

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

4
5 Attorney for Plaintiff LAURA LEIGH

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 LAURA LEIGH,

10 Plaintiff,

Case No. 3:10-cv-00417-LRH-VPC

11 vs.

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

16 Defendants.

17
18 **MOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS**
SHOULD NOT BE HELD IN CONTEMPT, AND/OR
FOR OTHER RELIEF

19 Plaintiff LAURA LEIGH moves for an order to show cause why the Defendants
20 should not be held in contempt of court and sanctioned for having defied or disregarded
21 that portion of the court's Temporary Restraining Order ("TRO") entered July 16, 2010
22 at 11:10 a.m. which reads as follows:

23 As to Leigh's First Amendment challenge to the closure of
24 public lands during the gather, the court shall grant Leigh's
25 temporary restraining order. Leigh argues that a blanket
26 closure of 27,000 acres of public land on which the
27 Tuscarora Gather is going to take place is a prior restraint on
28 her first Amendment rights because she will be unable to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

observe and report on the health of the horses and the BLM's management of the gather. The court agrees and finds that she has made a sufficient showing of probable success on the merits to warrant granting the motion. As such, ***the court enjoins the blanket closure of public land access during the gather and shall lift the closure as written with regard to land access.***

* * *

[t]he court finds that the blanket closure as written, in so far as it relates to public access, is unconstitutional because it prevents the public from observing the gather, even in such a way as to not interfere with the gather. . . .

* * *

IT IS FURTHER ORDERED, that the closure of land access to 27,000 acres of public land in Elko County, Nevada is LIFTED without prejudice to the BLM adopting reasonable closure restrictions upon such access. . . .

Order, July 16, 2010 at 11:10 a.m.

The Defendants have not complied with this portion of the Order. As of this writing the Defendants have thus far, created an impenetrable barrier to the Plaintiff's access or observation of the Owyhee Gather. The Defendants caused Plaintiff to be completely shut out from any observation whatsoever of wild horse gathering, even though such gather activities resumed nearly concurrently to when the court lifted its temporary injunction. For the past seventy-two (72) or more hours since the court's Order was imposed, the Defendants' artificial barriers effectively precluded, and *still* preclude Ms. Leigh from visualizing, seeing, hearing or photographing any gather activity whatsoever. Instead, Ms. Leigh was the brunt of intimidation by law enforcement types apparently arranged to be present by BLM, to hold Ms. Leigh at bay.

1 Ms. Leigh's only videos include segments documenting her encounters with officials,
2 bureaucrats and police all of whom remained steadfast while underscoring the clear
3 intent and demonstrable theme of the Defendants which was this: Stay away.

4 By the end of today the Owyhee gather would have been completed. By the end
5 of today the Defendants would have effectively shut out the Plaintiff completely,
6 irrespective of the court's Order, from observing in any aspect whatsoever, this Owyhee
7 Gather. What the Defendants appear to have accomplished was instead, hand-pick
8 press to observe or photograph some gather activity. If members of the press or
9 journalists were allowed access to the Gather, the Defendants refused Ms. Leigh the
10 same access. This is how the Defendants purportedly complied with the Order.

11 This unfortunate instance of government abuse caused Ms. Leigh to incur
12 damages in having missed reporting on assignments, she is now fearful of her personal
13 safety while in remote areas of public lands, and she has been deprived the very
14 fundamental rights this court recognized and apparently thought it could protect when
15 issuing its Order.

16 More than anything else, the Plaintiff seeks the court's help in initiating, if it able
17 to do so, an effective, stern method by which she would be granted immediate access
18 and also that she would somehow, be protected from further threat and intimidation
19 where she's done nothing wrong.

20 This Motion is made per 18 U.S.C. § 401 and also the inherent powers of the
21 court to enforce and defend its own orders from defiance. This Motion is based on the
22 pleadings and papers on file with the court and in particular, the court's Order entered
23 Friday, July 16, 2010 at 11:10 a.m.

24 Dated this 19th day of July 2010

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

27 /S/

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

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
3 **MOTION TO SHOW CAUSE**

4 The BLM and the Department of the Interior have made one issue clear: A court
5 order does not stop the BLM from precluding press or journalists except those of their
6 own choosing, from observing and reporting the BLM at work.

7 On Friday, July 16 following the entry of the Order, the undersigned left
8 Defendants' counsel, Mr. Petersen, a voice mail on his cell phone. The message asked
9 Mr. Petersen if he could have his client direct in which direction Ms. Leigh should travel
10 to observe the Gather Saturday morning. It made a difference in time because of the
11 vastness of the region which, depending in which area the Gather would take place,
12 would cause Ms. Leigh to head toward the area in significantly different directions that
13 account for hours of driving in different directions. No one returned that call.

14 Ms. Leigh's account of what transpired in the range since the court issued its
15 Order, is stated in the attached Declaration. Ms. Leigh's friends are likewise prepared
16 to provide testimony of these described incidents at the court's request.

17 Ms. Leigh arrived at 4:00 a.m. Saturday morning, reporting to the BLM office in
18 Elko, Nevada. She went there to obtain BLM instructions and limitations, if any, the
19 BLM might have imposed following the court's order. She was first told she was not
20 allowed near the Gather area. The BLM chose to call the Elko County Sheriff's Office
21 on her.

22 Later in the morning the BLM advised her that the Gather was now taking place
23 on private property; and, the private land owner didn't want anyone but authorized
24 government personnel present on the land. The BLM person advised there was a letter
25 from the landowner stating this fact. When asked to see the letter the BLM person
26 advised she could obtain it through a Freedom of Information Act ("FOIA") request.
27 Upon further discussion the BLM produced a letter. The letter did not indicate the
28 public or Ms. Leigh were precluded. Rather it granted permission for certain
veterinarians to assist. *[Due to the sensitive nature of the owner's identity, the*

1 *undersigned is prepared to provide a photographic copy to the court for "in camera"*
2 *review, of the document shown to Plaintiff at the Elko BLM office if the court so*
3 *requires. The Defendants maintain a copy of this letter in their possession at the Elko*
4 *BLM office].*

5 Ms. Leigh was also advised that if she trespassed she would be subject to arrest.

6 The experiences Ms. Leigh encountered by BLM and other officials are outlined
7 in her attached Declaration.

8 Also, Defendants did not cause an effective lifting of the area closure until well
9 into the afternoon of Saturday, July 17. The Defendants caused the attachment to be
10 sent to the undersigned at 2:30 p.m. Saturday. By then the Defendants had already
11 gathered horses two full days following the courts order requiring them to lift the
12 closure. See **EXHIBIT "A"** attached.

13
14 ***Legal Standard***

15 Title 18 U.S.C. § 401 states, "A court of the United States shall have power to
16 punish by fine or imprisonment, or both, at its discretion, such contempt of its authority,
17 and none other, as (1) Misbehavior of any person in its presence or so near thereto as
18 to obstruct the administration of justice; (2) Misbehavior of any of its officers in their
19 official transactions; (3) Disobedience or resistance to its lawful writ, process, order,
20 rule, decree, or command." Civil contempt is encompassed within this section. See
21 *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1409 n. 4 (9th Cir.1990).

22 Failure to obey the terms of a TRO or preliminary injunction constitutes a
23 contempt of court. Federal courts have inherent power to punish such contempt and to
24 coerce compliance with their orders. See, *International Union, UMWA v. Bagwell*, 512
25 U.S. 821, 831-32, 114 S. Ct 2552, 255902560 (inherent "power of self defense"); 18
26 USC Sec. 401-401.

27 The Ninth Circuit overturned a trial court's finding that a party committed civil
28 contempt for failing to comply with a TRO on the basis that the trial court's TRO was

1 “improperly issued ex parte and failed to describe the prohibited conduct with
2 specificity.” *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1134 (9th Cir.2006).
3 Nevertheless, the court determined that, “Civil contempt in this context consists of a
4 party's disobedience to a specific and definite court order **by failure to take all**
5 **reasonable steps within the party's power to comply**. *Id.* (Emphasis added).

6 The contempt need not be willful; however, a person should not be held in
7 contempt if his action appears to be based on a good faith and reasonable
8 interpretation of the court's order.” *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126,
9 1130 (9th Cir.2006), quotations omitted.

10 “Whether contempt is civil or criminal depends on the intended effect of the
11 penalty imposed. If the intent is remedial, or if the penalty is conditional in that it is
12 meant to compel the defendant to act, the contempt is civil. If the intent is punitive and
13 the penalty is unconditional, the contempt is criminal.” *United States v. Laurins*, 857
14 F.2d 529, 534 (9th Cir.1988).

15 The U.S. Supreme Court has stated, “A contempt fine accordingly is considered
16 civil and remedial if it either coerces the defendant into compliance with the court's
17 order, or compensates the complainant for losses sustained. Where a fine is not
18 compensatory, it is civil only if the contemnor is afforded an opportunity to purge. Thus,
19 a flat, unconditional fine totaling even as little as \$ 50 announced after a finding of
20 contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid
21 the fine through compliance.” *Int'l Union v. Bagwell*, 512 U.S. 821, 829, 114 S. Ct.
22 2552, 129 L. Ed. 2d 642 (1994). “If the fine, or any portion of the fine, is coercive, it
23 should be payable to the court. Moreover, in determining how large a coercive sanction
24 should be the court should consider the character and magnitude of the harm
25 threatened by continued contumacy, and the probable effectiveness of any suggested
26 sanction.” *General Signal Corp. v. Donallco, Inc.*, 787 F. 2d 1376, 1380 (9th
27 Cir.1986)(citations omitted).

28 “[C]ivil contempt sanctions, or those penalties designed to compel future

1 compliance with a court order, are considered to be coercive and avoidable through
2 obedience, and thus may be imposed in an ordinary civil proceeding upon notice and
3 an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is
4 required.” *Int'l Union v. Bagwell*, 512 U.S. 821, 827, 114 S.Ct. 2552, 129 L.Ed.2d 642
5 (1994). “The party alleging civil contempt must demonstrate that the alleged contemnor
6 violated the court's order by clear and convincing evidence, not merely a
7 preponderance of the evidence.” *In re Dual-Deck Video Cassette Recorder Antitrust*
8 *Litig.*, 10 F.3d 693, 695 (9th Cir.1993). Where, “the affidavits offered in support of a
9 finding of contempt are uncontroverted, we have held that a district court's decision not
10 to hold a full-blown evidentiary hearing does not violate due process.” *Peterson v.*
11 *Highland Music*, 140 F.3d 1313, 1324 (9th Cir.1998).

12 13 **Discussion**

14 The BLM was in charge of the area where they intentionally chose to place their
15 horse trap areas to keep this gather from the public's eye. From how Ms. Leigh was
16 handled by officials on the range, it appears they arranged it such that they could use
17 as the excuse, “private land” to prevent or block the press and journalists such as Ms.
18 Leigh, from entering the Gather site.

19 The Defendants chose the Gather site. The Defendants chose the trap site.
20 The Defendants chose the particular private land on which to complete the Gather. The
21 Defendants chose the Elko County Sheriff's Department and perhaps others, to cause
22 the Plaintiff and her friends to be intimidated to the point where they were fearful of their
23 safety and fearful from being falsely arrested. And such action by officials, whether by
24 the BLM or others, caused the Plaintiff to leave the range.

25 In *Roe v. Operation Rescue*, 54 F. 3d 133 (3rd Cir. 1995) the Circuit Court
26 reversed a district court's Contempt order on an “abuse of discretion” standard after the
27 Plaintiff presented evidence that the defendant breached the court's permanent
28 injunction against those who were trespassing and blocking ingress or egress to

1 abortion clinics in Philadelphia. Nonetheless, the court stated clearly, the following
2 concept:

3 [W]hen a party . . . urges others to participate in conduct
4 violative of the Injunction, such encouragement may itself
5 suffice to support a finding of contempt. *Id.*, at 139.

6 In this instance the Defendants chose to control what was transpiring during the
7 gather, whether on public or private lands close to the Gather or farther away where
8 they met various “officials” who caused the Plaintiff to stay away. Plaintiff believes,
9 based on the facts presented in her Declaration, that by design of the Gather by the
10 Defendants, they chose a method which prevented her total exclusion from the Gather,
11 irrespective of the court’s Order.

12 Although the Defendants may contend they somehow, “substantially complied”
13 with the order, this defense is available only where the Defendants made, every
14 reasonable effort . . . to comply.” *Go-Video, Inc. v. Motion Picture Ass’n of America*, 10
15 F. 3d 693, 695 (9th Cir. 1993).

16 Plaintiff is not deserving of this horrific conduct by officials. Plaintiff respectfully
17 requests the court issue an order of contempt and/or fashion a stern, effective remedy
18 which causes this offensive and dangerous conduct to halt and which assures her that
19 she would not be harmed when exercising her First Amendment right of free speech
20 and her freedoms as a journalist, to observe and report what transpires there.

21 Dated this 19th day of July 2010

22 RESPECTFULLY SUBMITTED,
23 LAW OFFICE OF GORDON M. COWAN

24 /S/

25 _____
26 Gordon M. Cowan Esq. (SBN 1781)
27 Attorney for Plaintiff LAURA LEIGH

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

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

I certify that I am employed at 1495 Ridgeview Drive, #90, Reno, Nevada, 89519; and, on this date I served the foregoing document(s) on all parties to this action by:

 X Electronic service:

Erik Petersen, Esq.	erik.peterson@usdoj.gov
Ayako Sato, Esq.	ayako.sato@usdoj.gov
Greg Addington	greg.addington@usdoj.gov

 Placing an original or true copy thereof in a sealed envelope with postage prepaid in the United States Mail at Reno, Nevada, following ordinary business practices

Erik Peterson, Esq.
U.S. Dept. of Justice
Wildlife & Marine Resources Section
Ben Franklin Station
P.O. Box 7369
Washington, D.C. 20044

Ayako Sato, Esq.
U.S. Dept. of Justice
Natural Resources Section
Ben Franklin Station
P.O. Box 663
Washington, D.C. 20044

Gregory W. Addington
U.S. Attorney's Office
100 West Liberty Street.
Suite 600
Reno, NV 89501

 Overnight or hand delivery to:
Erik Peterson, Esq.
U.S. Dept. of Justice
Wildlife & Marine Resources Section
601 D Street, N.W., Room 3909
Washington, D.C. 20004

Ayako Sato, Esq.
U.S. Dept. of Justice
Wildlife & Marine Resources Section
601 D Street, N.W., Room 3133
Washington, D.C. 20004

Gregory W. Addington
U.S. Attorney's Office
100 West Liberty Street.
Suite 600
Reno, NV 89501

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Facsimile to:

Erik Peterson, Esq.
Ayako Sato, Esq.
Greg Addington, Esq.

202 305 0275
202 305 0506

DATED this 19th day of July 2010

/S/

G.M. Cowan