choose private property on which to set trap sites
11 or holding pens, that as a condition precedent to doing so, the Defendants
12 obtain clear authorization from landowners in advance of such activities,
13 to allow Plaintiff, her colleagues and others similarly situated, onto the
14 property as part and parcel to the Defendants' horse gather, roundup,
15 capture activities; and to otherwise, keep the traps and holding areas for
16 captured wild horses on public lands;
 - 17 c. Require the Defendants to accommodate the public and Plaintiff to view
18 the capturing and handling thereafter, of Silver King wild horses shortly
19 following their capture, such that the Plaintiff, the public and press are
20 able to independently observe and assess the health, the condition, the
21 welfare of wild horses captured just moments previously, and their
22 handling by the Defendants in the process;
 - 23 d. Require clear daily visual access without unduly restrictive conditions or
24 impediments to such areas imposed on Plaintiff, her colleagues and
25 others similarly situated, to trap sites and to holding areas immediately
26 after wild horses are captured, such that the Plaintiff, the public and press
27 are able to independently observe and assess the health, the condition,
28 the welfare of wild horses captured just moments previously;

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- e. Prohibit the flying of helicopters to gather, roundup, haze or move horses in any fashion and for any reason whatsoever, at all times where the public has not been adequately notified of such activity or given opportunity to be present to observe the activity;
- f. Prohibit further, the practice of continuing to fly helicopters for such purposes (to gather, roundup, move or haze horses) after advising the public that gather or roundup activities are completed for the day;
- g. Prohibit further, the practice of requiring Plaintiff and those interested in viewing the capturing of wild horses and subsequent handling, to be in essence, licensed at the sole discretion of the Defendants, to view the roundup or capture or gather activities, through the use of a “reservations” system, or a “wait list” system, or some other conditional system which in effect impedes, restricts and/or precludes the Plaintiff and others from reasonably observing capture and roundup activities or which prevents observations altogether, and which effectively precludes Plaintiff and others from assessing the health, the condition, the welfare of wild horses so captured, and which also precludes the Plaintiffs’ and public’s observation of how captured horses are handled and cared for by the government Defendants;
- h. Require at a minimum, reasonable notice, of modification or changes to roundup activities or schedules, and of notices of roundup activities or schedules; and require Defendants to abide by the notices; and if the Defendants are not able to comply, to require the Defendants to renew such notice requirements before rounding up, or gathering, or removing wild horses from Silver King;
- i. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and also others similarly situated including the press and public, from reasonably viewing the loading and transportation of all wild horses

1 captured and removed from Silver King, in such a manner that the Plaintiff
2 and others are precluded from assessing the health, the safety and
3 welfare of captured wild horses, and they are precluded from observing
4 the Defendants' handling of captured wild horses during the course of
5 such activities; and, require the Defendants to notify the public with
6 sufficient advance notice, of the shipment or transportation of captured
7 wild horses from Silver King, and further, to notify the public of the specific
8 location of the facilities to which the captured horses (Silver King horses in
9 this instance) are intended to be shipped and where they are ultimately
10 shipped; and prohibit the shipment of any or all horses where such
11 notifications to the public have not been sent;

12 j. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
13 also others similarly situated, from being denied license to access
14 temporary holding facilities, short-term holding facilities, long-term holding
15 facilities, or any other facilities whether public or private, to which Silver
16 King horses are transported; and if the Defendants choose private
17 facilities at which to ship Silver King horses, that as a condition precedent
18 of using such private facilities, the operators of such private facilities shall
19 make available the facilities for inspection of the Silver King horses to
20 members of the public including Plaintiff and others if they so choose, in
21 such a manner that the horses may clearly be viewed and documented
22 such that a wellness or clinical assessment of such horses may be
23 accomplished, if so desired by the person(s) seeking to observe these
24 horses; and that such facilities shall be accessible and open to the public
25 to view any and all such horses in the facility, during normal business
26 hours;

27 k. Require the Defendants to identify and record, whether by photographs or
28 other methods, each Silver King wild horse removed therefrom, in a

1 manner which effectively allows the Defendants, the Plaintiff and the
2 public to track their whereabouts to their ultimate destination; and to make
3 available to the public to inspect, without censorship, such records and
4 information and without having to proceed with a Freedom of Information
5 request ("FOIA");

- 6 l. Require the Defendants to keep accurate and copious records of: (a)
7 persons to whom Silver King horses are given or sold outside of formal
8 horse adoption programs; (b) the identification of each Silver King horse
9 given or sold to each such person receiving them outside of formal
10 adoption programs; (c) allow the Plaintiff or others similarly situated and
11 the public to review or inspect such records without censorship or
12 restriction and without a FOIA request;
- 13 m. Prohibit the preclusion or restriction of the Plaintiff also others similarly
14 situated from photographing or documenting their observations of Silver
15 King operations and Silver King horses wherever situated;
- 16 n. Require the Defendants to keep accurate records of Silver King horses
17 having incurred injury or illness or debilitating conditions occurring while
18 such horses are in the custody or control of the Defendants or their
19 chosen contractors; and to make such records available to the public for
20 inspection without censorship or restriction and without a FOIA request;
- 21 o. Require the Defendants to provide any and all records discussed herein,
22 without censorship or restriction and without a FOIA request and to
23 provide copies of said records at the request of Plaintiff or others, at the
24 expense of requesting person(s);
- 25 p. To cease all wild horse roundup activities in Silver King until such time as
26 the Defendants are able to accommodate Plaintiff and others similarly
27 situated by providing access as herein outlined;
- 28 q. To cease shipments of all wild horses captured from Silver King such time

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as the Defendants are able to accommodate Plaintiff and others similarly situated by providing access as herein outlined;

- r. To preserve all documents and information wherever situated and however retained, whether internal, private or otherwise, electronic or hardcopy or otherwise, pertaining to the methods, plan, process, procedures, capture, shipment, boarding, intended use or disposition or demise of any and all horses removed in connection with the Defendants Silver King wild horse gather, or their related unpublished activities;
- s. Require the implementation of all other action necessary to effectuate the purpose and intent of that being requested herein.

This is a simple request because it merely asks for transparency in government. This case does *not* involve releasing “state secrets” or “classified information.” This Motion seeks to remove the secrecy of the process, accomplished by the Defendants through restrictive barriers, hurdles, rules, licenses, or conditions meant or which effectively keep out the Plaintiff and the citizenry, and which causes content-based censorship of speech and expression and causes undue prior restraints on Plaintiffs’ First Amendment rights. See, *U.S. Constitution*, First Amendment.

More simplified, this case is about the immediate need for *transparency* and the immediate cessation of limitations on the Plaintiffs rights. It’s also about monitoring and tracking public resources (i.e. the captured wild horses) the Defendants remove from the landscape in the area they call the Silver King Herd Management Area (“Silver King”)(“Silver King horses”).

///

New Evidence Supporting the Motion

Because the Plaintiff was apparently required to see if the same harm historically endured by her at the hands of these Defendants, would repeat at Silver King, Ms. Leigh traveled to the Silver King roundup in Lincoln County, Nevada to continue with her journalist’s duties. She was there attempting to view the Silver King roundup. She

1 spent Tuesday, September 28, Wednesday, September 29 and Thursday, September
2 30, there. During this entire time she was precluded from having any reasonable view
3 of gather activities. She was precluded from observing the horses close enough to
4 assess independently, the captured horses' health, their condition and their welfare.
5 Barriers and distance requirements precluded her reasonable observation. Plaintiff was
6 denied press access even though she was the only media representative present. She
7 was not given the same access to that as others who were given true press access
8 previously. Reasonable access was denied. See Plaintiff's Supplemental Declaration
9 to this Motion at **EXHIBIT "11"** attached.

10 Attached to this Amended TRO Motion is Laura Leigh's supplemental
11 Declaration at **EXHIBIT "11"**. What's disappointing is she was required to endure the
12 harm because it had "yet to happen." What transpired at Silver King is what was
13 forecast in Ms. Leigh's TRO Motion (Doc 6). The Defendants' rules, the distances
14 imposed, the methods employed to keep her and the public back and to hide the
15 aftermath of the Defendants' roundup activities, repeated as it has on so many
16 occasions. The Defendants once again, precluded Ms. Leigh from having any
17 meaningful observation. The Defendants caused content-based censorship of her
18 ability and vocation as a journalist and photo journalist, to observe and then report to
19 the public what transpired under this continuing cloak of secrecy and public preclusion.

20 What does it take to cause the Defendants to be transparent in their secretive
21 endeavors? What does it take to stop these Defendants from continually trampling on,
22 and denigrating the freedoms provided the citizenry by the First Amendment?

23 ///

24 ***Immediate Injunctive Relief Is Appropriate***

25 Plaintiff incorporates her points and authorities from her original TRO Motion
26 (Doc 6) together with exhibits attached thereto (Exhibits 1 through 6). Plaintiff
27 incorporates her Supplemental Brief to the same TRO Motion (Doc 11) together with
28 the exhibits attached thereto (Exhibits 7 through 10).

1 Immediate and Continuing Irreparable Injury

2 The attached Declaration and those previously provided together with all exhibits
3 clearly demonstrate the Plaintiff has in fact suffered and would continue to suffer
4 immediate, continuing, irreparable injury when being censored and deprived of her First
5 Amendment rights by these federal Defendants. See, *U.S. Constitution*, First
6 Amendment.

7 “[t]he loss of First Amendment freedoms, for even minimal periods of time,
8 unquestionably constitutes irreparable injury” for purposes of the issuance of a
9 preliminary injunction. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d
10 547 (1976); see also *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1148(9th Cir.1998)
11 (holding that a civil liberties organization that had demonstrated probable success on
12 the merits of its First Amendment overbreadth claim had thereby also demonstrated
13 irreparable harm). See also, *Sammartano v. First Judicial District Court, in and for*
14 *County of Carson City*, 303 F.3d 959 (2002)(The loss of First Amendment freedoms, for
15 even minimal periods of time, unquestionably constitutes irreparable injury for purposes
16 of the issuance of a preliminary injunction).

17 The Defendants restrictive methods to Plaintiff’s reasonable viewing of the
18 Defendants’ activities, amounts to content-based censorship of the Plaintiff, of that for
19 which she stands, of her work, of her intended publications, of her impressions,
20 opinions, and that which should be protected by the First Amendment.

21 Content-based regulation of fully-protected speech bears “a heavy presumption
22 against its constitutional validity.” *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S.
23 546, 558, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975).

24 While a presumption of constitutional validity exists in most contexts, the reverse
25 is true for a First Amendment challenge to a content-based restriction on fully-protected
26 speech. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 83 S.Ct. 631 (1963);
27 *R .A.V. v. St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538 (1992) (“Content-based
28 regulations are presumptively invalid.”). It is generally the government’s burden to

1 demonstrate that a restriction on expression is narrowly tailored to bring about a
2 compelling government interest. "A statute is narrowly tailored if it targets and
3 eliminates no more than the exact source of 'evil' it seeks to remedy." *Frisby v. Schultz*,
4 487 U.S. 474, 485, 108 S.Ct. 2495 (1988).

5 *Discriminatory Conduct*

6 Plaintiff has also been singled-out and discriminated against, because of the
7 content of her work which exposes the Defendants' activities. Attached to Plaintiff's
8 original TRO Motion (Doc 6) are the Declarations of Laura Leigh (EXHIBIT "2"), R.T.
9 Fitch (EXHIBIT "3") and Terry Fitch (EXHIBIT "4") and Debra Coffey (EXHIBIT "5").
10 Also attached is the letter from the editor of Horseback Magazine, Steve Long (EXHIBIT
11 "6"). These self-explanatory exhibits (incorporated herein) need no embellishment.
12 They strongly demonstrate the significant barriers and discrimination Ms. Leigh must
13 endure from the Defendants when she seeks to observe, photograph and report the
14 Defendant' in action when handling wild horses.

15 Discriminatory governmental action aimed at the communicative impact of
16 expression is presumptively at odds with the First Amendment. Above all else, the First
17 Amendment means that the government cannot restrict freedom of expression on the
18 basis of its ideas, message or content. See, *Cohen v. Cox*, 403 U.S. 75, 91 S. Ct. 1780
19 (1971); *NAACP v Button*, 371 U.S. 415, 445, 83 S. Ct. 328.

20 Official discrimination against a news media organization in retaliation for the
21 content of its news stories violates 42 U.S.C. §1983. *North Mississippi*
22 *Communications, Inc. v. Jones*, 792 F. 2d 1330, 1337 (5th Cir. 1986).

23 A policy that discriminates against particular reporters or news organizations by
24 public officials who are dissatisfied with the contents of news coverage is
25 unconstitutional unless the policy furthers a compelling state interest and is the least
26 restrictive means available to achieve the asserted governmental purpose. See,
27 *Borrecia v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974); *Quad-City Community News*
28 *Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971). See also, *Sherrill v. Knight*,

1 569 F. 2d 124, 129 (D.C. Cir. 1977)(holding that, because the White House has
2 established press facilities that are perceived as being open to all bona fide
3 Washington-based journalists, access to those facilities may not be “denied arbitrarily
4 or for less than compelling reasons”).

5 Plaintiff cannot fathom *any* compelling government interest that justifies her
6 exclusion over that of others, from accessing daily, close-up, the Defendants’ wild horse
7 roundup activities where others have been granted such access but which she has not.

8 Government restrictions that regulate speech based on its content cannot be
9 viewed as time, place and manner restrictions. Such restrictions can only be justified, if
10 ever, upon a showing of a compelling governmental interest and that the restriction is
11 the least restrictive means available to achieve the asserted governmental purpose.
12 *Consolidated Edison v. Public Service Comm’n*, 447 U.S. 530, 100 S. Ct. 2326 (1980).

13 It seems clear that media have a right to be in public places and on public
14 property to gather information photographically or otherwise. *Channel 10, Inc. v.*
15 *Gunnerson*, 337 F. Supp. 634, 638 (D.Minn. 1972). All persons, not just news
16 organizations, have First Amendment right to make and display videotapes of events
17 and plaintiff’s First Amendment rights were violated by police seizure of his camera.
18 *Lambert v. Polk City*, Iowa 723 F. Supp. 128, 133 (S.D.Iowa 1989). See also *Fordyce v.*
19 *City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995), [Recognizing a First amendment
20 right[s] to film matters of public interest....]; *Smith v. City of Cumming*, 212 F.3d 1332,
21 1333 (11 Cir. 2000), [The First Amendment protects the right to gather information ...
22 and specifically, a right to record matters of public interest.].

23 This *effective* exclusion by Defendants, of those interested in observing and
24 reporting the Defendants’ management of public lands, as practiced, as it relates to
25 their handling of wild horses, censors fair observation and reporting of their activities by
26 journalists, by media and by Plaintiff (also a journalist and writer) of newsworthy matters
27 involving government action involving matters of significant public interest. It results in
28 an impermissible prior restraint of free speech, freedom of expression and thought and

1 censors media, press, journalists from reporting government activities and it prevents
2 and censors those who inform the public, who *always* have the right to know, what their
3 government is up to. Such censorship and restraints are of course, prohibited by the
4 First Amendment to our Constitution.

5 Disturbingly, the Defendants have also singled-out Plaintiff for “special
6 treatment.” The Defendants impose more restrictions on her access to areas during the
7 Defendants’ wild horse roundups compared with the access granted other media. The
8 Defendants engage in an unwritten policy that discriminates against her because they
9 (Defendants) are dissatisfied with the content of the Defendants’ articles, they are
10 dissatisfied with the content of her videos and they are dissatisfied with the content of
11 her photos of the Defendants’ activities involving questionable wild horse handling and
12 management practices.

13 Plaintiff believes the Defendants’ custom and practice of unduly restricting
14 Plaintiff from observing and reporting the Defendants’ wild horse roundup activities in
15 the past are repeating with the Silver King roundup. Such discrimination is an
16 unconstitutional and impermissible restriction and prior restraint on Plaintiff’s First
17 Amendment rights to free speech, the right to freedom of expression and the right to
18 publish what she observes to the public. Such conduct by the Defendants unduly
19 censors the content of her journalistic pieces and stories.

20 Plaintiff further believes the Defendants’ custom and practice of discriminating
21 against her by imposing more restrictive hurdles to her than is required of others, to
22 observe the Defendants’ roundup activities, is the result of the Defendants’
23 dissatisfaction with the content of her reporting; and this type preclusion and restrictive
24 action is likewise unconstitutional and causes impermissible restrictions and prior
25 restraints to Plaintiff’s First Amendment rights to free speech, freedom of expression,
26 and it unduly censors her content when reporting to the public.

1 Balancing Interests

2 On the balance, clearly the hardships tip heavily toward the Plaintiff were
3 injunctive relief not issued. She loses assignments in her job as a journalist when she
4 cannot reasonably observe and visualize the gather. She cannot observe and report
5 which is part of the Plaintiff's job. She is denied First Amendment protections from a
6 prior restraint in being shut out from effectively reporting events involving government in
7 action in an issue of significant public interest.

8 Given the Plaintiff's chosen vocation and her station in life and her dedication to
9 wild horses, the Court's thoughts in *Lujan* are instructive. In *Lujan v. Defenders of*
10 *Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992) the Court stated, "It is clear that
11 the person who observes ... a particular animal threatened by a federal decision is
12 facing perceptible harm, since the very subject of his interest will no longer exist." *Lujan*,
13 504 U.S. at 566, 112 S.Ct. 2130.

14 On the other side of the scale, what are the harms to the Defendants caused by
15 coming clean, by making transparent their activities, by allowing the Plaintiff access so
16 she is able to observe, gain impressions and then report to the public?

17
18 No adequate or speedy remedy

19 Plaintiff has no adequate or speedy remedy available to her to redress the harm.
20 Free speech and press concerns, when violated, when censored and restrained, are
21 not retrievable when lost and are difficult if not impossible to redress by any other form
22 of remedy.

23 Here, the offensive conduct is proven and that it would likely continue absent
24 formal court intervention.

25 The difficulty with this case is not the concept of giving credence to First
26 Amendment speech. The difficulty stems from this activity occurring where there are no
27 witnesses, in remote regions of vast areas of Nevada, where oftentimes there is no cell
28 phone service. The Plaintiff and others like her are women, often left alone to fight the

1 for their rights in a “rough and tumble,” unfriendly atmosphere. The clear example is
2 what occurred to Leslie Peebles [see Exhibits 7-10 of the Supplemental Brief to
3 Plaintiff’s TRO Motion (Doc 11)]. This conduct is outrageous but continues on in the
4 wild outskirts of remote regions of our State.

5 It’s also not a “friendly” atmosphere for the Plaintiff where the Defendants dislike
6 that which the Plaintiff would publish or would reveal to the public were they to allow her
7 to observe, video and document the Defendants’ wild horse handling activities.

8
9 Likelihood of Success on the Merits

10 On less restrictive conduct as that clearly demonstrated herein, this very court in
11 the companion case (*Leigh v. Salazar*, 3:10-cv-417) found the same Plaintiff would
12 likely succeed on the merits when she had not yet tested the waters.

13 Leigh argues that a blanket closure of 27,000 acres of public
14 land on which the Tuscarora Gather is going to take place is
15 a prior restraint on her First Amendment rights because she
16 will be unable to observe and report on the health fo the
17 horses and the BLM’s management of the gather. The court
18 agrees and finds that she has made a sufficient showing of
19 probable success on the merits to warrant granting the
20 motion.

21 [Companion case, 3:10-cv-417, Order, page 3 (Doc 18) entered July 16, 2010].

22 Plaintiff submits she has met the requirements of *Winter v. Natural Resources*
23 *Defense Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 374 (2008) as now interpreted by
24 *Alliance for Wild Rockies v. Cottrell*, --- F.3d ----, (9th Cir. Jul 28, 2010). At a bare
25 minimum, she has raised serious questions to her prevailing on the merits where her
26 constitutional freedoms have been, and continue to be restrained and censored.

27 In the instant matter, even a stronger showing of the Defendants’ offensive
28 conduct is evident than what caused this court to rule in her favor on this issue

1 previously. [Companion case, 3:10-cv-417, Order, page 3 (Doc 18) entered July 16,
2 2010].

3
4 The Public Interest

5 The public interest in the right to know the business of government and how it
6 operates (absent perhaps some “classified” or “secure” or “national secrets” interests
7 which are *not* involved herein) is of significant public interest where, here, the
8 Defendants are managing public lands involving public resources (wild horses) that are
9 determined iconic and protected by Congress:

10 Congress finds and declares that wild free-roaming
11 horses and burros are living symbols of the historic
12 and pioneer spirit of the West; that they contribute to
13 the diversity of life forms within the Nation and enrich
14 the lives of the American people; and that these
15 horses and burros are fast disappearing from the
16 American scene. It is the policy of Congress that wild
17 free-roaming horses and burros shall be protected
18 from capture, branding, harassment, or death; and to
19 accomplish this they are to be considered in the area
20 where presently found, as an integral part of the
21 natural system of the public lands.

22 The Wild Free-Roaming Horses and Burro Act of 1971,
23 P.L.92-195, 16 U.S.C. §1331.

24 The First Amendment to the United States Constitution provides that "Congress
25 shall make no law...abridging the freedom...of the press."

26 Justice Hugo Black said it best in the 1971 “Pentagon Papers” case. With a 6-3
27 decision and in his concurring opinion with Justice Douglas, he wrote,

28 The Press was protected so that it could bare the secrets of

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the government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people.

New York Times v. U.S., 403 U.S. 713, 714, 91 S. Ct. 2140 (1971).

The Defendants while operating to remove wild horses from America's landscape are, without argument, engaged in a matter involving significant public interest. This court already acknowledges this concept.

"The court is cognizant of the public interest in this matter and of the right of the public and press to have reasonable access to the gather under the First Amendment."

[Companion case, 3:10-cv-417, Order, page 3 (Doc 18) entered July 16, 2010].

Access, public scrutiny, transparency have yet to occur while privacy and secrecy prevail. The Defendants are able to take advantage of the Plaintiff's vulnerability where she is in essence, the underdog who must remain submissive to the Defendants' unduly restrictive rules. She has complied to her detriment.

Certificate of Counsel

In accordance with Fed.R.Civ.P. 65, as counsel for Plaintiff, the undersigned hereby certifies he personally left a message on Mr. Petersen's voice mail and also sent him an email message indicating this Motion would be sought shortly; that the undersigned provided Defendants' counsel Mr. Petersen via electronic service, a copy of this Motion; and the undersigned is informed and believes Mr. Peterson would also receive a copy of this motion the instant it is filed through the court's CM/ECF filing system.

1 **Conclusion**

2 Plaintiff clarifies and modifies the relief she seeks through this motion, as follows:

- 3 1. That an injunction issue mandatorily precluding or mandating, as the case may
4 be, the Defendants concerning the following relative to all horses captured from
5 Silver King:
- 6 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
7 also others similarly situated, from accessing trap sites and holding pen
8 sites, whether placed on public property or intentionally placed on private
9 property;
 - 10 b. Should the Defendants choose private property on which to set trap sites
11 or holding pens, that as a condition precedent to doing so, the Defendants
12 obtain clear authorization from landowners in advance of such activities,
13 to allow Plaintiff, her colleagues and others similarly situated, onto the
14 property as part and parcel to the Defendants' horse gather, roundup,
15 capture activities; and to otherwise, keep the traps and holding areas for
16 captured wild horses on public lands;
 - 17 c. Require the Defendants to accommodate the public and Plaintiff to view
18 the capturing and handling thereafter, of Silver King wild horses shortly
19 following their capture, such that the Plaintiff, the public and press are
20 able to independently observe and assess the health, the condition, the
21 welfare of wild horses captured just moments previously, and their
22 handling by the Defendants in the process;
 - 23 d. Require clear daily visual access without unduly restrictive conditions or
24 impediments to such areas imposed on Plaintiff, her colleagues and
25 others similarly situated, to trap sites and to holding areas immediately
26 after wild horses are captured, such that the Plaintiff, the public and press
27 are able to independently observe and assess the health, the condition,
28 the welfare of wild horses captured just moments previously;

- 1 e. Prohibit the flying of helicopters to gather, roundup, haze or move horses
2 in any fashion and for any reason whatsoever, at all times where the
3 public has not been adequately notified of such activity or given
4 opportunity to be present to observe the activity;
- 5 f. Prohibit further, the practice of continuing to fly helicopters for such
6 purposes (to gather, roundup, move or haze horses) after advising the
7 public that gather or roundup activities are completed for the day;
- 8 g. Prohibit further, the practice of requiring Plaintiff and those interested in
9 viewing the capturing of wild horses and subsequent handling, to be in
10 essence, licensed at the sole discretion of the Defendants, to view the
11 roundup or capture or gather activities, through the use of a
12 “reservations” system, or a “wait list” system, or some other conditional
13 system which in effect impedes, restricts and/or precludes the Plaintiff and
14 others from reasonably observing capture and roundup activities or which
15 prevents observations altogether, and which effectively precludes Plaintiff
16 and others from assessing the health, the condition, the welfare of wild
17 horses so captured, and which also precludes the Plaintiffs’ and public’s
18 observation of how captured horses are handled and cared for by the
19 government Defendants;
- 20 h. Require at a minimum, reasonable notice, of modification or changes to
21 roundup activities or schedules, and of notices of roundup activities or
22 schedules; and require Defendants to abide by the notices; and if the
23 Defendants are not able to comply, to require the Defendants to renew
24 such notice requirements before rounding up, or gathering, or removing
25 wild horses from Silver King;
- 26 i. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
27 also others similarly situated including the press and public, from
28 reasonably viewing the loading and transportation of all wild horses

1 captured and removed from Silver King, in such a manner that the Plaintiff
2 and others are precluded from assessing the health, the safety and
3 welfare of captured wild horses, and they are precluded from observing
4 the Defendants' handling of captured wild horses during the course of
5 such activities; and, require the Defendants to notify the public with
6 sufficient advance notice, of the shipment or transportation of captured
7 wild horses from Silver King, and further, to notify the public of the specific
8 location of the facilities to which the captured horses (Silver King horses in
9 this instance) are intended to be shipped and where they are ultimately
10 shipped; and prohibit the shipment of any or all horses where such
11 notifications to the public have not been sent;

12 j. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and
13 also others similarly situated, from being denied license to access
14 temporary holding facilities, short-term holding facilities, long-term holding
15 facilities, or any other facilities whether public or private, to which Silver
16 King horses are transported; and if the Defendants choose private
17 facilities at which to ship Silver King horses, that as a condition precedent
18 of using such private facilities, the operators of such private facilities shall
19 make available the facilities for inspection of the Silver King horses to
20 members of the public including Plaintiff and others if they so choose, in
21 such a manner that the horses may clearly be viewed and documented
22 such that a wellness or clinical assessment of such horses may be
23 accomplished, if so desired by the person(s) seeking to observe these
24 horses; and that such facilities shall be accessible and open to the public
25 to view any and all such horses in the facility, during normal business
26 hours;

27 k. Require the Defendants to identify and record, whether by photographs or
28 other methods, each Silver King wild horse removed therefrom, in a

1 manner which effectively allows the Defendants, the Plaintiff and the
2 public to track their whereabouts to their ultimate destination; and to make
3 available to the public to inspect, without censorship, such records and
4 information and without having to proceed with a Freedom of Information
5 request (“FOIA”);

- 6 l. Require the Defendants to keep accurate and copious records of: (a)
7 persons to whom Silver King horses are given or sold outside of formal
8 horse adoption programs; (b) the identification of each Silver King horse
9 given or sold to each such person receiving them outside of formal
10 adoption programs; (c) allow the Plaintiff or others similarly situated and
11 the public to review or inspect such records without censorship or
12 restriction and without a FOIA request;
- 13 m. Prohibit the preclusion or restriction of the Plaintiff also others similarly
14 situated from photographing or documenting their observations of Silver
15 King operations and Silver King horses wherever situated;
- 16 n. Require the Defendants to keep accurate records of Silver King horses
17 having incurred injury or illness or debilitating conditions occurring while
18 such horses are in the custody or control of the Defendants or their
19 chosen contractors; and to make such records available to the public for
20 inspection without censorship or restriction and without a FOIA request;
- 21 o. Require the Defendants to provide any and all records discussed herein,
22 without censorship or restriction and without a FOIA request and to
23 provide copies of said records at the request of Plaintiff or others, at the
24 expense of requesting person(s);
- 25 p. To cease all wild horse roundup activities in Silver King until such time as
26 the Defendants are able to accommodate Plaintiff and others similarly
27 situated by providing access as herein outlined;
- 28 q. To cease shipments of all wild horses captured from Silver King such time

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as the Defendants are able to accommodate Plaintiff and others similarly situated by providing access as herein outlined;

- r. To preserve all documents and information wherever situated and however retained, whether internal, private or otherwise, electronic or hardcopy or otherwise, pertaining to the methods, plan, process, procedures, capture, shipment, boarding, intended use or disposition or demise of any and all horses removed in connection with the Defendants Silver King wild horse gather, or their related unpublished activities;
- s. Require the implementation of all other action necessary to effectuate the purpose and intent of that being requested herein.

Dated this 1st day of October 2010

RESPECTFULLY SUBMITTED,
LAW OFFICE OF GORDON M. COWAN

/S/

Gordon M. Cowan Esq. (SBN 1781)
Attorney for Plaintiff LAURA LEIGH

CERTIFICATE OF SERVICE

[Pursuant to Fed. R. Civ. P. 5(b) & Local Rules for Electronic Filing]

I certify that I am employed at 1495 Ridgeview Drive, #90, Reno, Nevada, 89519; and, on this date, in absence of having received indication of assignment of new counsel, I served the foregoing document(s) on the following counsel:

 X Electronic service:

Erik Petersen, Esq. erik.peterson@usdoj.gov

DATED this 1st day of October 2010

/S/

G.M. Cowan