

1 GORDON M. COWAN, Esq.  
SBN# 1781  
2 Law Office of Gordon M. Cowan  
1495 Ridgeview Drive, #90  
3 Reno, Nevada 89519  
Telephone (775) 786-6111  
4

5 Attorney for Plaintiff LAURA LEIGH

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 PRELIMINARY INJUNCTION**

19 Plaintiff LAURA LEIGH amends her Motion for Preliminary Injunction filed  
20 September 24, 2010 (Doc 9) and Supplement thereto (Doc 12) precluding Defendants  
21 from the harmful conduct described herein below.

22 Plaintiff requests this matter be heard in conjunction with the Plaintiff's requested  
23 Temporary Restraining Order, as amended (Docs 6, 11, 14) [See also, Order denying  
24 *sua sponte*, Plaintiff's TRO Motion (Doc 13)].

25 This Motion is again made in accordance with Fed.R.Civ.P. 65(a). The Motion is  
26 based on the pleadings and papers on file herein, the accompanying Memorandum of

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1 Points and Authorities and supporting documents, the Order entered September 27,  
2 2010 (Doc 13) and on such other matters as may be presented before the court.

3 Dated this 1<sup>st</sup> Day of October 2010

4 RESPECTFULLY SUBMITTED,  
5 LAW OFFICE OF GORDON M. COWAN

6 /S/

7  
8 Gordon M. Cowan Esq. (SBN 1781)  
9 Attorney for Plaintiff LAURA LEIGH

10  
11 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF  
12 AMENDED MOTION FOR PRELIMINARY INJUNCTION**

13 Plaintiff LAURA LEIGH submits the following Memorandum of Points &  
14 Authorities in support of her Amended Motion for Preliminary Injunction:

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

16 On September 27, 2010 this court denied “without prejudice,” Plaintiff’s TRO  
17 motion (Doc 6). See Order (Doc 13). Since the TRO Motion seeks the identical relief  
18 as the instant motion, for purposes of this discussion, Plaintiff incorporates her TRO  
19 Motion (Doc 6) as though fully set forth at length herein, together with exhibits attached  
20 thereto and including the Supplement to Motion for TRO (Doc 11) together with exhibits  
21 attached thereto, and including the Amended Motion for TRO (Doc 15).

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

23 Although relief “a” through “f” was not originally sought in Plaintiff’s Preliminary  
24 Injunction, the discussion is helpful.

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

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

1 In *Leigh v. Salazar*, 3:10-cv-417, a companion case involving roundups in Elko  
2 County this past July (“companion case”) this very court entered its own motion *sua*  
3 *sponte*, July 14, to temporarily stop all activity in the Owyhee, the Rock Creek and Little  
4 Humboldt roundups until the court could hear the TRO motion brought in that case.  
5 [See, companion case, 3:10-cv-417, Order at Doc 10 entered July 14, 2010 (“IT IS  
6 THEREFORE ORDERED that the defendants are prohibited from carrying out the  
7 gathering of any wild horses from within the Owyhee, the Rock Creek and Little  
8 Humboldt Herd Management Areas in the northwest of Elko County, Nevada until  
9 further order of the court”). Three days later in that case, the court heard the matter.

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

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

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

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

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

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

- 28 1. access to roundups based on historical and repetitive conduct effectively

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precluding or unduly restricting true access by Plaintiff, to observe roundup capture activities, the effective preclusion of which amounts to a prior restraint to Plaintiff's First Amendment rights;

2. "equal access" to roundups where the Plaintiff had been singled-out since the filing of the companion case and censored from observing roundups in the same manner and to the extent others equally credentialed, enjoyed, 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***

1 **capture to their ultimate disposition and demise.** Plaintiff does *not* seek a cessation  
2 of these roundups because of the Defendants' employ inhumane methods. They do;  
3 they don't care; that's not this case. Rather, this suit seeks transparency in government  
4 activity which is authorized and expected when granting credence to fundamental  
5 notions guaranteed by the First Amendment to the U.S. Constitution to uncensored free  
6 speech, thought and expression, and to freedom of the press and journalists to report  
7 on government activity. See, *U.S. Constitution*. First Amend.

8 The Defendants succeeded thus far, to trample on those rights, to make a  
9 mockery of "free speech," "freedom of expression" and have denigrated the freedom of  
10 the press where they continue, as they have historically, to conduct their sordid affairs  
11 under a shroud of secrecy and where they exclude the Plaintiff from these activities.  
12 The Defendants are succeeding at nearly every step of their wild horse removal  
13 program to regulate the content of fully protected speech.

14 To be clear, this case defends against the continued offenses to the First  
15 Amendment and to the Plaintiff's rights protected therein. "Inhumane" treatment,  
16 although ongoing, is not the issue herein.

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18 Purported Lack of Notice

19 The court believes Plaintiff didn't give the government Defendants copies of the  
20 TRO Motion. The court assumed *ex parte* relief was requested and denied the Motion.  
21 Again, such is not the case.

22 The moment the Complaint was filed September 22, Mr. Erik Peterson, Esq. of  
23 the U.S. Dept. of Justice ("USDOJ") received a copy. Mr. Peterson acknowledged his  
24 receipt of same that same day.

25 The undersigned also gave a copy of the TRO Motion (with all Exhibits) to Mr.  
26 Peterson when the TRO Motion was filed September 24. Once again, Mr. Peterson  
27 acknowledged his receipt of same the same day. Mr. Peterson also entered his  
28 appearance for all government Defendants that same day, September 24 (see Doc 7).

1 Also, a certificate of service accompanying the TRO Motion confirms Mr. Peterson  
2 received a copy of the TRO Motion that same day. (See last page, Doc 6). He also  
3 received the accompanying Preliminary Injunction. In fact, Mr. Peterson received all  
4 documents filed in this case thus far without delay.

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

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

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15 *Relief Denied Because Harm has "yet to happen"*

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

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

26 In comparison, in the companion case (3:10-cv-417) when on July 15 this very  
27 court heard the matter involving the Owyhee roundup, the Plaintiff had yet to have her  
28 constitutional freedoms infringed upon. But, because the court anticipated

1 constitutional First Amendment harm would occur in Owyhee, *before the harm*  
2 *occurred*, the court granted relief in that case. [See, Order (Doc 18), filed July 16, 2010  
3 in 3:10-cv-417].

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

7  
8 ***Requested Relief for Preliminary Injunction***

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

- 10 1. That an injunction issue mandatorily precluding or mandating, as the case may  
11 be, the Defendants concerning the following relative to all horses captured from  
12 Silver King:
- 13 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and  
14 also others similarly situated, from accessing trap sites and holding pen  
15 sites, whether placed on public property or intentionally placed on private  
16 property;
  - 17 b. Should the Defendants choose private property on which to set trap sites  
18 or holding pens, that as a condition precedent to doing so, the Defendants  
19 obtain clear authorization from landowners in advance of such activities,  
20 to allow Plaintiff, her colleagues and others similarly situated, onto the  
21 property as part and parcel to the Defendants' horse gather, roundup,  
22 capture activities; and to otherwise, keep the traps and holding areas for  
23 captured wild horses on public lands;
  - 24 c. Require the Defendants to accommodate the public and Plaintiff to view  
25 the capturing and handling thereafter, of Silver King wild horses shortly  
26 following their capture, such that the Plaintiff, the public and press are  
27 able to independently observe and assess the health, the condition, the  
28 welfare of wild horses captured just moments previously, and their

1 handling by the Defendants in the process;

- 2 d. Require clear daily visual access without unduly restrictive conditions or  
3 impediments to such areas imposed on Plaintiff, her colleagues and  
4 others similarly situated, to trap sites and to holding areas immediately  
5 after wild horses are captured, such that the Plaintiff, the public and press  
6 are able to independently observe and assess the health, the condition,  
7 the welfare of wild horses captured just moments previously;
- 8 e. Prohibit the flying of helicopters to gather, roundup, haze or move horses  
9 in any fashion and for any reason whatsoever, at all times where the  
10 public has not been adequately notified of such activity or given  
11 opportunity to be present to observe the activity;
- 12 f. Prohibit further, the practice of continuing to fly helicopters for such  
13 purposes (to gather, roundup, move or haze horses) after advising the  
14 public that gather or roundup activities are completed for the day;
- 15 g. Prohibit further, the practice of requiring Plaintiff and those interested in  
16 viewing the capturing of wild horses and subsequent handling, to be in  
17 essence, licensed at the sole discretion of the Defendants, to view the  
18 roundup or capture or gather activities, through the use of a  
19 “reservations” system, or a “wait list” system, or some other conditional  
20 system which in effect impedes, restricts and/or precludes the Plaintiff and  
21 others from reasonably observing capture and roundup activities or which  
22 prevents observations altogether, and which effectively precludes Plaintiff  
23 and others from assessing the health, the condition, the welfare of wild  
24 horses so captured, and which also precludes the Plaintiffs’ and public’s  
25 observation of how captured horses are handled and cared for by the  
26 government Defendants;
- 27 h. Require at a minimum, reasonable notice, of modification or changes to  
28 roundup activities or schedules, and of notices of roundup activities or



1 schedules; and require Defendants to abide by the notices; and if the  
2 Defendants are not able to comply, to require the Defendants to renew  
3 such notice requirements before rounding up, or gathering, or removing  
4 wild horses from Silver King;

5 I. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and  
6 also others similarly situated including the press and public, from  
7 reasonably viewing the loading and transportation of all wild horses  
8 captured and removed from Silver King, in such a manner that the Plaintiff  
9 and others are precluded from assessing the health, the safety and  
10 welfare of captured wild horses, and where they are precluded from  
11 observing the Defendants' handling of captured wild horses during the  
12 course of such activities; and, require the Defendants to notify the public  
13 with sufficient advance notice, of the shipment or transportation of  
14 captured wild horses from Silver King, and further, to notify the public of  
15 the specific location of the facilities to which the captured horses (Silver  
16 King horses in this instance) are intended to be shipped and where they  
17 are ultimately shipped; and prohibit the shipment of any or all horses  
18 where such notifications to the public have not been sent;

19 j. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and  
20 also others similarly situated, from being denied license to access  
21 temporary holding facilities, short-term holding facilities, long-term holding  
22 facilities, or any other facilities whether public or private, to which Silver  
23 King horses are transported; and if the Defendants choose private  
24 facilities at which to ship Silver King horses, that as a condition precedent  
25 of using such private facilities, the operators of such private facilities shall  
26 make available the facilities for inspection of the Silver King horses to  
27 members of the public including Plaintiff and others if they so choose, in  
28 such a manner that the horses may clearly be viewed and documented

1 such that a wellness or clinical assessment of such horses may be  
2 accomplished, if so desired by the person(s) seeking to observe these  
3 horses; and that such facilities shall be accessible and open to the public  
4 to view any and all such horses in the facility, during normal business  
5 hours;

6 k. Require the Defendants to identify and record, whether by photographs or  
7 other methods, each Silver King wild horse removed therefrom, in a  
8 manner which effectively allows the Defendants, the Plaintiff and the  
9 public to track their whereabouts to their ultimate destination; and to make  
10 available to the public to inspect, without censorship, such records and  
11 information and without having to proceed with a Freedom of Information  
12 request ("FOIA");

13 l. Require the Defendants to keep accurate and copious records of: (a)  
14 persons to whom Silver King horses are given or sold outside of formal  
15 horse adoption programs; (b) the identification of each Silver King horse  
16 given or sold to each such person receiving them outside of formal  
17 adoption programs; (c) allow the Plaintiff or others similarly situated and  
18 the public to review or inspect such records without censorship or  
19 restriction and without a FOIA request;

20 m. Prohibit the preclusion or restriction of the Plaintiff also others similarly  
21 situated from photographing or documenting their observations of Silver  
22 King operations and Silver King horses wherever situated;

23 n. Require the Defendants to keep accurate records of Silver King horses  
24 having incurred injury or illness or debilitating conditions occurring while  
25 such horses are in the custody or control of the Defendants or their  
26 chosen contractors; and to make such records available to the public for  
27 inspection without censorship or restriction and without a FOIA request;

28 o. Require the Defendants to provide any and all records discussed herein,

1 without censorship or restriction and without a FOIA request and to  
2 provide copies of said records at the request of Plaintiff or others, at the  
3 expense of requesting person(s);

4 p. To cease all wild horse roundup activities in Silver King until such time as  
5 the Defendants are able to accommodate Plaintiff and others similarly  
6 situated by providing access as herein outlined;

7 q. To cease shipments of all wild horses captured from Silver King until such  
8 time as the Defendants are able to accommodate Plaintiff and others  
9 similarly situated by providing access as herein outlined;

10 r. To preserve all documents and information wherever situated and  
11 however retained, whether internal, private or otherwise, electronic or  
12 hardcopy or otherwise, pertaining to the methods, plan, process,  
13 procedures, capture, shipment, boarding, intended use or disposition or  
14 demise of any and all horses removed in connection with the Defendants  
15 Silver King wild horse gather, or their related unpublished activities;

16 s. Require the implementation of all other action necessary to effectuate the  
17 purpose and intent of that being requested herein.

18 This is a simple request because it merely asks for transparency in government.

19 This case does *not* involve releasing “state secrets” or “classified information.” This  
20 Motion seeks to remove the secrecy of the process, accomplished by the Defendants  
21 through restrictive barriers, hurdles, rules, licenses, or conditions meant or which  
22 effectively keep out the Plaintiff and the citizenry, and which causes content-based  
23 censorship of speech and expression and causes undue prior restraints on Plaintiffs’  
24 First Amendment rights. See, *U.S. Constitution*, First Amendment.

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

1 King”)(“Silver King horses”).

2 ///

3 ***New Evidence Supporting the Motion***

4 Because the Plaintiff was apparently required to see if the same harm historically  
5 endured by her at the hands of these Defendants, would repeat at Silver King, Ms.  
6 Leigh traveled to the Silver King roundup in Lincoln County, Nevada to continue with  
7 her journalist’s duties. She was there attempting to view the Silver King roundup. She  
8 spent Tuesday, September 28, Wednesday, September 29 and Thursday, September  
9 30, there. During this entire time she was precluded from having any reasonable view  
10 of gather activities. She was precluded from observing the horses close enough to  
11 assess independently, the captured horses’ health, their condition and their welfare.  
12 Barriers and distance requirements precluded her reasonable observation. Plaintiff was  
13 denied press access even though she was the only media representative present. She  
14 was not given the same access to that accorded others, who were given true press  
15 access previously. Reasonable access was denied. See Plaintiff’s Supplemental  
16 Declaration to this Motion at **EXHIBIT “11”** attached.

17 Attached to this Amended Motion for Preliminary Injunction is Laura Leigh’s  
18 supplemental Declaration at **EXHIBIT “11”**. What’s disappointing is she was required  
19 to endure the harm because it had “yet to happen.” What transpired at Silver King is  
20 what was forecast in Ms. Leigh’s Preliminary Injunction Motion (Doc 9). The  
21 Defendants’ rules, the distances imposed, the methods employed to keep her and the  
22 public back and to hide the aftermath of the Defendants’ roundup activities, repeated as  
23 it has on so many occasions previously. The Defendants once again, precluded Ms.  
24 Leigh from having any meaningful observation. The Defendants caused content-based  
25 censorship of her ability and vocation as a journalist and photo journalist, to observe  
26 and then report to the public what transpired under this continuing cloak of secrecy and  
27 public preclusion.

28 What does it take to cause the Defendants to be transparent in their secretive

1 endeavors? What does it take to stop these Defendants from continually trampling on,  
2 and denigrating the freedoms provided the citizenry by the First Amendment?

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4 ***Immediate Injunctive Relief Is Appropriate***

5 Plaintiff incorporates her points and authorities from her original Motion For  
6 Preliminary Injunction (Doc 9) together with exhibits attached thereto (Exhibits 1 through  
7 6). Plaintiff incorporates her Supplemental Brief to the same Motion (Doc 12) together  
8 with the exhibits attached thereto (Exhibits 7 through 10).

9  
10 *Immediate and Continuing Irreparable Injury*

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

16 “[t]he loss of First Amendment freedoms, for even minimal periods of time,  
17 unquestionably constitutes irreparable injury” for purposes of the issuance of a  
18 preliminary injunction. *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d  
19 547 (1976); see also *S.O.C., Inc. v. County of Clark*, 152 F.3d 1136, 1148 (9th  
20 Cir.1998) (holding that a civil liberties organization that had demonstrated probable  
21 success on the merits of its First Amendment overbreadth claim had thereby also  
22 demonstrated irreparable harm). See also, *Sammartano v. First Judicial District Court,*  
23 *in and for County of Carson City*, 303 F.3d 959 (2002)(The loss of First Amendment  
24 freedoms, for even minimal periods of time, unquestionably constitutes irreparable  
25 injury for purposes of the issuance of a preliminary injunction).

26 The Defendants restrictive methods to Plaintiff’s reasonable viewing of the  
27 Defendants’ activities, amounts to content-based censorship of the Plaintiff, of that for  
28 which she stands, of her work, of her intended publications, of her impressions,

1 opinions, and that which should be protected by the First Amendment.

2 Content-based regulation of fully-protected speech bears “a heavy presumption  
3 against its constitutional validity.” *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S.  
4 546, 558, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975).

5 While a presumption of constitutional validity exists in most contexts, the reverse  
6 is true for a First Amendment challenge to a content-based restriction on fully-protected  
7 speech. See *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 83 S.Ct. 631 (1963);  
8 *R.A.V. v. St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538 (1992) (“Content-based  
9 regulations are presumptively invalid.”). It is generally the government’s burden to  
10 demonstrate that a restriction on expression is narrowly tailored to bring about a  
11 compelling government interest. “A statute is narrowly tailored if it targets and  
12 eliminates no more than the exact source of ‘evil’ it seeks to remedy.” *Frisby v. Schultz*,  
13 487 U.S. 474, 485, 108 S.Ct. 2495 (1988).

14 *Discriminatory Conduct*

15 Plaintiff has also been singled-out and discriminated against, because of the  
16 content of her work which exposes the Defendants’ activities. Attached to Plaintiff’s  
17 original Preliminary Injunction Motion (Doc 9) are the Declarations of Laura Leigh  
18 (EXHIBIT “2”), R.T. Fitch (EXHIBIT “3”) and Terry Fitch (EXHIBIT “4”) and Debra  
19 Coffey (EXHIBIT “5”). Also attached is the letter from the editor of Horseback  
20 Magazine, Steve Long (EXHIBIT “6”). These self-explanatory exhibits (incorporated  
21 herein) need no embellishment. They strongly demonstrate the significant barriers and  
22 discrimination Ms. Leigh must endure from the Defendants when she seeks to observe,  
23 photograph and report the Defendant’ in action when handling wild horses.

24 Discriminatory governmental action aimed at the communicative impact of  
25 expression is presumptively at odds with the First Amendment. Above all else, the First  
26 Amendment means that the government cannot restrict freedom of expression on the  
27 basis of its ideas, message or content. See, *Cohen v. Cox*, 403 U.S. 75, 91 S. Ct. 1780  
28 (1971); *NAACP v Button*, 371 U.S. 415, 445, 83 S. Ct. 328.

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

4 A policy that discriminates against particular reporters or news organizations by  
5 public officials who are dissatisfied with the contents of news coverage is  
6 unconstitutional unless the policy furthers a compelling state interest and is the least  
7 restrictive means available to achieve the asserted governmental purpose. See,  
8 *Borreca v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974); *Quad-City Community News*  
9 *Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971). See also, *Sherrill v. Knight*,  
10 569 F. 2d 124, 129 (D.C. Cir. 1977)(holding that, because the White House has  
11 established press facilities that are perceived as being open to all bona fide  
12 Washington-based journalists, access to those facilities may not be “denied arbitrarily  
13 or for less than compelling reasons”).

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

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

22 It seems clear that media have a right to be in public places and on public  
23 property to gather information photographically or otherwise. *Channel 10, Inc. v.*  
24 *Gunnerson*, 337 F. Supp. 634, 638 (D.Minn. 1972). All persons, not just news  
25 organizations, have First Amendment right to make and display videotapes of events  
26 and plaintiff’s First Amendment rights were violated by police seizure of his camera.  
27 *Lambert v. Polk City*, Iowa 723 F. Supp. 128, 133 (S.D.Iowa 1989). See also *Fordyce v.*  
28 *City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995), [Recognizing a First amendment

1 right[s] to film matters of public interest....]; *Smith v. City of Cumming*, 212 F.3d 1332,  
2 1333 (11 Cir. 2000), [The First Amendment protects the right to gather information ...  
3 and specifically, a right to record matters of public interest.].

4 This *effective* exclusion by Defendants, of those interested in observing and  
5 reporting the Defendants' management of public lands, as practiced, as it relates to  
6 their handling of wild horses, censors fair observation and reporting of their activities by  
7 journalists, by media and by Plaintiff (also a journalist and writer) of newsworthy matters  
8 involving government action involving matters of significant public interest. It results in  
9 an impermissible prior restraint of free speech, freedom of expression and thought and  
10 censors media, press, journalists from reporting government activities and it prevents  
11 and censors those who inform the public, who *always* have the right to know, what their  
12 government is up to. Such censorship and restraints are of course, prohibited by the  
13 First Amendment to our Constitution.

14 Disturbingly, the Defendants have also singled-out Plaintiff for "special  
15 treatment." The Defendants impose more restrictions on her access to areas during the  
16 Defendants' wild horse roundups compared with the access granted other media. The  
17 Defendants engage in an unwritten policy that discriminates against her because they  
18 (Defendants) are dissatisfied with the content of the Defendants' articles, they are  
19 dissatisfied with the content of her videos and they are dissatisfied with the content of  
20 her photos of the Defendants' activities involving questionable wild horse handling and  
21 management practices.

22 Plaintiff believes the Defendants' custom and practice of unduly restricting  
23 Plaintiff from observing and reporting the Defendants' wild horse roundup activities in  
24 the past are repeating with the Silver King roundup. Such discrimination is an  
25 unconstitutional and impermissible restriction and prior restraint on Plaintiff's First  
26 Amendment rights to free speech, the right to freedom of expression and the right to  
27 publish what she observes to the public. Such conduct by the Defendants unduly  
28 censors the content of her journalistic pieces and stories.



1 Plaintiff further believes the Defendants' custom and practice of discriminating  
2 against her by imposing more restrictive hurdles to her than is required of others, to  
3 observe the Defendants' roundup activities, is the result of the Defendants'  
4 dissatisfaction with the content of her reporting; and this type preclusion and restrictive  
5 action is likewise unconstitutional and causes impermissible restrictions and prior  
6 restraints to Plaintiff's First Amendment rights to free speech, freedom of expression,  
7 and it unduly censors her content when reporting to the public.

8  
9 Balancing Interests

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

16 Given the Plaintiff's chosen vocation and her station in life and her dedication to  
17 wild horses, the Court's thoughts in *Lujan* are instructive. In *Lujan v. Defenders of*  
18 *Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992) the Court stated, "It is clear that  
19 the person who observes ... a particular animal threatened by a federal decision is  
20 facing perceptible harm, since the very subject of his interest will no longer exist." *Lujan*,  
21 504 U.S. at 566, 112 S.Ct. 2130.

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

25  
26 No adequate or speedy remedy

27 Plaintiff has no adequate or speedy remedy available to her to redress the harm.  
28 Free speech and press concerns, when violated, when censored and restrained, are

1 not retrievable when lost and are difficult if not impossible to redress by any other form  
2 of remedy.

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

5 The difficulty with this case is not the concept of giving credence to First  
6 Amendment speech. The difficulty stems from this activity occurring where there are no  
7 witnesses, in remote regions of vast areas of Nevada, where oftentimes there is no cell  
8 phone service. The Plaintiff and others like her are women, often left alone to fight for  
9 their rights in a “rough and tumble,” unfriendly atmosphere. The clear example is what  
10 occurred to Leslie Peeples [see Exhibits 7-10 of the Supplemental Brief to Plaintiff’s  
11 Preliminary Injunction Motion (Doc 12)]. This conduct is outrageous but continues on  
12 unchecked in the wild outskirts of remote regions of our State.

13 It’s also not a “friendly” atmosphere for the Plaintiff where the Defendants dislike  
14 that which the Plaintiff would publish or would reveal to the public when allowing her to  
15 observe, video and document the Defendants’ wild horse handling activities. They  
16 allude to this when caught on tape, saying the following:

17 If somethin’ happens we’re gonna correct it quickly; just like  
18 we talked about. If it’s a broken leg, gonna put it down.  
19 We’re gonna slide it on the trailer; same thing; we’re gonna  
20 go to town with it. ***We’re not gonna give them that one  
21 shot they want.***

22 (Dave Cattoor, Cattoor Livestock, talking on video tape out in  
23 open range; by Clare Major, New York Times videographer,  
24 August 27, 2010, Twin Peaks roundup) (Emphasis)  
25 See Plaintiff’s Complaint (Doc 1) p. 16, para. 43.

26 *Likelihood of Success on the Merits*

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

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

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

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

In the instant matter, even a stronger showing of the Defendants’ offensive conduct is evident than what caused this court to rule in her favor on this issue previously. [Companion case, 3:10-cv-417, Order, page 3 (Doc 18) entered July 16, 2010].

*The Public Interest*

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

Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to

1 the diversity of life forms within the Nation and enrich  
2 the lives of the American people; and that these  
3 horses and burros are fast disappearing from the  
4 American scene. It is the policy of Congress that wild  
5 free-roaming horses and burros shall be protected  
6 from capture, branding, harassment, or death; and to  
7 accomplish this they are to be considered in the area  
8 where presently found, as an integral part of the  
9 natural system of the public lands.

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

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

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

16 The Press was protected so that it could bare the secrets of  
17 the government and inform the people. Only a free and  
18 unrestrained press can effectively expose deception in  
19 government. And paramount among the responsibilities of a  
20 free press is the duty to prevent any part of the government  
21 from deceiving the people.

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

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

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

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

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

6  
7 ***Requested Relief***

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

- 9 1. That an injunction issue mandatorily precluding or mandating, as the case may  
10 be, the Defendants concerning the following relative to all horses captured from  
11 Silver King:
- 12 a. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and  
13 also others similarly situated, from accessing trap sites and holding pen  
14 sites, whether placed on public property or intentionally placed on private  
15 property;
  - 16 b. Should the Defendants choose private property on which to set trap sites  
17 or holding pens, that as a condition precedent to doing so, the Defendants  
18 obtain clear authorization from landowners in advance of such activities,  
19 to allow Plaintiff, her colleagues and others similarly situated, onto the  
20 property as part and parcel to the Defendants' horse gather, roundup,  
21 capture activities; and to otherwise, keep the traps and holding areas for  
22 captured wild horses on public lands;
  - 23 c. Require the Defendants to accommodate the public and Plaintiff to view  
24 the capturing and handling thereafter, of Silver King wild horses shortly  
25 following their capture, such that the Plaintiff, the public and press are  
26 able to independently observe and assess the health, the condition, the  
27 welfare of wild horses captured just moments previously, and their  
28 handling by the Defendants in the process;

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- d. Require clear daily visual access without unduly restrictive conditions or impediments to such areas imposed on Plaintiff, her colleagues and others similarly situated, to trap sites and to holding areas immediately after wild horses are captured, such that the Plaintiff, the public and press are able to independently observe and assess the health, the condition, the welfare of wild horses captured just moments previously;
- 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

1 Defendants are not able to comply, to require the Defendants to renew  
2 such notice requirements before rounding up, or gathering, or removing  
3 wild horses from Silver King;

4 I. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and  
5 also others similarly situated including the press and public, from  
6 reasonably viewing the loading and transportation of all wild horses  
7 captured and removed from Silver King, in such a manner that the Plaintiff  
8 and others are precluded from assessing the health, the safety and  
9 welfare of captured wild horses, and where they are precluded from  
10 observing the Defendants' handling of captured wild horses during the  
11 course of such activities; and, require the Defendants to notify the public  
12 with sufficient advance notice, of the shipment or transportation of  
13 captured wild horses from Silver King, and further, to notify the public of  
14 the specific location of the facilities to which the captured horses (Silver  
15 King horses in this instance) are intended to be shipped and where they  
16 are ultimately shipped; and prohibit the shipment of any or all horses  
17 where such notifications to the public have not been sent;

18 j. Prohibit the preclusion or restriction of the Plaintiff, her colleagues and  
19 also others similarly situated, from being denied license to access  
20 temporary holding facilities, short-term holding facilities, long-term holding  
21 facilities, or any other facilities whether public or private, to which Silver  
22 King horses are transported; and if the Defendants choose private  
23 facilities at which to ship Silver King horses, that as a condition precedent  
24 of using such private facilities, the operators of such private facilities shall  
25 make available the facilities for inspection of the Silver King horses to  
26 members of the public including Plaintiff and others if they so choose, in  
27 such a manner that the horses may clearly be viewed and documented  
28 such that a wellness or clinical assessment of such horses may be

1 accomplished, if so desired by the person(s) seeking to observe these  
2 horses; and that such facilities shall be accessible and open to the public  
3 to view any and all such horses in the facility, during normal business  
4 hours;

5 k. Require the Defendants to identify and record, whether by photographs or  
6 other methods, each Silver King wild horse removed therefrom, in a  
7 manner which effectively allows the Defendants, the Plaintiff and the  
8 public to track their whereabouts to their ultimate destination; and to make  
9 available to the public to inspect, without censorship, such records and  
10 information and without having to proceed with a Freedom of Information  
11 request ("FOIA");

12 l. Require the Defendants to keep accurate and copious records of: (a)  
13 persons to whom Silver King horses are given or sold outside of formal  
14 horse adoption programs; (b) the identification of each Silver King horse  
15 given or sold to each such person receiving them outside of formal  
16 adoption programs; (c) allow the Plaintiff or others similarly situated and  
17 the public to review or inspect such records without censorship or  
18 restriction and without a FOIA request;

19 m. Prohibit the preclusion or restriction of the Plaintiff also others similarly  
20 situated from photographing or documenting their observations of Silver  
21 King operations and Silver King horses wherever situated;

22 n. Require the Defendants to keep accurate records of Silver King horses  
23 having incurred injury or illness or debilitating conditions occurring while  
24 such horses are in the custody or control of the Defendants or their  
25 chosen contractors; and to make such records available to the public for  
26 inspection without censorship or restriction and without a FOIA request;

27 o. Require the Defendants to provide any and all records discussed herein,  
28 without censorship or restriction and without a FOIA request and to



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provide copies of said records at the request of Plaintiff or others, at the expense of requesting person(s);

p. To cease all wild horse roundup activities in Silver King until such time as the Defendants are able to accommodate Plaintiff and others similarly situated by providing access as herein outlined;

q. To cease shipments of all wild horses captured from Silver King until such time 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.

**Conclusion**

The Defendants' conduct violates Plaintiff's constitutional rights to free speech, expression, thought, and her right as media and a public citizen to observe and report.

*U.S. Constitution, First Amendment.*

Dated this 1<sup>st</sup> day of October 2010

RESPECTFULLY SUBMITTED,  
LAW OFFICE OF GORDON M. COWAN

/S/

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

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**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 1<sup>st</sup> day of October 2010

/S/

\_\_\_\_\_  
G.M. Cowan