

1 DAVID LOY (CA SBN 229235)  
 davidloy@aclusandiego.org  
 2 MITRA EBADOLAHİ (CA SBN 275157)  
 mebadolahi@aclusandiego.org  
 3 SARAH THOMPSON (CA SBN 323188)  
 sthompson@aclusandiego.org  
 4 ACLU FOUNDATION OF SAN DIEGO &  
 IMPERIAL COUNTIES  
 5 P.O. Box 87131  
 San Diego, California 92138-7131  
 6 Telephone: 619.232.2121

7 DAVID P. GERSCH  
 david.gersch@arnoldporter.com  
 8 R. STANTON JONES  
 stanton.jones@arnoldporter.com  
 9 SARA MURPHY D'AMICO  
 sara.d'amico@arnoldporter.com  
 10 ARNOLD & PORTER  
 KAYE SCHOLER LLP  
 11 601 Massachusetts Avenue, NW  
 Washington, DC 20001  
 12 Telephone: 202.942.5000

13 Attorneys for Plaintiffs  
 RAY ASKINS AND CHRISTIAN RAMIREZ  
 14

15 UNITED STATES DISTRICT COURT  
 16 SOUTHERN DISTRICT OF CALIFORNIA  
 17

18 RAY ASKINS and  
 CHRISTIAN RAMIREZ,  
 19 Plaintiffs,  
 v.  
 20 UNITED STATES DEPARTMENT  
 OF HOMELAND SECURITY;  
 21 GENERAL SERVICES  
 ADMINISTRATION;  
 22 FEDERAL PROTECTIVE SERVICE;  
 JOHN P. SANDERS, Acting  
 23 Commissioner of United States  
 Customs and Border Protection;  
 24 EMILY W. MURPHY, Administrator  
 of the General Services Administration;  
 25 L. ERIC PATTERSON, Director of the  
 Federal Protective Service; DAVID A.  
 26 SALAZAR, Director, Calexico Port of  
 Entry; SIDNEY K. AKI, Director, San  
 27 Ysidro & Otay Mesa Ports of Entry,  
 28 Defendants.

Case No. 3:12-cv-02600-W-BLM

**SECOND AMENDED  
 COMPLAINT FOR  
 DECLARATORY AND  
 INJUNCTIVE RELIEF**

1 Plaintiffs Ray Askins and Christian Ramirez (collectively, “Plaintiffs”) bring  
2 this First Amendment action against the U.S. Department of Homeland Security, the  
3 General Services Administration, the Federal Protective Service, and, in their official  
4 capacities, U.S. Customs and Border Protection Acting Commissioner John P.  
5 Sanders, Administrator of the General Services Administration Emily W. Murphy,  
6 Director of the Federal Protective Service L. Eric Patterson, Calexico Port Director  
7 David Salazar, and San Ysidro Port Director Sidney Aki (collectively,  
8 “Defendants”), and allege as follows.

9  
10 **NATURE OF THE ACTION**

11 1. This is a civil rights action to remedy violations of Plaintiffs’ First  
12 Amendment rights by Defendants, including officers and agents of U.S. Customs and  
13 Border Protection (“CBP”), an agency within the U.S. Department of Homeland  
14 Security (“DHS”).

15 2. The right to gather, receive, record, and disseminate information is  
16 grounded in the Free Speech Clause of the First Amendment. This right is further  
17 grounded in the Petition Clause of the First Amendment (if the purpose of gathering,  
18 receiving, or recording the information is to use it to petition the government for  
19 redress of grievances), and the Free Press Clause of the First Amendment (if the  
20 purpose of gathering, receiving, or recording the information is to publish and  
21 disseminate it to other people).

22 3. The First Amendment guarantees the right to take photographs of and  
23 otherwise record law enforcement officers engaged in the public discharge of their  
24 duties and other matters or events exposed to public view. For convenience, the terms  
25 “photograph” and “photography” as used in this Complaint encompass all forms of  
26 recording matters or events, including but not limited to still photography and video  
27 recording.  
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1           4. The public has a significant interest in monitoring and recording  
2 government officials at ports of entry, including CBP officers and their agents, “who  
3 are granted substantial discretion that may be misused to deprive individuals of their  
4 liberties.” *Glik v. Cunniffe*, 655 F.3d 78, 82 (1st Cir. 2011).

5           5. CBP routinely and consistently denies public access to basic  
6 information about its operations, including whether officers engaged in misconduct  
7 are disciplined in any way, thus shielding both the agency and individual officials  
8 from public accountability for abusive policies and practices. *See, e.g.*, Fernanda  
9 Santos, *Border Patrol Accused of Profiling and Abuse*, N.Y. TIMES, Oct. 14, 2015,  
10 available at <http://nyti.ms/1GeW0E7>; Garrett M. Graff, *The Green Monster: How*  
11 *the Border Patrol Became America’s Most Out-of-Control Law Enforcement Agency*,  
12 POLITICO, Nov./Dec. 2014, available at <http://politi.co/1tlB4CS>; Carrie Johnson,  
13 *Former Border Protection Insider Alleges Corruption, Distortion in Agency*, NAT’L  
14 PUB. RADIO, Aug. 28, 2014, available at <http://n.pr/1wGGPdv>; *see also* AMERICAN  
15 IMMIGRATION COUNCIL, NO ACTION TAKEN: LACK OF CBP ACCOUNTABILITY IN  
16 RESPONDING TO COMPLAINTS OF ABUSE (2014), available at <http://bit.ly/SwNbye>.

17           6. In recent years, the physical abuse of persons at or near the border by  
18 CBP has been rampant. *See, e.g.*, Joseph Tanfani, et al., *Special Report: How Tasers*  
19 *Became Instruments of Excessive Force for the Border Patrol*, L.A. TIMES, Oct. 30,  
20 2015, available at <http://lat.ms/1M5U2GF>. Such abuse has further fueled the public’s  
21 interest in monitoring and recording public actions of CBP officials at ports of entry.  
22 For example, CBP officials’ excessive use of force has resulted in a record number  
23 of deaths, including the deaths of U.S. citizens and lawful permanent residents. *See,*  
24 *e.g.*, Brian Bennett, *Border Patrol Absolves Itself In Dozens of Cases of Lethal Force*,  
25 L.A. TIMES, June 15, 2015, available at <http://lat.ms/1Xxf3hA>; Charles Davis, *U.S.*  
26 *Customs and Border Protection Has Killed Nearly 50 People in 10 Years. Most Were*  
27 *Unarmed. And Not One Officer Has Been Disciplined*. NEW REPUBLIC, Jan. 4, 2015,  
28

1 available at <http://bit.ly/1BBYcyn>. In view of CBP's unwillingness or inability to  
2 timely discipline officials for misconduct and abuse, the importance of public access  
3 to information regarding CBP's actions cannot be overstated.

4 7. Along the U.S.-Mexico border, DHS either owns or leases from other  
5 federal government agencies large swaths of property, including ports of entry and  
6 areas surrounding ports of entry. For convenience, the terms "port of entry" or "port  
7 of entry property" as used in this Complaint encompass all such property, whether  
8 owned or leased by DHS and/or CBP, to which Defendants assert their photography  
9 policies, described below, apply.

10 8. CBP has a national policy that it asserts prohibits photography on any  
11 port of entry property without advance official permission. *See* U.S. Customs and  
12 Border Protection, Office of Public Affairs, Roles, Functions and Responsibilities,  
13 CBP Directive No. 5410-001B (Mar. 18, 2009) (attached as Exhibit A) (hereinafter  
14 "Policy").

15 9. According to the Policy, authorization of photography "at CBP facilities  
16 shall be made in consultation with the appropriate Public Affairs Specialist and with  
17 the concurrence and control of the appropriate CBP supervisor." *Id.* at Part 6.2.3. The  
18 Policy contains no standards or criteria limiting CBP officials' discretion to grant or  
19 deny permission to take photographs on port of entry property. On its face, the Policy  
20 covers only "the media."

21 10. Likewise, CBP's media "ground rules" for "Southern California ports  
22 of entry"—which Defendants apply to photography by any person in the areas at  
23 issue in this action—purportedly require individuals to obtain advance authorization  
24 from CBP officials in order to take photographs on any port of entry property. *See*  
25 U.S. Customs and Border Protection, Ground Rules for News Media Representatives  
26 When Visiting Southern California Ports of Entry (attached as Exhibit B) (hereinafter  
27 "Ground Rules"). The Ground Rules contain no standards or criteria limiting CBP  
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1 officials' discretion to grant or deny permission to take photographs on port of entry  
2 property. In addition, like the Policy, the Ground Rules on their face cover only  
3 "news media representatives."

4 11. The Policy and Ground Rules are currently in effect and were in effect  
5 at all times relevant to this action.

6 12. Other authorities relied upon by Defendants to exclude photography at  
7 federal ports of entry include 41 C.F.R. § 102-74.420; Part 11.19 of CBP's Security  
8 Policy and Procedures, HB 1400-02B (August 13, 2009); DHS's Instruction of the  
9 Participation of DHS with Film and Television Productions, DHS Directives System  
10 Instruction No. 109-01-001; and 41 C.F.R. §§ 102-74.370, 102-74.380, 102-74.385,  
11 and 102-74.390.

12 13. Both individually and taken together, Defendants' interpretation and  
13 enforcement of the above-mentioned policies and procedures violate the First  
14 Amendment by (a) conferring unlimited discretion upon CBP officials to grant or  
15 deny permission to take photographs on port of entry property, including areas of that  
16 property that constitute a traditional public forum, and (b) unreasonably restricting  
17 the right to take photographs of matters or events exposed to public view from  
18 exterior or outdoor areas of port of entry property, including areas of that property  
19 that constitute a traditional public forum.

20 14. Defendants and/or their agents violated Plaintiff Ray Askins's First  
21 Amendment rights by directing him to cease taking photographs of the exterior of the  
22 Calexico West port of entry building from a location outside that building, and by  
23 erasing all but one of the photographs he did take of said exterior.

24 15. Defendants and/or their agents violated Plaintiff Christian Ramirez's  
25 First Amendment rights by directing him to cease taking photographs of matters and  
26 events exposed to public view in outdoor areas of the San Ysidro port of entry, and  
27 by erasing all of the photographs he did take of said events.  
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1           16. As interpreted and enforced by Defendants, the above-mentioned  
2 policies and procedures unconstitutionally prevent Mr. Askins and Mr. Ramirez from  
3 freely exercising their First Amendment rights to photograph and record matters and  
4 events exposed to public view from exterior or outdoor areas of CBP ports of entry.

5           17. Plaintiffs' cases are not unique. Defendants and/or their agents  
6 frequently deter or prevent individuals from documenting potential misconduct by  
7 CBP officers and other matters of public interest, and destroy photo or video evidence  
8 of the same.

9           18. As interpreted and enforced by Defendants, therefore, the above-  
10 mentioned policies and procedures chill and deter reasonable persons from exercising  
11 their First Amendment rights to photograph and record matters exposed to public  
12 view from exterior or outdoor areas of CBP ports of entry.

13           19. Perhaps the most well-known recent example of this unconstitutional  
14 interference occurred in May 2010, when CBP officers confronted individuals who  
15 captured video footage of the government's lethal beating of Anastasio Hernandez  
16 Rojas at the San Ysidro port of entry. CBP officers demanded that some of these  
17 eyewitnesses hand over their cell phones or delete the video they had just recorded  
18 of the incident. *See, e.g., R. Stickney, Judge Clears Way for Family's Civil Suit in*  
19 *Border Beating Death*, NBC SAN DIEGO, Oct. 7, 2014, *available at*  
20 <http://bit.ly/1MSRJYI> (noting that, when members of the public gathered to record  
21 the fatal beating of Hernandez Rojas, one federal officer confiscated witness cell  
22 phones and erased images and videos recorded thereupon); Cristina Costantini &  
23 Elise Foley, *Anastasio Hernandez-Rojas Death: Border Patrol Tasing Incident*  
24 *Complicated by New Footage (VIDEO)*, HUFFINGTON POST (updated Apr. 24, 2012,  
25 12:40 PM EDT), <http://huff.to/1jzwlFu>.

26           20. After eyewitness videos of Hernandez Rojas's brutal beating surfaced,  
27 sixteen members of Congress sent a letter to CBP seeking information about the  
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1 agency's use-of-force policies and internal investigation protocols. *See* Press  
2 Release, Congressman José E. Serrano, Sixteen Members of Congress Call for  
3 Justice in Hernandez-Rojas Case (May 10, 2012), *available at*  
4 <https://bit.ly/1HvbeQE>. Subsequent public pressure led CBP to undertake a three-  
5 pronged review of its use-of-force policies and, ultimately, to release those policies  
6 to the public. *See, e.g.*, Adrian Carrasquillo, *Border Patrol Finally Releases Report*  
7 *Critical of Use of Deadly Force*, BUZZFEED NEWS (May 30, 2014, 1:25 PM PST),  
8 <http://bzfd.it/1PSKkcv>.

9  
10 21. Plaintiffs seek declaratory and injunctive relief to protect their First  
11 Amendment rights. Specifically, Plaintiffs seek a declaration that Defendants are  
12 violating the First Amendment by (a) asserting unlimited discretion to grant or deny  
13 permission to photograph and (b) unreasonably prohibiting photography of matters  
14 or events exposed to public view from exterior or outdoor areas of ports of entry.  
15 Plaintiffs also seek an injunction prohibiting Defendants from preventing Plaintiffs  
16 from photographing matters or events exposed to public view from exterior or  
17 outdoor areas of ports of entry.

### 18 **THE PARTIES**

19 22. Plaintiff Ray Askins is, and at all relevant times was, a citizen of the  
20 United States. Since at least 2008, Mr. Askins has researched environmental health  
21 hazards in Imperial County and, in particular, in Calexico along the U.S.-Mexico  
22 border. He has also served on the Imperial-Mexicali Air Quality Task Force since at  
23 least 2009.

24 23. Plaintiff Christian Ramirez is, and at all relevant times was, a citizen of  
25 the United States. He is the statewide policy director for the Service Employees  
26 International Union (SEIU) United Service Workers West (USWW). Previously, he  
27 served as the Human Rights Director for Alliance San Diego, an organization focused  
28 on building coalitions to promote social justice and social change. He also served as

1 the Director of the Southern Border Communities Coalition, which brings together  
2 more than sixty organizations reaching from San Diego, California to Brownsville,  
3 Texas to promote policies and solutions that improve the quality of life in border  
4 communities.

5 24. Defendant U.S. Department of Homeland Security is an executive  
6 department of the United States.

7 25. U.S. Customs and Border Protection is an agency within DHS. The  
8 agency employs more than 60,000 individuals and is one of the world's largest law  
9 enforcement organizations.

10 26. Defendant General Services Administration is an independent agency of  
11 the United States government.

12 27. Defendant Federal Protective Service is a federal agency tasked with  
13 providing security and law enforcement services to GSA-owned and leased  
14 properties.

15 28. Defendant John P. Sanders is Acting Commissioner of CBP. He is sued  
16 here in his official capacity.

17 29. Defendant Emily W. Murphy is Administrator of the General Services  
18 Administration. She is sued here in her official capacity.

19 30. Defendant L. Eric Patterson is Director of the Federal Protective  
20 Service. He is sued here in his official capacity.

21 31. Defendant David Salazar is Director of the Calexico port of entry. He is  
22 sued here in his official capacity.

23 32. Defendant Sidney Aki is Director of the San Ysidro and Otay Mesa ports  
24 of entry. He is sued here in his official capacity.

25 33. Plaintiffs seek declaratory and injunctive relief against each Defendant,  
26 as well as each Defendant's agents, assistants, successors, employees, attorneys, and  
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1 all persons acting in concert or cooperation with any of them or at the direction or  
2 under the control of any of them.

3  
4 **JURISDICTION AND VENUE**

5 34. The Court has jurisdiction under 28 U.S.C. § 1331 because Defendants  
6 are acting on behalf of the United States and this action arises under the First  
7 Amendment to the United States Constitution.

8 35. The Court may grant declaratory and injunctive relief for the  
9 constitutional violations alleged here pursuant to 5 U.S.C. § 702, which waives the  
10 sovereign immunity of the United States for relief other than money damages; 28  
11 U.S.C. § 2201; and/or Federal Rules of Civil Procedure 57 and 65.

12 36. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)  
13 and (e), because the events that give rise to this action occurred within this district,  
14 and because one or more of the Defendants reside in this district.

15 **FACTS**

16 **A. PLAINTIFF RAY ASKINS**

17 **I. PERSONAL AND PROFESSIONAL BACKGROUND**

18 37. Mr. Askins is a U.S. citizen living primarily in Mexicali, Baja  
19 California, Mexico. He retired from his job as an insurance broker in November 2001.  
20 Nowadays, he travels frequently to the United States, often to attend governmental  
21 and policy meetings in Imperial County. He usually crosses into the United States  
22 through the Calexico West port of entry.

23 38. Mr. Askins is deeply concerned with environmental and environmental  
24 health issues affecting the U.S.-Mexico border region generally and Imperial County  
25 in particular. He himself suffers from chronic obstructive pulmonary disease, a  
26 progressive disease which makes it difficult for him to breathe.

27 39. Imperial County and its constituent communities, including the City of  
28 Calexico, suffer from high rates of poverty and pollution, which together contribute

1 to significant public health and environmental problems. *See, e.g.,* Tony Perry,  
2 *Deepening Woes for the Imperial Valley*, L.A. TIMES, Apr. 27, 2009, available at  
3 <http://lat.ms/1N9Q1xp> (detailing historic, persistent poverty and environmental  
4 pollution afflicting Imperial County).

5 40. A higher proportion of Imperial County residents live at or below the  
6 federal poverty level compared to other California counties, which, according to the  
7 county's Community and Economic Development Department, means that residents  
8 "face many challenges in meeting basic health needs." *See* U.S. CENSUS BUREAU,  
9 STATE & COUNTY QUICK FACTS: IMPERIAL COUNTY, <https://bit.ly/2YGfUCz> (last  
10 visited May 19, 2019); IMPERIAL CNTY. CMTY. & ECON. DEV. DEP'T,  
11 COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY 2014–2015 ANNUAL UPDATE  
12 25 (2015), available at <https://bit.ly/2WTnWr8> (hereinafter "CEDS 2014–15").  
13 "Much of Imperial County is designated as a medically underserved area." CEDS  
14 2014–15 at 25.

15 41. According to the California Department of Public Health, Imperial  
16 County's poor air quality, combined with many residents' lack of access to primary  
17 health care providers, have contributed to very high rates of asthma in the area. *See*  
18 Patricia Leah Brown, *The Air is Dark and Asthma is Deadly Along the Mexico*  
19 *Border*, REVEAL: CTR. FOR INVESTIGATIVE REPORTING, Apr. 21, 2015, available at  
20 <http://bit.ly/1XxwSgy>. A recent study by a San Diego State University environmental  
21 health professor found "that diesel and gasoline from Mexicali, Mexico, most likely  
22 from idling vehicles at the border crossing, is the No. 1 source of particulate matter  
23 in Calexico, California, increasing in intensity when the wind blows into the Imperial  
24 Valley from the south." *Id.* Calexico residents are exposed to high levels of harmful  
25 particulate matters in the air; the highest levels, and the most destructive particulates,  
26 are found near the border crossing, through which more than seven million trucks  
27 and passenger vehicles commute annually. *Id.*

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1           42. Health experts have long acknowledged a link between high-traffic  
2 areas and asthma severity. *See, e.g.*, YING-YING MENG, ET AL., UCLA HEALTH  
3 POLICY RESEARCH BRIEF: LIVING NEAR HEAVY TRAFFIC INCREASES ASTHMA  
4 SEVERITY 1 (2006), available at <http://bit.ly/1S83ABS>. For adults with asthma,  
5 medium to high traffic exposure has been found to increase the likelihood of chronic  
6 symptoms by approximately forty to eighty percent. *Id.* Latino children with asthma  
7 are nearly two-and-a-half times more likely than White children to live near high-  
8 traffic areas. *Id.* at 4.

9           43. Hospitalization rates for asthma in Imperial County are among the  
10 highest in the state, especially for children. Whereas the rate of emergency hospital  
11 visits for asthma in California as a whole is 46.1 per 10,000 residents, in Imperial  
12 County, it is more than double: 91.0 per 10,000 residents. CEDS 2014–2015 at 26;  
13 *see also, e.g.*, Anna Gorman, *Imperial County Leads State in Treatment of Children*  
14 *with Asthma*, L.A. TIMES, July 16, 2012, available at <http://lat.ms/1Nmo7AT>.

15           44. Mr. Askins’s environmental advocacy work involves extensive  
16 research, investigation, and analysis of CBP border activities, including in particular  
17 activities at or near U.S.-Mexico ports of entry. He is especially interested in how  
18 emissions from idling vehicles awaiting primary or secondary inspection at the ports  
19 of entry contribute to environmental pollution and health problems in Imperial  
20 County and Mexicali.

21           45. For several years, beginning in 2008, Mr. Askins maintained and  
22 contributed regularly to a blog (now defunct) that addressed environmental issues  
23 and human rights abuses in the U.S.-Mexico border region.

24           46. Since at least March 2008, Mr. Askins has contributed to or co-authored  
25 numerous reports relating to the environmental consequences of law enforcement  
26 activities at or near U.S.-Mexico ports of entry.

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1           47. Mr. Askins has submitted various environmental bulletins and reports  
2 based on his research to public officials, including: (a) members of the U.S.  
3 Environmental Protection Agency; (b) the Imperial County Board of Supervisors;  
4 and (c) Bob Filner, during his tenure as U.S. Representative for California's 51st  
5 congressional district, which includes all of Imperial County and the southern  
6 portions of San Diego County.

7           48. Since at least 2009, Mr. Askins has served on the Imperial-Mexicali Air  
8 Quality Task Force.

9           49. In April 2014, Dr. Paul English, MPH, Ph.D., invited Mr. Askins to join  
10 the Imperial County Community Air Monitoring Project of the California  
11 Environmental Health Tracking Program. As a member of this project, Mr. Askins  
12 has worked in a team to place forty air quality monitors throughout Imperial County,  
13 including one such monitor near the Calexico West port of entry.

## 14           **II. 2012 INCIDENT**

15           50. In the spring of 2012, Mr. Askins was preparing a presentation for a  
16 conference entitled "Health Impacts of Border Crossings," which was scheduled for  
17 May 3 and 4, 2012 in San Ysidro, California.

18           51. The conference was funded by the Southwest Consortium on  
19 Environmental Research and Policy, through a cooperative agreement with the U.S.  
20 Environmental Protection Agency. Conference organizers described the event as one  
21 that

22           focused on local health impacts of the U.S.-Mexico border. The  
23 emphasis was on avenues for reduction of exposures to traffic pollutants  
24 experienced by people crossing the border at the U.S.-Mexico Ports of  
25 Entry, workers and the community on both sides of the border. The  
26 conference included participation of researchers and stakeholders from  
the San Diego-Tijuana region and other areas along the U.S.-Mexico  
border with similar issues.

27           Exhibit C (Health Impacts of Border Crossings Conference 2012).  
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1           52. To prepare for a presentation at this conference, Mr. Askins planned to  
2 visit the Calexico West port of entry. Specifically, Mr. Askins intended to photograph  
3 the secondary vehicle inspection area of the port of entry to demonstrate that CBP  
4 did not make full and proper use of this area, leading to longer delays and,  
5 consequently, more emissions pollution from vehicles waiting to cross the border.

6           53. On or about April 18, 2012, Mr. Askins contacted CBP Officer John  
7 Campos by phone and requested permission to take three or four photographs inside  
8 the secondary inspection area at the Calexico port of entry the next day. Officer  
9 Campos said that this would be inconvenient, but otherwise did not object to the  
10 request.

11           54. On or about April 19, 2012, Mr. Askins called Officer Campos to follow  
12 up. When Officer Campos did not answer, Mr. Askins left a voicemail message  
13 stating that, instead of taking photographs inside the Calexico port of entry building,  
14 Mr. Askins would stand on the street outside that building and take photographs of  
15 the exit of the secondary inspection area.

16           55. On or about April 19, 2012, at approximately 3:10 p.m., Mr. Askins was  
17 standing near the shoulder of a public street in Calexico, California, approximately  
18 fifty to 100 feet from the exit from the secondary inspection area at the Calexico West  
19 port of entry. More precisely, Mr. Askins was standing near the shoulder of the public  
20 street at the intersection of First Street and Paulin Avenue.

21           56. Immediately behind Mr. Askins was the Genaro Teco Monroy  
22 Memorial International Border Friendship Park, a small public park with grass lawns  
23 and concrete benches overlooking the Calexico West port of entry secondary  
24 inspection area.

25           57. Both the public street and the park are public forums open to speech and  
26 expressive activity by tradition and past usage. Upon information and belief,  
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Defendants consider some or all of these areas to be part of the Calexico West port of entry.

58. From this vantage point, outdoors and outside any port of entry building or structure, Mr. Askins took three or four photographs of the exit of the secondary inspection area, including the following photograph:



59. While taking these photographs, Mr. Askins was not engaged in any form of commercial speech or activity. Mr. Askins took these photographs for political and/or other non-commercial purposes.

60. The building exterior photographed by Mr. Askins was exposed to public view from exterior and outdoor areas of both port of entry property and adjacent property.

61. Additionally, when taking these photographs, Mr. Askins was not engaged in the act of crossing the border. Rather, Mr. Askins was standing outdoors on the U.S. side of the border when taking the photographs.

1           62.     Shortly after Mr. Askins took the photographs, a number of male CBP  
2 officers approached him. One or two of the officers demanded that Mr. Askins delete  
3 the photographs. Mr. Askins stated that he would not do so.

4           63.     One or more of the CBP officers then stated that they would smash Mr.  
5 Askins's camera if he did not delete the photographs. Mr. Askins again declined to  
6 delete the photographs, explaining that they were his property.

7           64.     One or more of these officers then handcuffed Mr. Askins from behind  
8 and took his camera, passport, car keys, and hat.

9           65.     Throughout this encounter, the CBP officers spoke to Mr. Askins in an  
10 aggressive and threatening manner, despite the fact that Mr. Askins at no point posed  
11 a threat to the safety of the officers and at no point actively resisted arrest.  
12 Furthermore, Mr. Askins committed no crime and took no actions giving rise to a  
13 reasonable suspicion or probable cause that he had committed or was about to commit  
14 a crime under any law that could constitutionally have been applied to him. To the  
15 extent Mr. Askins may have violated any law making his photography illegal, that  
16 law is unconstitutional as applied to him.

17           66.     After Mr. Askins was handcuffed and his possessions taken, one officer  
18 forcefully led him into a small room inside the secondary inspection area, holding  
19 Mr. Askins's right arm in a tight grip that caused significant pain and bruising on the  
20 inside of Mr. Askins's arm. The officer told Mr. Askins to sit down. Mr. Askins was  
21 not free to leave the room.

22           67.     After about twenty minutes, the same officer led Mr. Askins to a  
23 separate room, where he subjected Mr. Askins to an invasive and embarrassing  
24 physical search. During the search, Mr. Askins remained clothed while the officer  
25 used his hands to pat Mr. Askins's entire body. Mr. Askins felt that he was being  
26 groped, and experienced particular discomfort when the officer unnecessarily  
27 squeezed and touched Mr. Askins's groin area several times.  
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1           68. One or more CBP officers then told Mr. Askins that he was free to go  
2 and returned his belongings, and one officer escorted him to the exit. From the  
3 moment CBP officers first detained Mr. Askins to the moment they told him he was  
4 free to go, approximately twenty-five to thirty-five minutes elapsed. The officers had  
5 no warrant or other constitutional justification for the search and/or seizure of Mr.  
6 Askins's person or property.

7           69. When Mr. Askins later scrolled through the pictures on his digital  
8 camera, he discovered that all but one of the photographs he just had taken of the port  
9 of entry had been deleted.

10           70. On April 20, 2012, Mr. Askins sent a letter of complaint to then-Port  
11 Director Billy Whitford regarding the April 19 incident. That same day, Director  
12 Whitford responded in writing, stating:

13                   In response to the issues raised in your complaint, the area in  
14 question is currently under the jurisdiction of GSA [(General Services  
15 Administration)] and CBP. CBP security policies prohibit visitors at  
16 CBP-controlled facilities from using cameras and video recording  
17 devices without the prior approval from the senior CBP official (Port  
18 Director or designee).

19                   The officer perceived your actions as a security violation and  
20 detained you briefly until a supervisor was contacted and it was  
21 determined that you posed no threat to the facility, the public, or the  
22 officers. I regret that this incident occurred and hope that all officers  
23 conducted themselves in a professional manner at all times.

24           *See* Exhibit D (Email from Billy B. Whitford to Ray Askins (Apr. 20, 2012)).

### 25           **III. NECESSITY OF AND ENTITLEMENT TO INJUNCTIVE 26           RELIEF**

27           71. Mr. Askins wants to continue photographing matters and events  
28 exposed to public view from outdoor and exterior areas of the Calexico port of entry,  
including but not limited to the specific area in which he was standing at the time of  
the above incident. As a result of his experience and in light of Defendants'  
interpretation and enforcement of above-mentioned policies and procedures,



1 however, Mr. Askins has a reasonable fear that if he does continue such photography,  
2 he will again be subject to interference by Defendants and/or their agents. Such  
3 interference may include Mr. Askins's detention or arrest and the loss of his personal  
4 property, such as his camera and photographs.

5         72. Mr. Askins seeks to photograph and record matters and events exposed  
6 to public view in the area immediately surrounding the Calexico port of entry  
7 building, including vehicular traffic and CBP officers engaged in the public discharge  
8 of their duties, in order to document air and other environmental pollution as well as  
9 human rights abuses.

10         73. Unless enjoined by this Court, Defendants can and will continue to  
11 interpret and enforce the above-mentioned policies and procedures to prohibit Mr.  
12 Askins from photographing matters and events exposed to public view from outdoor  
13 or exterior areas of the Calexico port of entry, including vehicular traffic and CBP  
14 officers engaged in the public discharge of their duties.

15         74. As a result of Defendants' interpretation and enforcement of the above-  
16 mentioned policies and procedures, Mr. Askins has been chilled, hindered, deterred,  
17 and prevented from freely exercising his First Amendment right to photograph  
18 matters and events exposed to public view from outdoor or exterior areas of the  
19 Calexico port of entry, including vehicular traffic and CBP officers engaged in the  
20 public discharge of their duties.

21         75. Mr. Askins is thus suffering, and will continue to suffer, irreparable  
22 harm as a result of the violation of his First Amendment rights.

23         76. Mr. Askins has no adequate remedy at law.  
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1       **B.     PLAINTIFF CHRISTIAN RAMIREZ**

2               **I.     PERSONAL AND PROFESSIONAL BACKGROUND**

3               77.     Mr. Ramirez is a U.S. citizen living in San Diego, California. He is a  
4 nationally-recognized border policy advocate and a leading expert on border-related  
5 civil and human rights abuses.

6               78.     Mr. Ramirez regularly travels to the U.S.-Mexico border, both to visit  
7 family members living in Mexico and to observe law enforcement activity and  
8 monitor human rights issues. He does this not only for work but also out of a sense  
9 of personal responsibility as a lifelong member of the border community.

10              79.     The San Ysidro port of entry is the busiest land port in the Western  
11 Hemisphere. *See, e.g.*, U.S. General Services Administration, San Ysidro Port of  
12 Entry, <https://bit.ly/2VOEaFi> (last visited May 19, 2019). An estimated 20,000  
13 northbound pedestrians cross from Mexico into the United States through the San  
14 Ysidro port of entry each day. *Id.*

15              80.     As explained, the incidence of civil and human rights violations along  
16 the U.S.-Mexico border, including at or near the San Ysidro port of entry, and the  
17 lack of CBP accountability for such abuses, are matters of grave public concern.

18              81.     Members of the public, like Mr. Ramirez, seek to document CBP  
19 activity at or near the San Ysidro port of entry to safeguard against civil and human  
20 rights abuses, including excessive use of force and racial profiling.

21               **II.    2010 INCIDENT**

22              82.     On June 20, 2010—Father’s Day—Mr. Ramirez and his wife crossed  
23 the border into Mexico to visit his father. They parked on the U.S. side of the border  
24 and walked into Mexico through the pedestrian entrance at San Ysidro.

25              83.     Mr. Ramirez and his wife returned to the United States the same  
26 afternoon. They passed through primary inspection at the San Ysidro port of entry  
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1 without incident. Once inside the United States, they walked toward their vehicle,  
2 crossing a pedestrian bridge that passed over the southbound lanes of Interstate 5.

3 84. While crossing this pedestrian bridge, Mr. Ramirez noticed that women  
4 were being inspected and patted down by male CBP officers at a southbound security  
5 checkpoint below him. The officers appeared to be pulling aside only women for  
6 inspection.

7 85. Mr. Ramirez observed the checkpoint for approximately ten to fifteen  
8 minutes. During that time he took approximately ten photographs using his cell phone  
9 camera, out of concern that the CBP officers might have been acting inappropriately.

10 86. While taking these photographs, Mr. Ramirez was not engaged in any  
11 form of commercial speech or activity. Mr. Ramirez took these photographs for  
12 political and/or other non-commercial purposes.

13 87. Additionally, when taking these photographs, Mr. Ramirez was not  
14 engaged in the act of crossing the border, nor was he inside any port of entry building.  
15 Rather, Mr. Ramirez was standing outdoors on the U.S. side of the border when  
16 taking the photographs.

17 88. The events and individuals photographed by Mr. Ramirez were exposed  
18 to public view in exterior and outdoor areas of the San Ysidro port of entry property.

19 89. While observing the checkpoint, Mr. Ramirez and his wife were  
20 approached by two men who appeared to be private security officers.

21 90. One of the private security officers asked for Mr. Ramirez's personal  
22 identification documents. Mr. Ramirez explained that he and his wife had already  
23 passed through inspection and declined to hand over his documents again.

24 91. One of the private security officers then ordered Mr. Ramirez to stop  
25 taking photographs. Mr. Ramirez refused and took a picture of the private security  
26 officer. Acting aggressively, the private security officer attempted to grab Mr.  
27 Ramirez.  
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1           92. Mr. Ramirez stopped taking photographs and said “let’s go” to his wife;  
2 the two began to descend from the pedestrian bridge. The private security officers,  
3 whom Mr. Ramirez heard make a radio call for backup, followed them.

4           93. At the bottom of the pedestrian bridge, approximately five to seven CBP  
5 officers were waiting. They asked whether and why Mr. Ramirez had taken any  
6 photographs. Mr. Ramirez responded that he had taken photographs because he had  
7 witnessed what he believed to be inappropriate activity by CBP officers at the  
8 checkpoint—namely, the patting down of women by male officers.

9           94. The CBP officers at the bottom of the bridge asked Mr. Ramirez to turn  
10 over his phone. Mr. Ramirez refused and explained that he was willing only to show  
11 them the photographs.

12           95. An officer in plain clothes, who later identified himself as a U.S.  
13 Immigration and Customs Enforcement (“ICE”) officer, confronted Mr. Ramirez and  
14 asked for Mr. Ramirez’s personal identification documents. Mr. Ramirez refused to  
15 turn over his documents and explained that he and his wife had already been  
16 inspected.

17           96. The ICE officer then said to Mr. Ramirez, “Give me one other reason to  
18 take you down.” He took Mr. Ramirez’s and Mr. Ramirez’s wife’s passports out of  
19 Mr. Ramirez’s shirt pocket, without Mr. Ramirez’s consent, and went to a nearby  
20 office.

21           97. A CBP officer then confiscated Mr. Ramirez’s cell phone, again without  
22 Mr. Ramirez’s consent, and scrolled through the photographs. As he did so, the  
23 officer made comments about Mr. Ramirez’s personal pictures.

24           98. The CBP officer eventually found the photographs Mr. Ramirez had  
25 taken from the pedestrian bridge. The officer then proceeded to delete these images,  
26 without Mr. Ramirez’s consent. After deleting the photographs, the CBP officer  
27 returned the cell phone to Mr. Ramirez.  
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1           99. When Mr. Ramirez later looked through the contents of his cell phone,  
2 he confirmed that the CBP officer had deleted all of the photographs that Mr. Ramirez  
3 had just taken, without Mr. Ramirez's consent or permission.

4           100. Throughout this encounter, which lasted ten to fifteen minutes after Mr.  
5 Ramirez and his wife had reached the bottom of the pedestrian bridge, Mr. Ramirez  
6 and his wife were separated from each other by CBP officers. The officers essentially  
7 created a buffer area around Mr. Ramirez while they questioned him and took his cell  
8 phone.

9           101. Moreover, the officers spoke to Mr. Ramirez in an aggressive and  
10 threatening manner throughout this encounter, despite the fact that Mr. Ramirez at  
11 no point posed a threat to the safety of the officers and at no point actively resisted  
12 arrest. Furthermore, Mr. Ramirez committed no crime and took no actions giving rise  
13 to a reasonable suspicion or probable cause that he had committed or was about to  
14 commit a crime under any law that could constitutionally have been applied to him.  
15 To the extent Mr. Ramirez may have violated any law making his photography  
16 illegal, that law is unconstitutional as applied to him.

17           102. Approximately ten to fifteen minutes after confiscating the passports,  
18 the ICE agent returned with the documents and gave them back to Mr. Ramirez. Mr.  
19 Ramirez and his wife were then allowed to continue on their way.

20           103. Neither Mr. Ramirez nor his wife felt free to leave at any point during  
21 this encounter. The officers had no warrant or other constitutional justification for  
22 the search and/or seizure of Mr. Ramirez's person or property.

### 23           **III. RECONSTRUCTION OF SAN YSIDRO PORT OF ENTRY**

24           104. In or around late 2007, a three-phase, multi-million dollar project  
25 commenced to reconstruct the San Ysidro port of entry. *See* GSA Fact Sheet:  
26 Reconfiguration and Expansion of the Existing Port of Entry (Sept. 2007), *available*  
27 *at* <https://bit.ly/2YENxV1> (last visited on May 19, 2019). The project was expected  
28

1 to be completed by Summer 2016. *See* U.S. General Services Administration, San  
2 Ysidro Port of Entry, <https://bit.ly/2VOEaFi> (last visited May 19, 2019). It is still not  
3 completed as of this date.

4 105. As part of this project, the old pedestrian bridge connecting the United  
5 States to Mexico, upon which Mr. Ramirez was standing at the time of the 2010  
6 incident, has been decommissioned.

7 106. In 2011, a new pedestrian bridge replaced the old bridge.

8 107. The new bridge runs east to west on the U.S. side of the border,  
9 connecting the transit plaza on San Ysidro Boulevard to the east and Camiones Way  
10 to the west. Like the old bridge, the new bridge passes over Interstate 5. *See* Elizabeth  
11 Aguilera, *San Ysidro's New Pedestrian Bridge Opens Friday*, SAN DIEGO UNION  
12 TRIBUNE, Apr. 14, 2011, available at <http://bit.ly/1OSWzEY>.

13 108. The bridge is open to and used by the public to cross over Interstate 5.  
14 It does not connect to the border crossing or any port of entry building or edifice;  
15 members of the public can and do frequently cross the bridge without crossing the  
16 border or entering or exiting any port of entry building.

17 109. The outdoor vehicle inspection areas where CBP officers conduct  
18 primary and secondary inspections are visible from this new bridge, as are portions  
19 of the City of San Diego and United States to the north and City of Tijuana and  
20 Mexico to the south.

21 110. Under the current configuration of the San Ysidro port of entry, Mr.  
22 Ramirez wishes to exercise his First Amendment rights to photograph and otherwise  
23 record matters exposed to public view, including CBP officers engaged in the public  
24 discharge of their duties, in but not limited to the following outdoor areas:

- 25 (a) The transit plaza on San Ysidro Boulevard and adjacent sidewalk.  
26 This transit plaza and adjacent sidewalk are outdoors and open to  
27 and used by the public. Members of the public can and frequently  
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1 do use the transit plaza and adjacent sidewalk without crossing  
2 the border or entering or exiting any port of entry building. The  
3 exit of the San Ysidro port of entry building—where individuals  
4 crossing the border on foot first enter into the United States—is  
5 readily visible to pedestrians in the transit plaza and adjacent  
6 sidewalk. Upon information and belief, part or all of the transit  
7 plaza and adjacent sidewalk is a public forum open to speech and  
8 expressive activity by tradition and past usage.

9  
10 (b) The east-to-west pedestrian bridge connecting San Ysidro  
11 Boulevard to the east and Camiones Way to the west. As  
12 explained, this bridge crosses over Interstate 5, so the outdoor  
13 vehicle inspection areas where CBP officers conduct primary and  
14 secondary inspections are visible to pedestrians.

15 (c) The footpath leading from the transit plaza and adjacent sidewalk  
16 to Mexico. This footpath lies to the southeast of the transit plaza,  
17 behind certain businesses lining the east side of San Ysidro  
18 Boulevard. The eastern side of the footpath is the base of a small  
19 hill and is lined with a concrete wall, above which there is a  
20 railroad. The western side of the footpath includes chainlink fence  
21 overlooking parking lots used by government officials.  
22 Approximately halfway down the footpath, there is a small tent  
23 behind the eastern concrete wall. This tent is staffed by CBP  
24 officials, who sometimes leave the tent to question pedestrians on  
25 the path as they move toward the entrance to Mexico. The  
26 footpath terminates at a structure through which pedestrians must  
27 pass to enter Mexico, which is staffed by Mexican officials,  
28 including Mexican law enforcement officers. Members of the

1 public can walk along this footpath without crossing the border  
2 or entering or exiting any port of entry building; it is possible to  
3 turn around and walk back towards the transit plaza and adjacent  
4 sidewalk at any point prior to crossing into the Mexican border  
5 building.

6 (d) The outdoor bi-directional pedestrian crossing area known as  
7 “PedWest,” located adjacent to the planned transit center at  
8 Virginia Avenue.

9  
10 111. In or near these areas, there are one or more official U.S. government  
11 signs posted that appear to prohibit some or all forms of photography from these  
12 outdoor areas.

13 112. The ongoing reconstruction of the San Ysidro port of entry has neither  
14 lessened nor eliminated public concern about civil and human rights violations along  
15 the U.S.-Mexico border. Indeed, given that improved infrastructure at the San Ysidro  
16 port of entry will accommodate a greater number of border crossers each day, public  
17 oversight of federal law enforcement activity at the port is indispensable.

18 113. Mr. Ramirez remains deeply committed to documenting civil and  
19 human rights violations throughout the border region, including San Ysidro. He is  
20 particularly concerned about the lack of adequate oversight, transparency, and  
21 accountability within CBP, and about incidents involving CBP officials’ excessive  
22 or unwarranted use of force (or other abusive behavior) and racial and religious  
23 profiling.

#### 24 **IV. NECESSITY OF AND ENTITLEMENT TO INJUNCTIVE RELIEF**

25 114. Since the 2010 incident, Mr. Ramirez has refrained from photographing  
26 matters and events exposed to public view from outdoor and exterior areas of the San  
27 Ysidro port of entry, including CBP officers engaged in the public discharge of their  
28 duties.



1           115. As a result of his experience, and in light of Defendants’ interpretation  
2 and enforcement of above-mentioned policies and procedures, Mr. Ramirez has a  
3 reasonable fear that if he attempts to photograph matters and events exposed to public  
4 view from outdoor or exterior areas of the San Ysidro port of entry, including but not  
5 limited to those described above, he will again be subject to interference by  
6 Defendants and/or their agents. Such interference may include Mr. Ramirez’s  
7 detention or arrest and the loss of his personal property, such as his cell phone and  
8 photographs.

9           116. To document CBP officers’ official actions, including potential civil and  
10 human rights abuses, Mr. Ramirez is prepared, and intends, to resume photographing  
11 matters and events exposed to public view at San Ysidro port of entry (from outdoor  
12 places including but not limited to the areas described above) as soon as he is able to  
13 do so without CBP interference.

14           117. Unless enjoined by this Court, Defendants can and will continue to  
15 interpret and enforce the above-mentioned policies and procedures to prohibit Mr.  
16 Ramirez from photographing matters and events exposed to public view from  
17 outdoor or exterior areas of the San Ysidro port of entry, including but not limited to  
18 those described above.

19           118. As a result of Defendants’ interpretation and enforcement of the above-  
20 mentioned policies and procedures, Mr. Ramirez has been chilled, hindered, deterred,  
21 and prevented from freely exercising his First Amendment right to photograph  
22 matters and events exposed to public view from outdoor or exterior areas of the San  
23 Ysidro port of entry, including but not limited to those described above, including  
24 CBP officers or their agents engaged in the public discharge of their duties.

25           119. Mr. Ramirez is thus suffering, and will continue to suffer, irreparable  
26 harm as a result of refraining from exercising his First Amendment rights.

27           120. Mr. Ramirez has no adequate remedy at law.  
28

1 **CLAIMS FOR RELIEF**

2 **CLAIM ONE**

3 **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—**  
4 **BY BOTH PLAINTIFFS AGAINST ALL DEFENDANTS)**

5 121. Plaintiffs re-allege and incorporate by reference each preceding  
6 paragraph, as if fully set forth herein.

7 122. The Defendants’ allegedly applicable policies (including but not limited  
8 to the Policy and Ground Rules) and practices constitute prior restraints that violate  
9 the First Amendment because they require advance permission to take photographs  
10 of matters or events of public interest exposed to public view in exterior and outdoor  
11 areas of port of entry property and provide unlimited discretion for Defendants and/or  
12 their agents to grant or deny permission to take such photographs. Such limitless  
13 discretion inherently creates an unacceptable risk of viewpoint discrimination,  
14 regardless of whether or how it is in fact exercised.

15 **CLAIM TWO**

16 **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—**  
17 **BY PLAINTIFF ASKINS AGAINST ALL DEFENDANTS EXCEPT SIDNEY**  
18 **AKI)**

19 123. Plaintiffs re-allege and incorporate by reference each preceding  
20 paragraph, as if fully set forth herein.

21 124. The Defendants’ policies and practices violate the First Amendment by  
22 unreasonably restricting Mr. Askins’s right to take photographs of matters and events  
23 of public interest exposed to public view from exterior or outdoor areas of the  
24 Calexico port of entry, because it is irrational to prohibit photography of such matters  
25 and events, regardless of the nature of the forum from which they are taken.

26 125. To the extent the Defendants enforce policies or implement practices  
27 that prevent photography of matters or events of public interest in any area of  
28 Calexico that is a traditional or designated public forum, such enforcement or

1 implementation violates the First Amendment because it is not narrowly tailored to  
2 any substantial governmental interest and does not leave open ample alternative  
3 channels for expression.

4 **CLAIM THREE**

5 **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—**  
6 **BY PLAINTIFF RAMIREZ AGAINST ALL DEFENDANTS EXCEPT**  
7 **DAVID A. SALAZAR)**

8 126. Plaintiffs re-allege and incorporate by reference each preceding  
9 paragraph, as if fully set forth herein.

10 127. The Defendants’ policies and practices violate the First Amendment by  
11 unreasonably restricting Mr. Ramirez’s right to take photographs of matters and  
12 events of public interest exposed to public view from exterior or outdoor areas of the  
13 San Ysidro port of entry, because it is irrational to prohibit photography of such  
14 matters and events, regardless of the nature of the forum from which they are taken.

15 128. To the extent the Defendants enforce policies or implement practices  
16 that prevent photography of matters or events of public interest in any area of San  
17 Ysidro that is a traditional or designated public forum, such enforcement or  
18 implementation violates the First Amendment because it is not narrowly tailored to  
19 any substantial governmental interest and does not leave open ample alternative  
20 channels for expression.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully request that the Court:

23 A. Declare Defendants’ allegedly applicable policies and practices  
24 unconstitutional as applied to photography of matters and events exposed to public  
25 view from exterior or outdoor areas of the Calexico and San Ysidro ports of entry;

26 B. Preliminarily and permanently enjoin all Defendants, their successors,  
27 agents, servants and employees, and anyone acting in concert with Defendants or any  
28 of the foregoing persons, from preventing, impeding, or otherwise interfering with

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Plaintiffs' First Amendment rights to make and retain photographs, video recordings, or any other recordings of matters or events exposed to public view from exterior or outdoor areas of the Calexico and San Ysidro ports of entry;

- C. Award Plaintiffs' costs, including reasonable attorneys' fees; and
- D. Award such other relief as the Court deems proper.

Dated: June 7, 2019

By: /s Mitra Ebadolahi  
MITRA EBADOLAH  
mebadolahi@aclusandiego.org

*Attorney for Plaintiffs*  
*Ray Askins and Christian Ramirez*