

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
RAY ASKINS and CHRISTIAN RAMIREZ
(b) County of Residence of First Listed Plaintiff Imperial County
(c) Attorneys (Firm Name, Address, and Telephone Number)
M. Andrew Woodmansee (CA SBN 201780) (see Attachment A)
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DEFENDANTS
UNITED STATES DEPARTMENT OF HOMELAND SECURITY; et al.
(see Attachment B)
County of Residence of First Listed Defendant Washington D.C.
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
'12CV2600 W BLM
Attorneys (If Known)
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Washington, DC 20530-0001 Telephone: (202) 514-2001

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. § 702; 28 U.S.C. § 2201; U.S. Const. amend. I, IV
Brief description of cause:
Violation of First and Fourth Amendment rights

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 10/24/2012 SIGNATURE OF ATTORNEY OF RECORD s/M. Andrew Woodmansee

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**ATTACHMENT A TO
ASKINS v. U.S. DEPT. OF HOMELAND SECURITY
CIVIL COVER SHEET**

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**ATTACHMENT B TO
ASKINS v. U.S. DEPT. OF HOMELAND SECURITY
CIVIL COVER SHEET**

DEFENDANTS:

UNITED STATES DEPARTMENT OF HOMELAND SECURITY; DAVID V. AGUILAR, Deputy Commissioner of United States Customs and Border Protection; CALEXICO PORT DIRECTOR BILLY WHITFORD; SAN YSIDRO PORT DIRECTOR FRANK JARAMILLO; UNITED STATES CUSTOMS & BORDER PROTECTION OFFICERS DOES 1 through 15; and DOES 16 through 50.

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11 Attorneys for Plaintiffs
12 RAY ASKINS AND CHRISTIAN RAMIREZ

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 RAY ASKINS and CHRISTIAN RAMIREZ,

17 Plaintiffs,

18 v.

19 UNITED STATES DEPARTMENT OF
20 HOMELAND SECURITY; DAVID V.
AGUILAR, Deputy Commissioner of United
21 States Customs and Border Protection;
CALEXICO PORT DIRECTOR BILLY
22 WHITFORD; SAN YSIDRO PORT
DIRECTOR FRANK JARAMILLO;
23 UNITED STATES CUSTOMS & BORDER
PROTECTION OFFICERS DOES 1 through
24 15; and DOES 16 through 50,

25 Defendants.
26
27
28

Case No. **'12CV2600 W BLM**

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMAGES**

JURY TRIAL DEMANDED

1 Plaintiffs Ray Askins and Christian Ramirez (collectively, “Plaintiffs”) bring this First and
2 Fourth Amendment action against the U.S. Department of Homeland Security, U.S. Customs and
3 Border Protection Deputy Commissioner David V. Aguilar, Calexico Port Director Billy
4 Whitford, San Ysidro Port Director Frank Jaramillo, U.S. Customs and Border Protection
5 Officers Does 1-15, and Defendants Does 16-50 (collectively, “Defendants”), and allege as
6 follows.

7 **NATURE OF THE ACTION**

8 1. This is a civil action to remedy violations of Plaintiffs’ First and Fourth
9 Amendment rights by officers of U.S. Customs and Border Protection (“CBP”), an agency within
10 the Department of Homeland Security.

11 2. The First Amendment right to freedom of speech includes the right to take
12 photographs and make video recordings of matters such as U.S. ports of entry and federal law
13 enforcement officers engaged in the public discharge of their duties. The U.S. Department of
14 Justice (“DOJ”) agreed in a letter providing guidance for potential settlement negotiations in
15 *Christopher Sharp v. Baltimore City Police Department, et. al.*, No. 1:11-cv-02888-BEL (D.
16 Md.), advising that “[r]ecording governmental officers engaged in public duties is a form of
17 speech through which private individuals may gather and disseminate information of public
18 concern, including the conduct of law enforcement officers.” (Exhibit A, DOJ Guidance Letter
19 dated May 14, 2012, at 2 (citations omitted).) DOJ further advised that “the justification for this
20 right is firmly rooted in long-standing First Amendment principles” and that “[t]he right to
21 ‘[g]ather[] information about government officials in a form that can readily be disseminated to
22 others serves a cardinal First Amendment interest in protecting and promoting ‘the free discussion
23 of governmental affairs.’” (*Id.* at 3 (citations omitted).)

24 3. CBP has an unconstitutional policy and practice of prohibiting the use of cameras
25 and video recording devices at or near CBP-controlled facilities, including U.S. ports of entry,
26 without the CBP’s prior approval. Acting pursuant to this policy and practice, CBP officers
27 violated Plaintiffs’ First Amendment rights by directing Plaintiffs to cease taking photographs
28 and erasing the photographs they did take of CBP personnel and buildings at U.S. ports of entry.

1 (collectively, with the Doe Officers, the “Doe Defendants”) are unknown to Plaintiffs, who
2 therefore sue the Doe Defendants by fictitious names. Plaintiffs reserve the right to amend this
3 Complaint to further identify the Doe Defendants when Plaintiffs have ascertained these
4 defendants’ true names and capacities.

5 11. All defendants are sued in their official capacities for declaratory and injunctive
6 relief. Mr. Askins also sues Officers Does 1-15 in their individual capacities for damages.

7 12. Injunctive relief is sought against each defendant as well as each defendant’s
8 agents, assistants, successors, employees, attorneys, and all persons acting in concert or
9 cooperation with any of them or at the direction or under the control of any of them.

10 **JURISDICTION AND VENUE**

11 13. The Court has jurisdiction under 28 U.S.C. § 1331 because Defendants are acting
12 on behalf of the United States and this action arises under the First and Fourth Amendments to the
13 United States Constitution.

14 14. The Court may grant declaratory and injunctive relief for the constitutional
15 violations alleged here pursuant to 5 U.S.C. § 702, which waives the sovereign immunity of the
16 United States for relief other than money damages; 28 U.S.C. § 2201; and/or Federal Rules of
17 Civil Procedure 57 and 65. Additionally, pursuant to *Bivens v. Six Unknown Federal Narcotics*
18 *Agents*, 403 U.S. 388 (1971), the Court may award damages against the Doe Officers, who are
19 sued in their individual capacities.

20 15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (e),
21 because the events that give rise to this action occurred within this district, and because one or
22 more defendants reside in this district.

23 16. The Court has personal jurisdiction over Officers Does 1-15, all of whom, on
24 information and belief, are residents of the state of California.

25 **FACTS**

26 **PLAINTIFF ASKINS**

27 17. Mr. Askins is a U.S. citizen living primarily in Mexicali, Mexico. He travels
28 frequently to the United States, often to attend meetings or to visit his home in Lake Arrowhead,

1 California. He maintains and contributes to a blog that primarily addresses environmental issues
2 and human rights abuses in the U.S.-Mexico border region. This work involves extensive
3 research, investigation, and analysis of CBP border activities. Additionally, this work has
4 culminated in numerous reports prepared by Mr. Askins and submitted to U.S. Representative
5 Bob Filner, whose congressional district includes the entire California-Mexico border.

6 18. Mr. Askins's claims arise from his attempt to take photographs of the Calexico-
7 Mexicali port of entry for a presentation at a conference entitled "Health Impacts of Border
8 Crossings," held on May 4, 2012, in San Ysidro, California. According to its website, the
9 conference was funded by the Southwest Consortium on Environmental Research and Policy.
10 The website also states: "This binational conference focuses on local health impacts of the U.S.-
11 Mexico border. The emphasis is on avenues for reduction of exposures to traffic pollutants
12 experienced by people crossing the border at the U.S.-Mexico Ports of Entry, workers and the
13 community on both sides of the border. The conference includes participation of researchers and
14 stakeholders from the San Diego-Tijuana region and other areas along the U.S.-Mexico border
15 with similar issues." See <http://www.healthyborders2012.com/#!/about> (attached as Exhibit B to
16 this Complaint). Furthermore, the conference materials state that, as an outcome of the
17 conference, "[a] White Paper is to be sent to the Air Quality and Environmental Health Task
18 Forces of the EPA Border 2012 initiative as well as local and state agencies and regional
19 stakeholders along the border."

20 19. In connection with his conference presentation, Mr. Askins wished to photograph
21 the secondary inspection area of the Calexico-Mexicali port of entry to demonstrate that the CBP
22 does not make full and proper use of this inspection area, leading to longer delays at the border
23 crossing and, accordingly, to more pollution arising from emissions of vehicles waiting in line to
24 cross the border or enter the port of entry.

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

1 21. On or about April 19, 2012, Mr. Askins called Officer Campos to follow up.
2 When Officer Campos did not answer, Mr. Askins left a voicemail message stating that, instead
3 of taking photographs inside the building, Mr. Askins would stand on the street in Calexico and
4 take photographs of the exit of the secondary inspection area.

5 22. On or about April 19, 2012, at approximately 3:21 p.m., Mr. Askins was standing
6 on the shoulder of a public street in Calexico, California, approximately 50-100 feet from the exit
7 from the secondary inspection area at the Calexico port of entry. From this vantage point, Mr.
8 Askins took three or four photographs of the exit of the secondary inspection area, including the
9 following photograph:



20
21 23. While taking these photographs, Mr. Askins was not engaged in any form of
22 commercial speech or activity. Mr. Askins took these photographs for political and/or other non-
23 commercial purposes.

24 24. Additionally, when taking these photographs, Mr. Askins was not engaged in the
25 act of crossing the border. Mr. Askins was outside the port of entry on the U.S. side of the border
26 when taking the photographs.

27 25. Shortly after he took the photos, a number of male CBP officers (Officers Does 1-
28 15) approached Mr. Askins. One or two of the officers (Officer Doe 1 and/or Officer Doe 2)

1 demanded that Mr. Askins delete the photos. When Mr. Askins stated that he would not do so,
2 Officer Doe 1 and/or Officer Doe 2 stated that they would smash the camera if Mr. Askins did not
3 delete the photos. Mr. Askins again declined to delete the photos, explaining that they were his
4 property. One or more officers (Officers Does 1-15) then handcuffed Mr. Askins from behind
5 and took his camera, passport, car keys, and hat.

6 26. Throughout this encounter, the CBP officers—particularly Officer Doe 1—spoke
7 to Mr. Askins in an aggressive and threatening manner, despite the fact that Mr. Askins at no
8 point posed a threat to the safety of the officers and at no point actively resisted arrest.
9 Furthermore, Mr. Askins committed no crime and took no actions giving rise to a reasonable
10 suspicion or probable cause that he had committed or was about to commit a crime.

11 27. After Mr. Askins was handcuffed and his possessions taken, Officer Doe 1
12 forcefully led Mr. Askins into a small room inside the secondary inspection area, holding Mr.
13 Askins's right arm in a tight grip that caused significant pain and bruising on the inside of Mr.
14 Askins's arm. The officer told Mr. Askins to sit down. Mr. Askins was not free to leave the
15 room.

16 28. After about 20 minutes, Officer Doe 1 led Mr. Askins to a separate room where he
17 subjected Mr. Askins to an invasive and embarrassing physical search. During the search, Mr.
18 Askins remained clothed and Officer Doe 1 used his hands to pat Mr. Askins's entire body. Mr.
19 Askins felt that he was being groped, and experienced particular discomfort when Officer Doe 1
20 unnecessarily squeezed and touched Mr. Askins's groin area several times.

21 29. One or more CBP officers (Officers Does 1-15) then told Mr. Askins that he was
22 free to go and returned his belongings. Officer Doe 4 escorted him to the exit. From the moment
23 CBP officers first detained Mr. Askins to the moment they told him he was free to go,
24 approximately 25-35 minutes elapsed. The officers had no warrant or other justification for the
25 search and/or seizure of Mr. Askins's person or property.

26 30. When Mr. Askins later scrolled through the pictures on his digital camera, he
27 discovered that all but one of the photographs he just had taken of the port of entry had been
28 deleted.

1 36. Mr. Ramirez’s claims arise from his experience crossing the border at the San
2 Ysidro port of entry on Father’s Day 2010. On or about that day—June 20, 2010—Mr. Ramirez
3 and his wife crossed the border into Mexico to visit his father. They parked on the U.S. side of
4 the border and walked into Mexico through the pedestrian entrance at San Ysidro.

5 37. After a late lunch, Mr. Ramirez and his wife returned to the United States. They
6 passed through primary inspection at the San Ysidro port of entry without incident. They then
7 crossed a pedestrian bridge that passes over, among other things, the southbound lanes of
8 Interstate 5.

9 38. While crossing this pedestrian bridge, Mr. Ramirez noticed that, at a southbound
10 security checkpoint below him, which was staffed by CBP officers, women were being inspected
11 and patted down by male CBP officers. Mr. Ramirez’s wife commented that the officers
12 appeared to be pulling aside only women for inspection.

13 39. Mr. Ramirez observed the checkpoint for approximately ten to 15 minutes. During
14 that time he took approximately ten pictures using his cell phone camera, out of concern that the
15 CBP officers might have been acting inappropriately.

16 40. While taking the photographs at issue on or about June 20, 2010, Mr. Ramirez was
17 not engaged in any form of commercial speech or activity. Mr. Ramirez took these photographs
18 for political and/or other non-commercial purposes.

19 41. Additionally, when taking these photographs, Mr. Ramirez was not engaged in the
20 act of crossing the border. Mr. Ramirez was in the United States when taking the photographs.

21 42. While observing the checkpoint, Mr. Ramirez and his wife were approached by
22 two men who appeared to be private security officers. One of the private security officers asked
23 for Mr. Ramirez’s personal identification documents. Mr. Ramirez explained that he and his wife
24 had already passed through inspection and declined to hand over his documents again.

25 43. One of the private security officers then ordered Mr. Ramirez to stop taking
26 photographs. Mr. Ramirez refused and took a picture of the private security officer. Acting
27 aggressively, the private security officer attempted to grab Mr. Ramirez. Mr. Ramirez stopped
28 taking photographs and said “let’s go” to his wife.

1 44. Mr. Ramirez and his wife then began to descend the pedestrian bridge, now
2 followed by the private security officers, whom Mr. Ramirez heard make a radio call for backup.
3 At the bottom of the bridge, approximately five to seven CBP officers were waiting. They asked
4 whether and why Mr. Ramirez had taken any photographs. Mr. Ramirez responded that he had
5 taken photographs because he had witnessed what he believed to be inappropriate activity by
6 CBP officers at the checkpoint—namely, the patting down of women by male officers.

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

10 46. An officer in plain clothes then confronted Mr. Ramirez and asked for Mr.
11 Ramirez's personal identification documents. The officer later identified himself as a U.S.
12 Immigration and Customs Enforcement ("ICE") agent. Mr. Ramirez refused to turn over his
13 documents and explained that they had already been inspected. The ICE officer said to Mr.
14 Ramirez, "Give me one other reason to take you down." The officer took Mr. Ramirez's and Mr.
15 Ramirez's wife's passports out of Mr. Ramirez's shirt pocket and went to a nearby office.

16 47. A CBP officer then took Mr. Ramirez's phone and scrolled through the photos,
17 making a comment about Mr. Ramirez's personal pictures. When Mr. Ramirez later looked
18 through the contents of his phone, he discovered that the CBP officer who took his phone had
19 deleted all of the photos that Mr. Ramirez had just taken at the CBP checkpoint.

20 48. Throughout this encounter, officers spoke to Mr. Ramirez in an aggressive and
21 threatening manner, despite the fact that Mr. Ramirez at no point posed a threat to the safety of
22 the officers and at no point actively resisted arrest. Furthermore, Mr. Ramirez committed no
23 crime and took no actions giving rise to a reasonable suspicion or probable cause that he had
24 committed or was about to commit a crime.

25 49. Approximately ten to 15 minutes after the ICE agent had taken the passports
26 belonging to Mr. Ramirez and Mr. Ramirez's wife, the ICE agent returned with the documents
27 and gave them back to Mr. Ramirez. Mr. Ramirez and his wife were then allowed to continue on
28 their way.

1 restricts and/or hinders the ability of persons such as Plaintiffs to take photographs and make
2 video recordings of matters such as U.S. ports of entry and federal law enforcement officers
3 engaged in the public discharge of their duties. This CBP policy and/or practice continues to be
4 an impermissible prior restraint on speech and to chill, deter, and infringe Mr. Askins's First
5 Amendment right to freedom of speech.

6 56. Furthermore, the violation of Mr. Askins's First Amendment rights by Officers
7 Does 1-15 caused Mr. Askins to suffer harm. As a result, Mr. Askins is entitled to monetary
8 damages from Officers Does 1-15 pursuant to the *Bivens* doctrine.

9 57. The violation of Mr. Askins's First Amendment rights by Officer Does 1-15 was
10 also oppressive, malicious, and done with a willful and conscious disregard of Mr. Askins's
11 rights, justifying an award of punitive damages.

12 **CLAIM TWO**
13 **(VIOLATION OF THE FIRST AMENDMENT—FREEDOM OF SPEECH—**
14 **BY PLAINTIFF RAMIREZ AGAINST DEFENDANTS**
15 **DEPARTMENT OF HOMELAND SECURITY AND COMMISSIONER AGUILAR)**

16 58. Plaintiff Ramirez incorporates by reference and re-alleges each preceding
17 paragraph as if fully set forth herein.

18 59. Mr. Ramirez has the right to freedom of speech, which includes the right to take
19 photographs and make video recordings of matters such as U.S. ports of entry and federal law
20 enforcement officers engaged in the public discharge of their duties.

21 60. By engaging in the above-described conduct on or about June 20, 2010, the CBP
22 violated Mr. Ramirez's First Amendment right to freedom of speech.

23 61. In violating Mr. Ramirez's First Amendment rights, the CBP officers acted
24 pursuant to an expressly adopted official CBP policy and/or a longstanding CBP practice of
25 prohibiting the use of cameras and video recording devices at CBP-controlled facilities, including
26 U.S. ports of entry, without the CBP's prior approval. This policy and/or practice prevents,
27 restricts and/or hinders the ability of persons such as Plaintiffs to take photographs and make
28 video recordings of matters such as U.S. ports of entry and federal law enforcement officers
engaged in the public discharge of their duties. This CBP policy and/or practice continues to be

1 an impermissible prior restraint on speech and to chill, deter, and infringe Mr. Ramirez’s First
2 Amendment right to freedom of speech.

3 **CLAIM THREE**
4 **(VIOLATION OF THE FOURTH AMENDMENT—UNLAWFUL SEARCH AND**
5 **SEIZURE—BY PLAINTIFF ASKINS AGAINST DEFENDANTS DEPARTMENT OF**
6 **HOMELAND SECURITY, COMMISSIONER AGUILAR, AND OFFICERS DOES 1-15)**

6 62. Plaintiff Askins incorporates by reference and re-alleges each preceding paragraph
7 as if fully set forth herein.

8 63. By engaging in the above-described conduct on or about April 19, 2012, CBP
9 Officers Does 1-15 searched and seized Mr. Askins’s person and/or property without a warrant,
10 probable cause, reasonable suspicion, consent, exigent circumstances, or any other justification,
11 in violation of Mr. Askins’s Fourth Amendment right to freedom from unreasonable search and
12 seizure.

13 64. In violating Mr. Askins’s Fourth Amendment rights, the CBP officers acted
14 pursuant to an expressly adopted official CBP policy and/or a longstanding CBP practice of
15 searching and seizing individuals without a warrant, probable cause, reasonable suspicion,
16 consent, exigent circumstances, or any other justification, when the individuals use cameras and
17 video recording devices at or near CBP-controlled facilities, including U.S. ports of entry, without
18 the CBP’s prior approval.

19 65. Furthermore, the conduct of Officers Does 1-15 caused Mr. Askins to suffer harm.
20 As a result, Mr. Askins is entitled to monetary damages from Officers Does 1-15 pursuant to the
21 *Bivens* doctrine.

22 66. The unreasonable search and seizure by Officer Does 1-15 was also oppressive,
23 malicious, and done with a willful and conscious disregard of Mr. Askins’s rights and safety,
24 justifying an award of punitive damages.

1 consent, exigent circumstances, or any other justification, when the individuals use cameras and
2 video recording devices at or near CBP-controlled facilities, including U.S. ports of entry, without
3 the CBP’s prior approval.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request that the Court:

6 A. Preliminarily and permanently enjoin all Defendants, their successors, agents,
7 servants and employees, and anyone acting in concert with Defendants, from preventing,
8 impeding, or otherwise interfering with Plaintiffs’ First Amendment free speech rights to take
9 photographs and make video recordings of U.S. ports of entry and federal law enforcement
10 officers engaged in the public discharge of their duties;

11 B. Preliminarily and permanently enjoin all Defendants, their successors, agents,
12 servants and employees, and anyone acting in concert with Defendants, from violating Plaintiffs’
13 Fourth Amendment rights by searching and seizing Plaintiffs and/or Plaintiffs’ cameras or video
14 recording devices without a warrant, probable cause, reasonable suspicion, consent, exigent
15 circumstances, or any other justification, when Plaintiffs use cameras and video recording devices
16 at or near CBP-controlled facilities, including U.S. ports of entry.

17 C. Declare Defendants’ conduct to be unlawful;

18 D. Award Plaintiff Askins general, compensatory, statutory, nominal, and/or punitive
19 damages against CBP Officers Does 1-15 for the violations of his First and Fourth Amendment
20 rights, in an amount to be proven at trial;

21 E. Award Plaintiffs’ costs, including reasonable attorneys’ fees; and

22 F. Award such other relief as the Court deems proper.

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