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8 * *Pro hac vice* motions forthcoming
9 ** Admitted pursuant to Ariz. Sup. Ct. R.
38(f)

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12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF ARIZONA**

15 LEESA JACOBSON; PETER RAGAN,

16 *Plaintiffs*

17 v.

18 UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; UNITED STATES
19 CUSTOMS & BORDER PROTECTION; UNITED
STATES OFFICE OF BORDER PATROL; JEH
20 JOHNSON, Secretary, United States Department of
Homeland Security, in his official capacity; R. GIL
21 KERLIKOWSKE, Commissioner, United States
Customs & Border Protection, in his official
22 capacity; MICHAEL J. FISHER, Chief of the
United States Border Patrol, in his official capacity;
23 JEFFREY SELF, Commander, Arizona Joint Field
Command, in his official capacity; MANUEL
24 PADILLA, JR., Chief Patrol Agent-Tucson Sector,
in his official capacity; ROGER SAN-MARTIN,
25 Agent in Charge-Tucson Border Patrol Station, in
his official capacity; LLOYD EASTERLING,
26 Assistant Agent in Charge-Tucson Border Patrol
Station, in his official capacity; BORDER PATROL
27 AGENT J. JOYNER, in his official capacity;
BORDER PATROL AGENT ROSALINDA
28 HUEY, in her official capacity; BORDER

) CASE NO.:

)
) **COMPLAINT FOR**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF FOR**
) **VIOLATION OF**
) **PLAINTIFFS' FIRST**
) **AMENDMENT RIGHTS**

1 PATROL AGENT N. BALLISTREA, in her)
official capacity; BORDER PATROL AGENT S.)
2 SPENCER, in his official capacity; BORDER)
PATROL AGENT K. RIDEN, in her official)
3 capacity)
4)
Defendants.)
5)
6)
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18 * *Pro hac vice motions forthcoming*

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1 States. Border Patrol has responsibility for and oversight over policies, procedures, and
2 practices relating to the operation of Border Patrol interior vehicle checkpoints.

3 14. Defendant Jeh Johnson is the Secretary of Homeland Security, vested with
4 all functions of all officers, employees, and organizational units of DHS. Defendant
5 Johnson has authority over all DHS policies, procedures, and practices relating to Border
6 Patrol interior checkpoint operations. Defendant Johnson is sued in his official capacity.

7 15. Defendant R. Gil Kerlikowske is Commissioner of CBP. In that capacity,
8 Defendant Kerlikowske has authority over all CBP policies, procedures, and practices
9 relating to Border Patrol interior checkpoint operations. Defendant Kerlikowske is sued in
10 his official capacity.

11 16. Defendant Michael J. Fisher is Chief of the Border Patrol. In that capacity,
12 Defendant Fisher has direct responsibility for and oversight over Border Patrol policies,
13 procedures, and practices relating to Border Patrol interior checkpoint operations.
14 Defendant Fisher is sued in his official capacity.

15 17. Defendant Jeffrey Self is Commander of the Arizona Joint Field Command.
16 In that capacity, Defendant Self has direct responsibility for and oversight over Tucson
17 Sector Border Patrol policies, procedures, and practices relating to Border Patrol interior
18 checkpoint operations in Tucson Sector. Defendant Self is sued in his official capacity

19 18. Defendant Manuel Padilla, Jr. is the Chief Patrol Agent for the Tucson
20 Sector of the Border Patrol. In that capacity, Defendant Padilla has direct responsibility
21 for and oversight over Tucson Sector Border Patrol policies, procedures, and practices
22 relating to Border Patrol interior checkpoint operations in Tucson Sector. Defendant
23 Padilla is sued in his official capacity.

24 19. Defendant Roger San-Martin is Agent in Charge of Tucson Border Patrol
25 Station. In that capacity, Defendant San-Martin has direct responsibility for and oversight
26 over Border Patrol policies, procedures, and practices relating to Border Patrol interior
27 checkpoint operations in Tucson Sector. Defendant San-Martin is sued in his official
28 capacity.

1 road, running east from and immediately adjacent to the shelter. Beginning several
2 thousand feet to the east and west of the checkpoint, a series of road signs direct motorists
3 to slow to a stop at the checkpoint, where they are questioned by the Border Patrol agent
4 or agents on duty. Motorists may be directed to the secondary inspection area for further
5 questioning.

6 30. Arivaca Road is located in a rural area where traffic is minimal. Generally,
7 no more than one or two vehicles arrive at the Arivaca Road checkpoint at any given time,
8 and of all vehicles arriving at the checkpoint, only a small fraction are referred for
9 secondary inspections.

10 31. Despite being designated a temporary or “tactical” checkpoint, the Arivaca
11 Road checkpoint has been in operation for approximately seven years, and is one of four
12 interior Border Patrol checkpoints located within thirty miles of Arivaca. Arivaca
13 residents must drive through a checkpoint in order to leave the area by automobile in any
14 east, west, or northbound direction. Many residents must pass through the Arivaca Road
15 checkpoint regularly, to go to school, to go to work, and to perform routine errands.

16 **People Helping People Campaign Protesting the Arivaca Road Checkpoint**

17 32. In or around July 2013, the community organization People Helping People
18 (“PHP”) launched a campaign to protest the Arivaca Road checkpoint.

19 33. PHP is an all-volunteer organization, founded by residents of Arivaca,
20 Arizona to provide humanitarian aid along the U.S.-Mexico border. The organization
21 sponsors an Abuse Documentation Clinic; co-sponsors the Arivaca Humanitarian Aid
22 Office, in Arivaca, Arizona; and hosts public events such as community forums and
23 educational workshops, including “Know Your Rights” and medical trainings, and
24 presentations on border-related topics.

25 34. Beginning in or around October 2013, PHP drafted and circulated a petition
26 calling on Border Patrol to remove the Arivaca Road checkpoint, citing civil rights
27 violations by agents at the checkpoint, along with harm to property values, tourism, and
28 quality of life resulting from checkpoint operations. The petition also stated residents’

1 objection to the checkpoint for its role in contributing to migrant deaths and the
2 militarization of the border region. More than 230 Arivaca residents and ten local business
3 owners have signed the petition calling for the removal of the Arivaca Road checkpoint.

4 35. PHP's petition drive followed the launch, in September 2013, of PHP's
5 "Abuse Documentation Clinic," through which PHP invited local residents to document
6 their experiences with Border Patrol in the community. PHP subsequently published a
7 selection of residents' accounts to its website (<http://phparivaca.org/>). Several of those
8 accounts described abuses by Border Patrol agents at the checkpoint, including prolonged
9 interrogation and detention, invasive searches, false canine alerts, racial profiling, verbal
10 harassment, and physical assault.

11 36. On December 8, 2013, members of PHP and a group of more than 100
12 supporters delivered a copy of the petition to Border Patrol at the Arivaca Road
13 checkpoint. There, PHP and its supporters staged a rally, with local residents carrying
14 banners and signs and speaking out in opposition to the checkpoint.

15 37. On January 15, 2014, the ACLU submitted an administrative complaint to
16 DHS as well as Defendants Johnson and Padilla, on behalf of fifteen individuals alleging
17 rights abuses at Border Patrol checkpoints in southern Arizona, almost half of which
18 involved local residents at the Arivaca Road checkpoint.¹ To date, Defendants have not
19 provided any information regarding whether any of those complaints have been
20 investigated or resolved. Neither have Defendants responded to the alleged abuses of
21 Arivaca residents documented on PHP's website, which are also incorporated into the
22 ACLU's January 15 complaint.

23 38. On or around January 16, 2014, Defendant Padilla sent a letter to PHP,
24 stating that Border Patrol would not remove the checkpoint. Defendant Padilla noted,
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27 ¹ See ACLU OF ARIZ., COMPLAINT AND REQUEST FOR INVESTIGATION OF ABUSES AT U.S.
28 BORDER PATROL INTERIOR CHECKPOINTS IN SOUTHERN ARIZONA, INCLUDING UNLAWFUL
SEARCH AND SEIZURE, EXCESSIVE FORCE, AND RACIAL PROFILING (Jan. 15, 2014), attached
as Exhibit A.

1 “You are welcome to bring to our attention specific incidents or issues regarding local
2 residents at the checkpoint.”

3 39. On or around January 23, 2014, Congressman Raul Grijalva sent a letter to
4 Border Patrol in support of the Arivaca residents’ petition.

5 **Monitoring the Arivaca Road Checkpoint and Border Patrol Response**

6 40. On January 22, 2014, PHP and its supporters staged a rally and press
7 conference outside of Border Patrol’s Tucson Sector headquarters to announce the start of
8 a “community based effort” to monitor the Arivaca Road checkpoint and called for public
9 hearings on the negative impacts of Border Patrol checkpoints.

10 41. Before initiating these monitoring activities, Plaintiffs and other members of
11 PHP drafted protocol and data collection materials for observing agents’ interactions with
12 motorists at the Arivaca Road checkpoint and for recording those observations. These
13 materials included a “Checkpoint Vehicle Stop Report” and a “Checkpoint Monitoring
14 Shift Report,” which direct monitors to record checkpoint-related information based on
15 their observations, including the names and agent numbers of any agents or other law
16 enforcement present at the checkpoint; the duration of any checkpoint interrogations; the
17 number of motorists searched, required to show identification, or referred for secondary
18 inspection; the number of apprehensions and seizures; the incidence of canine searches
19 and alerts; descriptions of every vehicle stopped at the checkpoint; the gender, apparent
20 ethnicity, and approximate age of each vehicle’s occupant(s); and other observations.

21 42. PHP members initiated checkpoint monitoring activities on February 26,
22 2014 when, at approximately 11:00 a.m., a group of six designated PHP checkpoint
23 monitors, including Plaintiff Ragan, arrived in the vicinity of the Arivaca Road
24 checkpoint.

25 43. The monitors wore fluorescent yellow traffic vests marked “Checkpoint
26 Monitor” and carried a sign reading “Monitoring to Deter Abuse + Collect Data.”
27 Monitors were supplied with video cameras, notepads, and PHP materials, including the
28 “Checkpoint Vehicle Stop Report” and a “Checkpoint Monitoring Shift Report.” Using

1 these materials, Plaintiff Ragan and the other PHP monitors sought to observe all
2 interactions between agents and motorists during the period monitoring occurred, and to
3 record relevant information based on those observations.

4 44. The monitors were accompanied by roughly two dozen additional protesters
5 and PHP members, including Plaintiff Jacobson, several of whom carried signs and
6 banners protesting the checkpoint with slogans such as, “Checkpoints Can’t Divide Us!,”
7 “Arivaca Is Not At War! Demilitarize Now!,” “Revitalize Not Militarize Border
8 Communities,” and “We R Watching.”

9 45. The group approached the checkpoint area from the east, walking on the
10 public right-of-way on the south shoulder of the county road and remaining out of the path
11 of traffic.

12 46. When Plaintiff Ragan and the other PHP monitors were approximately 100
13 feet east of the checkpoint at the eastern terminus of the secondary inspection area, they
14 were approached by Defendants Joyner and Riden. Defendant Joyner informed the
15 monitors that they would have to “move back” past a cattle guard in the roadway, which
16 was approximately 100 feet behind them and roughly 200 feet east of the checkpoint.
17 Defendant Joyner also stated that the Border Patrol had a permit demarcating the
18 boundaries of the checkpoint and promised to retrieve it.

19 47. Plaintiff Ragan and the other PHP monitors remained in place and began to
20 monitor and record interactions between agents and passing motorists, using a video
21 camera and taking notes.

22 48. Approximately twenty minutes later, Defendants Joyner and Riden returned.
23 They told Plaintiff Ragan and the other PHP monitors that Border Patrol had a permit on
24 site; Border Patrol would not provide a copy of the permit to the monitors; and that the
25 monitors could instead “look it up.”² Defendants Joyner and Riden repeated that Plaintiff
26

27 ² Plaintiffs are aware of one “Permit to Use County Right of Way” obtained by the U.S.
28 Border Patrol for the Arivaca Road checkpoint on February 26, 2004. That permit, a copy
of which is attached as Exhibit B, however, does not demarcate the boundaries of the
checkpoint, nor does it limit public access to the public-right-of-way. Upon information

1 Ragan and the other monitors needed to move and directed them to “back up to the cattle
2 guard” and out of the Border Patrol’s “enforcement area.” Defendants Joyner and Riden
3 then returned to the checkpoint.

4 49. A short time later, Pima County Sherriff’s Deputies arrived on the scene.
5 After conferring with Border Patrol for approximately fifteen minutes, Deputy Judd,
6 accompanied by Agents Joyner and Spencer, approached Plaintiff Ragan and the other
7 monitors. Deputy Judd asked Plaintiff Ragan and the other monitors to cross the street to
8 the north side of Arivaca Road. Deputy Judd pointed to an area directly across from where
9 the monitors were stationed, at the end of a line of Border Patrol vehicles. Plaintiff Ragan
10 and the other monitors agreed to go to the area indicated by Deputy Judd.

11 50. In that area, however, the monitors’ line of vision to the checkpoint
12 and the activities they sought to observe and record were obstructed by several Border
13 Patrol vehicles that were parked along the north side of the road. When some of the
14 monitors attempted to move closer to better observe the checkpoint, they were turned back
15 by agents, including Defendants Spencer, Ballistrea, Joyner, and Riden. Defendants
16 claimed the monitors were intruding on Border Patrol’s “enforcement area.” Those
17 monitors retreated to the area indicated by Deputy Judd, where Plaintiff Ragan had
18 remained.

19 51. At approximately 1:30 p.m., Defendant Easterling approached and asked
20 Plaintiff Ragan and the other monitors to “move back” again, this time to an area
21 approximately fifty feet from where they were stationed and 150 feet east of the
22 checkpoint. Defendant Easterling said that he had seen a permit granting Border Patrol an
23

24 and belief, U.S. Border Patrol has no other permits related to its Arivaca Road checkpoint.
25 Additionally, Pima County Code of Ordinances Title X, Chapter 10.50.050,
26 “Nonexclusive Use,” which governs public right-of-ways, provides, “Nothing in this
27 chapter shall be construed to grant any user an exclusive right to use the public right-of-
28 way. Any user’s facilities shall be erected, adjusted, installed, replaced, removed,
relocated and maintained in a manner that will not interfere with the reasonable use of the
public right-of-way, drainage ways, alleys, or easements by the public, by county, or by
any other user, or the rights and conveniences of adjacent property owners.”

1 “enforcement zone” that extended 800 feet to the west of the checkpoint. Defendant
2 Easterling said that he did not remember how far to the east the enforcement zone
3 extended, but said that he was demarcating it as running to “the end of the pylons” and
4 that the monitors had to move beyond that limit.

5 52. Plaintiff Ragan and the other monitors communicated to Defendant
6 Easterling that Pima County Sheriff’s Deputies had directed them to stand in their present
7 location. Defendant Easterling then summoned a different Pima County Sheriff, Sergeant
8 Lapelini. Sergeant Lapelini did not say that the monitors were required to move. The
9 monitors remained in place.

10 53. Defendant Spencer and a second Border Patrol agent then proceeded to
11 string yellow tape marked “U.S. Border Patrol Incident Scene” across the north and south
12 shoulders of the road, approximately 150 feet east of the checkpoint. On both sides of the
13 road, Border Patrol agents strung the tape from a private fence adjacent to the public right-
14 of-way to a traffic barrier by the roadside, blocking off pedestrian access to the public
15 right-of-way on both the north and south sides of Arivaca Road.

16 54. Shortly after the Sheriff’s Deputies left the scene, Defendant Easterling
17 approached Plaintiff Ragan and the other monitors. Agent Easterling stated that if the
18 monitors did not move, the agents would move them forcibly. Agent Easterling stated that
19 this was “an order,” and that if monitors resisted, they would be arrested.

20 55. Under threat of arrest, Plaintiff Ragan and the other monitors relocated by
21 moving east to an area behind the newly-installed boundary. From that distance, Plaintiff
22 Ragan and the other monitors were unable to observe and record much of the checkpoint-
23 related information they sought, including information regarding agents’ identities,
24 vehicle and motorist descriptions, and the nature and description of agents’ interactions
25 with motorists at the checkpoint.

26 **Additional Border Patrol Restrictions on Public Access to the Public Right-of-Way**

27 56. At some point prior to March 1, 2014, Border Patrol modified the barriers
28 on both sides of Arivaca Road, replacing the yellow incident tape with rope cordons

1 running from the private fence adjacent to the public right-of-way to a traffic barrier in the
2 middle of the public right-of-way, and from there to another traffic barrier by the roadside.

3 57. On each side of the road, Border Patrol also posted a sign: “Border Patrol
4 Enforcement Zone — No Pedestrians Beyond This Point.”

5 58. Pedestrians passing by the checkpoint from either direction on the north or
6 south right-of-ways could not pass without stepping under the rope cordons or into the
7 roadway. The barriers have since been modified but remain in place and prevent observers
8 from coming within about 150 feet of the checkpoint.

9 59. On March 1, 2014, at approximately 10:30 a.m., a group of six PHP
10 monitors returned to the north side of the Arivaca Road checkpoint. The monitors again
11 carried video cameras, notepads, and PHP materials, including the “Checkpoint Vehicle
12 Stop Report” and a “Checkpoint Monitoring Shift Report” in order to observe agents’
13 interactions with motorists and record relevant information.

14 60. The monitors stopped approximately 100 feet from the checkpoint, in
15 roughly the same location they had agreed to use at the request of Deputy Judd on
16 February 26.

17 61. The monitors were approached by Defendant Huey and several unidentified
18 agents. Defendant Huey informed the monitors that they were within Border Patrol’s
19 “zone of operation” and needed to stand behind the boundary. The monitors responded
20 that they had returned to the same location to which they had been directed by Pima
21 County Sheriff’s Deputies on February 26. Defendant Huey stated that if the monitors did
22 not move, Border Patrol would call the Pima County Sheriff’s Office. The monitors
23 objected and remained in place.

24 62. After approximately one hour, Defendant Huey returned, again
25 accompanied by several unidentified agents. Defendant Huey then stated, “There is
26 nothing to discuss, there is nothing to decide. Either you move or we will arrest you.”
27 Another agent stated to Defendant Huey, “Just arrest them.” Defendant Huey and another
28

1 agent produced handcuffs and began advancing on the monitors. Under threat of arrest,
2 the monitors moved.

3 63. One of the monitors asked the agents for their names. In response,
4 Defendant Huey stated, “You have to move or we will place you under arrest. If you want
5 our names you will have to move behind the barrier.” Agents followed the monitors to the
6 barrier, approximately 150 feet from the checkpoint. The agents then walked away
7 without allowing the monitors to obtain the agents’ names or agent numbers.

8 64. An unidentified Border Patrol agent parked a vehicle directly in front of the
9 monitors, on the west side of the barrier, blocking their line of vision. Another vehicle was
10 parked in the same location on the south side of the road, just west of the barrier. At that
11 time, there was ample space inside the “enforcement zone” for the Border Patrol vehicles
12 to park without obstructing the monitors’ view, including most of the north side of
13 Arivaca Road adjacent to the checkpoint.

14 65. Despite the existence of ample alternative parking locations, Border Patrol
15 parked its vehicles immediately adjacent to the barriers and knowingly impeded the
16 monitors’ line of sight to the checkpoint.

17 66. As before, agents denied monitors access to the vacant, unused space in the
18 public right-of-way within 150 feet of the checkpoint. As a result, monitors were again
19 unable to observe and record much of the checkpoint-related information they sought.

20 **Border Patrol Interference With, and Retaliation Against, Plaintiffs and Other**
21 **Checkpoint Monitors**

22 67. Members of PHP, including Plaintiffs Jacobson and Ragan, have continued
23 to attempt to protest and observe Arivaca Road checkpoint operations to the best of their
24 ability from behind Defendant Border Patrol’s barriers. PHP monitors, including
25 Plaintiffs, seek to observe interactions between agents and motorists, and to record
26 relevant information based on those observations. These activities, however, continue to
27 be greatly restricted by the barriers and the conduct of agents.
28

1 68. For example, because they are restricted to observing from approximately
2 150 feet away, Plaintiffs and other PHP monitors have been unable to observe or record
3 the identity of agents operating the checkpoint, and have had difficulty observing and
4 recording descriptions of vehicles and vehicle occupants. Plaintiffs also have been unable
5 to discern the nature of agents' interactions with motorists, whether conversational or
6 inquisitional in nature, from behind the barriers. Plaintiffs are further impeded in their
7 ability to observe and record the full range of actions taken by agents and by Border Patrol
8 service canines, including canine "alerts" and agent inspections. As a result of the
9 obstacles imposed by Border Patrol, Plaintiff and other PHP monitors' ability to gather
10 basic information about public law enforcement practices has been severely limited.

11 69. Additionally, as-yet unidentified Border Patrol agents have harassed,
12 intimidated, and retaliated against the PHP monitors, including Plaintiffs, in direct
13 response to their checkpoint monitoring campaign. Plaintiffs have themselves been
14 subject to harassment, intimidation, and retaliation by agents at the checkpoint, and are
15 aware of all incidents alleged herein in which other members of PHP were treated
16 similarly.

17 70. On multiple occasions following the initiation of the checkpoint monitoring
18 campaign, Border Patrol agents parked vehicles next to the barriers for the purpose of
19 obstructing the monitors' view, despite the ample availability of alternative parking
20 locations. When Plaintiffs and other PHP monitors arrived at the checkpoint in the
21 morning, Border Patrol agents moved their vehicles and parked them next to the barriers;
22 after the monitors left, agents removed the vehicles.

23 71. On more than one occasion, agents have parked a Border Patrol vehicle next
24 to the barrier and left the engine running, with exhaust fumes directed at the monitors. In
25 one instance, in an attempt to avoid the exhaust fumes blowing in their direction, the
26 monitors moved to the opposite side of the road. The agent responded by parking a
27 vehicle next to the barrier on that side of the road, again leaving the engine running. Both
28 vehicles were left idling for approximately three hours while the monitors were present.

1 On another occasion, Plaintiff Jacobson was forced to breathe exhaust fumes directed at
2 the monitors from a Border Patrol vehicle that was left running next to the barrier.

3 72. On another occasion, the monitors could overhear agents shouting
4 profanities that were directed at the monitors; one agent yelled to a passing motorist, “You
5 should drive up and tell her, ‘Bitch, don’t film me!’”

6 73. At no point since the onset of PHP’s checkpoint monitoring activities have
7 Plaintiffs or any other checkpoint monitors interfered or attempted to interfere with
8 Border Patrol operations in any way.

9 74. On March 7, 2014, Defendant San-Martin sent an e-mail to People Helping
10 People, a copy of which is attached as Exhibit C, which read in part:

11 The inside perimeter of the checkpoint is not a public place where anyone
12 can just show up and establish ground. It is a “controlled area” for agents
13 conducting their duties. By controlled I mean agents have the authority and
14 are within their right to determine who can enter into the perimeter where
15 they are conducting law enforcement actions. Agents have the right to
16 perform their duties without impediment by individuals who are on scene.
17 The decision on where monitors can stand/sit without interfering with agents
18 and traffic is that of the agents and not the monitors.

19 75. On March 11, 2014, Defendant San-Martin and Defendant Easterling spoke
20 at the Arivaca Community Center. Members of PHP, including Plaintiff Ragan, were
21 present.

22 76. Defendants San-Martin and Easterling both asserted that Border Patrol had
23 the authority to restrict access to the public area adjacent to the Arivaca Road checkpoint.
24 Defendant Easterling stated that “the people who are going to dictate where they can and
25 can’t be are the agents on the scene.” Defendant Easterling also noted that agents required
26 the monitors to move “under threat of arrest.” Defendant Easterling went on to say,
27 “We’re well aware that we have some agents out there that lose their minds. Well aware.
28 And when we get the reports on that . . . we take care of it.” Defendant Easterling stated
that all agents should have their name tags visible.

1 77. Defendant San-Martin acknowledged that Border Patrol vehicles had parked
2 adjacent to the barriers to block ingress, but claimed there was no intention to obstruct the
3 monitors' view of the checkpoint.

4 78. Defendants Easterling and San-Martin also acknowledged that arrests at the
5 Arivaca Road checkpoint are rare, but that the checkpoint serves as a "deterrent."

6 79. Border Patrol agents at the Arivaca Road checkpoint have repeatedly
7 allowed individuals not affiliated with PHP to access the area surrounding the checkpoint
8 while denying that access to Plaintiffs and other PHP monitors. On April 3, 2014, PHP
9 monitors, including Plaintiff Ragan, observed a local resident arrive and park his vehicle
10 next to the barrier, directly inside the new "enforcement zone." That individual had
11 previously directed obscene comments and gestures at the monitors, and on this occasion
12 began to harass and video record the monitors stationed on the other side of the barrier.

13 80. The man remained inside the barrier for approximately forty minutes, at one
14 point parking his truck with one end protruding into the roadway. The man's wife also
15 arrived and parked her car inside the barrier. As the man left the checkpoint area, he
16 stopped in the westbound lane where monitors overheard him shout to the agents on duty,
17 "Well, we had our fun today." The agents at the checkpoint smiled and laughed.

18 81. Later, as Plaintiff Ragan was departing from the Arivaca Road checkpoint,
19 he asked the agents at the checkpoint if they had given the man permission to remain
20 inside the "enforcement zone." An agent replied, "It's a free country."

21 82. On another occasion, monitors observed another man dressed in plain
22 clothes go through the checkpoint, park his truck in the secondary inspection area, and
23 approach the checkpoint on foot, where he conversed with agents for approximately
24 twenty minutes.

25 83. At some point subsequent to this encounter, Border Patrol replaced the "No
26 Pedestrian" signs with new signs that read, "No Unauthorized Entry Beyond This Point."
27 Those signs and the Border Patrol's barriers remain in place. Photographs of the signs are
28 attached as Exhibit D.

1 84. On April 17, 2014, the ACLU sent a letter to Defendants Padilla, Johnson,
2 and Kerlikowske, a copy of which is attached as Exhibit E, demanding that Border Patrol
3 cease harassing and discriminating against the checkpoint monitors, remove the barriers
4 on Arivaca Road, and allow peaceful protest and monitoring activity from a short distance
5 outside the primary inspection area.

6 85. On April 24, 2014, Defendant Padilla sent a letter to the ACLU, a copy of
7 which is attached as Exhibit F, asserting that Border Patrol would continue to restrict
8 access to the public area adjacent to the Arivaca Road checkpoint.

9 86. On July 3, 2014, the ACLU sent a second letter to Defendants Padilla,
10 Johnson, and Kerlikowske, a copy of which is attached as Exhibit G, seeking a resolution
11 of the dispute. To date, Defendants have not responded to that letter.

12 87. On July 11, 2014, Plaintiff Ragan and other members of PHP participated in
13 a checkpoint “Know Your Rights” rally at the Arivaca Road checkpoint. The rally took
14 place on the west side of the checkpoint, while Plaintiff Jacobson and other PHP monitors
15 set up to record checkpoint operations from the east. Members of the media were present
16 and agents permitted reporters and pedestrians only to walk along the north side of the
17 road from one end of the “enforcement zone” to the other. Agents again parked Border
18 Patrol vehicles immediately adjacent to the barriers on both sides of the road, impeding
19 Plaintiff Jacobson and other monitors’ view of the checkpoint. As the monitors were
20 departing, the Border Patrol vehicles were removed.

21 88. Border Patrol agents at the Arivaca Road checkpoint and at other Border
22 Patrol checkpoints repeatedly have asserted that motorists do not have the right to record
23 checkpoint interactions. For example, the ACLU’s January 15, 2014 administrative
24 complaint describes an August 19, 2013 encounter in which a family of four was accosted
25 by Defendant Riden for attempting to video record their checkpoint stop.³

26
27 ³ See ACLU COMPLAINT, *supra* n.1, at 8–9 (“When Mrs. Garcia exited the vehicle with
28 the phone, Agent Riden yelled at her to turn it off, and tried unsuccessfully to grab the
phone from Mrs. Garcia’s hand, poking her chest. Mrs. Garcia handed the phone to her
husband. Agent Riden continued to yell and demanded that Mr. Garcia turn the phone off.

1 89. More recently, on August 1, 2014, a California resident filed a complaint
2 with Pima County Sheriff’s Department, alleging that a Border Patrol agent at the Arivaca
3 Road checkpoint prevented her from videotaping a search of her vehicle.⁴

4 90. On October 19, 2014, after analyzing monitoring data collected from
5 February 26 to April 28, 2014, members of PHP presented initial findings of the
6 checkpoint monitoring campaign at a community forum in Arivaca. Among other
7 findings, PHP reported that Border Patrol agents at the Arivaca Road checkpoint were
8 engaged in “systemic” discrimination, subjecting Latino motorists to far greater scrutiny
9 and delay than Caucasian motorists. The monitors’ report noted that the data was collected
10 from an area “beyond monitors’ ability to adequately see or hear Border Patrol
11 operations” and that limitations imposed by Border Patrol “restricted [monitors’] ability to
12 observe and record important information.”

13 91. After more than eight months and thousands of observed checkpoint stops,
14 PHP monitors have not witnessed a single arrest at the Arivaca Road checkpoint.

15 92. To the best of their ability, given the restrictions imposed upon them by
16 Defendants, Plaintiffs and other PHP members have continued monitoring, recording, and
17 collecting data concerning agents’ interactions with motorists at the Arivaca Road
18 checkpoint, and intend to continue analyzing the recorded data and reporting their
19 findings. Their ability to do so remains significantly impeded by Defendants’ actions,
20 however, and PHP recently decided to narrow the scope of the data monitors will seek to
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22
23 Agent Riden stated that Mr. Garcia could not use her phone to record because Border
24 Patrol was searching the vehicle ‘based on probable cause.’ Agent Riden continued
25 yelling at Mr. Garcia to turn off the phone . . . Mr. Garcia could see that Agent Riden’s
26 behavior was upsetting his children, so he turned the phone off, but not before Agent
Riden attempted, again unsuccessfully, to grab the phone out of his hands.”).

27 ⁴ See *Woman Claims Assault at Border Patrol Checkpoint*, GREEN VALLEY NEWS, Aug.
28 22, 2014, available at <http://bit.ly/1rIWgRY> (“A short video clip of the incident provided to the Green Valley News shows the agent grabbing the phone from the woman’s hand. The woman also said the agent went through her phone and purse without permission.”).

1 record. For example, monitors no longer attempt to record the identity of agents at the
2 checkpoint because that information is impossible to discern from so far away.

3 **Border Patrol’s Arbitrary “Enforcement Zone” and Harassment of Plaintiffs Violate**
4 **the First Amendment**

5 93. On information and belief, prior to February 26, 2014, Defendants never
6 created or enforced a restricted checkpoint “enforcement area” or “zone,” or any similar
7 restriction on public access to the public right-of-way adjacent to the Arivaca Road
8 checkpoint, or adjacent to any other Arizona interior vehicle checkpoint.

9 94. On information and belief, prior to February 26, 2014, Defendants never
10 erected “No Pedestrian” signs or other signage indicating restricted public access to the
11 public right-of-way adjacent to the Arivaca Road checkpoint, or adjacent to any other
12 Arizona interior vehicle checkpoint.

13 95. On information and belief, subsequent to February 26, 2014, Defendants
14 have not created or enforced any other checkpoint “enforcement zone” and have not
15 installed “No Pedestrian” signage restricting access to the public right-of-way adjacent to
16 any other interior vehicle checkpoint in Arizona other than the Arivaca Road checkpoint.

17 96. On information and belief, prior to February 26, 2014, Defendants were
18 aware that Plaintiffs and others working with them were critical of the practices of Border
19 Patrol, including their criticism of arbitrary and unconstitutional actions by Border Patrol
20 agents at the Arivaca Road checkpoint.

21 97. On information and belief, Defendants established the “enforcement zone”
22 and accompanying signage at the Arivaca Road checkpoint in direct response to the PHP
23 monitoring campaign and to prevent protesters and monitors from accessing the public
24 right-of-way adjacent to the checkpoint.

25 98. On information and belief, Defendants DHS, CBP and Border Patrol have
26 not promulgated regulations governing the boundaries of interior checkpoint
27 “enforcement zones” or any similar exclusive zones of authority adjacent to interior
28 vehicle checkpoints.

1 99. On information and belief, Defendants DHS, CBP, Border Patrol, Johnson,
2 Kerlikowske, Self, Fisher, Padilla, San-Martin, and Easterling have a policy and practice
3 of delegating decisions regarding any restrictions on public access to public areas adjacent
4 to Border Patrol interior checkpoints to the discretion of local sector chiefs, supervisors,
5 and/or agents in the field. These delegations of authority do not include specific criteria or
6 conditions for persons seeking to observe and/or record the activities of agents at Border
7 Patrol interior checkpoints, nor instructions concerning the First Amendment rights of
8 persons to engage in such observations.

9 100. On information and belief, Defendants DHS, CBP, Border Patrol, Johnson,
10 Kerlikowske, Self, Fisher, Padilla, San-Martin, and Easterling are aware of and condone
11 the actions Border Patrol has taken to restrict public access to public areas adjacent to the
12 Arivaca Road checkpoint, including the harassment, intimidation, and retaliatory acts
13 Border Patrol agents have directed at Plaintiffs, and have taken no action to lift those
14 restrictions or to prevent future harassment, intimidation, and retaliatory acts from being
15 directed at Plaintiffs.

16 101. By preventing and impeding Plaintiffs' checkpoint monitoring and
17 protesting activities, and by threatening Plaintiffs with arrest, Defendants' actions have
18 chilled, deterred, and infringed upon Plaintiffs' right to engage in protected speech,
19 resulting in harm to Plaintiffs.

20 102. Defendants' policies, customs, and/or practices concerning Plaintiffs'
21 checkpoint monitoring and protesting activities have caused Border Patrol agents to chill,
22 deter, and infringe upon Plaintiffs' right to engage in protected speech, resulting in harm
23 to Plaintiffs and entitling them to declaratory and injunctive relief.

24 103. Through harassment, intimidation, willful obstruction, and selective
25 enforcement of the "enforcement area" at the Arivaca Road checkpoint, Defendants have
26 discriminated and retaliated against Plaintiffs for exercising their First Amendment rights.

27 104. The acts, omissions, policies, customs, and/or practices of all Defendants are
28 causing irreparable harm to Plaintiffs due to interference with and chilling of their First

1 Amendment rights to protest and/or record checkpoints from a public right-of-way, for
2 which they have no adequate remedy at law.

3 105. An actual and immediate controversy has arisen and now exists between
4 Plaintiffs and Defendants regarding Plaintiffs' ability to exercise First Amendment rights
5 to protest, observe, and/or record the Arivaca Road checkpoint from a public right-of-way
6 adjacent to the checkpoint. Plaintiffs are entitled to a declaration of rights with respect to
7 this controversy. Without such a declaration, Plaintiffs will be uncertain of their rights and
8 responsibilities under the law.

9 **CLAIMS**

10 **COUNT ONE**

11 **Unlawful Regulation of Plaintiffs' First Amendment Rights in a Public Forum**
12 **(All Defendants)**

13 106. Plaintiffs reallege and incorporate by reference the allegations in all
14 preceding paragraphs.

15 107. The First Amendment to the United States Constitution prohibits
16 infringement on and chilling of protected First Amendment activity.

17 108. Defendants Easterling, San-Martin, Joyner, Huey, Ballistrea,
18 Spencer, and Riden acted pursuant to Defendants DHS, CBP, Border Patrol, Johnson,
19 Kerlikowske, Self, Fisher, and Padilla's expressly adopted official policy and/or
20 longstanding practice of delegating authority regarding public access to public areas
21 adjacent to interior vehicle checkpoints to the discretion of supervisors and/or agents in
22 the field. This policy and/or practice affords an impermissible degree of discretion to
23 agents and continues to be an impermissible prior restraint on speech and to chill, deter,
24 and infringe upon Plaintiffs' First Amendment rights. Further, Defendants' definition of
25 the "enforcement zone" and inconsistent regulation of Plaintiffs' proximity to Defendants'
26 public activities in and near the checkpoints are both broader than needed to further
27 Defendants' objectives.
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checkpoint situated similarly to the one on Arivaca Road, from the public right-of-way; and

- 2. Preventing, restricting, impeding, or otherwise interfering with Plaintiffs' First Amendment rights to protest and record the Border Patrol checkpoint on Arivaca Road, or any other Border Patrol checkpoint situated similarly to the one on Arivaca Road, from areas where other members of the public are allowed to congregate.

B. Enter a judgment declaring that

- 1. Defendants have violated Plaintiffs' rights under the First Amendment; and
- 2. Plaintiffs are entitled under the First Amendment to protest and record Border Patrol interior vehicle checkpoint operations from a reasonable distance outside the primary inspection area.

C. Award Plaintiffs costs, including reasonable attorneys' fees, and

D. Grant such other and further relief as the Court deems just and proper.

DATED this 20th day of November, 2014.

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