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Two briefs were recently filed in the ongoing lawsuit brought by journalist Laura Leigh against the Bureau of Land Management and Department of Interior. The briefs are in connection with the Silver King wild horse roundups conducted in Nevada this past September. The case pursues the public's ongoing right to accountability on the whereabouts of these horses after capture.

Leigh's suit champions the public's and her own right to reasonable access to observe all aspects of the government's handling of the wild horses taken from the Silver King herd management area near Ely, Nevada. This lawsuit is based 100% on violations to First Amendment rights. It directly challenges, the Defendants' unconstitutional prior restraints on the Plaintiff's First Amendment rights by denying her reasonable access to wild horse roundups and related activities, to observe and report on all activities from capture, removal, processing, shipping, transportation, housing, and ultimate disposition of wild horses taken during the Silver King wild horse roundup operations (which the BLM euphemistically refers to as a "gather").

Following hours of testimony November 16 when Judge Hicks heard Leigh's evidence against the BLM and Dept. of Interior, the judge agreed to allow the parties to submit additional briefs including a supplemental brief from the plaintiff as an offer of proof of the testimony and other evidence the judge refused from evidence at the hearing.

Justice Department attorneys for the BLM argued that since the roundup had already occurred, the case was mooted. Leigh's attorney, Gordon Cowan, argued, "[the mere cessation of illegal activity in response to pending litigation does not moot a case, unless the party alleging mootness can show that the 'allegedly wrongful behavior could not reasonably be expected to recur.'" Much case law was cited where other courts upheld Cowan's argument. One court concluded that, without such an exception to 'mootness' the courts would be compelled to leave the, "defendant ... free to return to his old ways."

Conduct by the BLM at the Twin Peaks roundup in Twin Peaks CA was cited. On August 24, 2010 a New York Times reporter and photographer were allowed directly into the horse capture trap during the moment of wild horse captures. At that exact same time, Laura Leigh's press credentials were not being recognized by the defendants' officials there; and she was precluded from having access to the trap area and held back nearly a half-mile from the trap. On this same day, Laura Leigh was not allowed to walk on public land to a public road to photograph horses leaving the traps after they had been captured and loaded onto a trailer. When standing in the identical area where other members of the public were allowed to freely pass to and from their cars to the viewing area, Ms. Leigh was instructed to move and go back to the viewing area; that if she refused, it could elevate to the "next level," which she was advised by defendants, meant she could be arrested. Many almost identical scenarios are repeated at previous and subsequent roundups attended by Laura Leigh and her press credentials from Horseback Magazine for whom she reports, are routinely denied.

Cowan's brief also contends the complaint is not moot where it seeks Injunctive relief to gain immediate access to horses being warehoused in facilities closed to the public, and to have the public and press observe these horses not just during their capture, but at all stages of their journey through the BLM's wild horse removal program.

Leigh was precluded from providing evidence that mootness didn't apply. The judge would not allow evidence of the BLM's conduct occurring elsewhere such as the closing to the public of the Indian Lakes horse holding facility. Prior to Indian Lakes' closure (in June) public tours of the facility were given weekly. Leigh and colleagues photographed and videoed difficult images from these tours, including images of a foal nearly starved to death, an eight month old colt dying because his feet were damaged from a recent roundup, horses with abscesses apparently suffering from pigeon fever, and other tough images. BLM's Dean Bolstad, according to the brief, complained to Leigh over the barrage of emails he received from displeased citizens who viewed the published Indian Lakes images.

BLM's Bolstad sent an email to superiors arguing that "Indian Lakes" should close to the public because of the, "damage that is being done to BLM's image as a result of the tours." This offensive email is attached to Leigh's brief. The brief also conveys that Bolstad at one point called Ms. Leigh a terrorist simply because she published her photos taken at Indian Lakes.

All subsequent requests to reopen the facility to the public have since been denied, according to Leigh's court filing. Since then no horses removed from Silver King who were taken to "Indian Lakes" facility were seen by the public since before their capture on the range. Even members of the public interested in adopting a Silver King horse from "Indian Lakes" would be denied access to view the horse. Horses are moved from "Indian Lakes" to long term holding and the public never has a chance to view them again.

On December 11, 2010 Leigh's counsel filed a brief responsive to the Defendant's brief that sought to strike or limit the testimony accepted in evidence at the November hearing. The defendants complained they were prejudiced when not notified that the hearing would be evidentiary in nature. The BLM also claimed to have experienced difficulty obtaining copies of Leigh's filed witness list from the court's electronic document management system. The defendants sought to have all testimony stricken.

Following a thorough brow-beating over the defendants' contended "surprise" that evidence would be received at a scheduled hearing, Cowan added, "To claim surprise or prejudice because the defendants were not prepared for an evidentiary Rule 65 hearing, under these circumstances, is entertaining at best."

The BLM added a new argument to their existing repertoire of "mootness," now claiming the complaint was somehow "vague". Cowan argued, "this new 'vagueness' argument seeks to steer the court astray into thinking the case should be embroiled in administrative proceedings or records which discuss challenges to the inhumanity of the defendants' wild horse removal and warehousing process."

Cowan in our estimation, "nailed it" when asserting the following:

Although the BLM and Interior Department's Wild Horse and Burro removal and warehousing process is one of America's greater embarrassing atrocities, this issue is not the focal point of the case. "Inhumanity" is, although ongoing with the BLM's "management" of America's wild horses, unfortunately, secondary. The case clearly seeks to challenge the defendants' *continuing removal of interested citizens* (not horses) from observing the defendants' handling of America's wild horses, particularly those horses that entered the defendants' process from Silver King."

These horses (Silver King horses in this instance) are being handled, processed, and/or disposed of, or moved, or "lost," or warehoused even as of this writing. The process doesn't come to a halt just because the defendants completed their roundup. The process is ongoing. The roundup is only the beginning of the defendants' process. In this instance the defendants' process remains entirely secretive and hidden from the public's eye. In this instance, Silver King horses entered the process at the front end, beginning with the roundup. They (Silver King horses) are still there, somewhere, within the process, within the Defendants' wild horse handling system. There is not one document or notice from the defendants indicating that *all handling* of Silver King horses has been concluded. Only the roundup stopped. No document or record of the defendants states or even implies that they (the defendants) have concluded all handling, processing and warehousing of Silver King horses.

These First Amendment violations occur and are repeated each and every time Ms. Leigh or citizens are turned away, or refused access, or are kept back, or are denied appropriate observation, entrance or access to any portion of the defendants' processes. The most outrageous part of it all, is that the defendants continue on the same secretive, private course as if citizens possessed no right at all to observe the government in action. This is shameful."

Laura Leigh's legal actions are supported by Grass Roots Horse, Inc. an equine welfare and mustang advocacy group. The legal actions can be viewed at www.grassrootshorse.com Field Reports on wild horse roundups and related information can be read at <http://blog.grassrootshorse.com>