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16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE DISTRICT OF ARIZONA**

18 ARACELI RODRIGUEZ, individually
19 and as the surviving mother and personal
20 representative of the ESTATE OF J.A.,
21 Deceased,

Plaintiff,

v.

22 JOHN DOES 1–10, Agents of U.S.
23 Border Patrol, and DOES 11–20,
24 Officers of U.S. Customs and Border
25 Protection,

Defendants.

CASE NO. 4:14-CV-02251-RCC

**PLAINTIFF'S MOTION (1) TO
TEMPORARILY FILE FIRST
AMENDED COMPLAINT UNDER
SEAL AND (2) FOR ORDER THAT
DEFENDANT SHOW CAUSE WHY
FIRST AMENDED COMPLAINT
SHOULD REMAIN UNDER SEAL**

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15 ** *Admitted pursuant to Ariz. Sup. Ct.*
16 *R. 38(f)*

1 This motion involves a procedurally odd posture. Plaintiff is filing her First
2 Amended Complaint and requesting that it be filed under seal *temporarily* to prevent
3 public disclosure of the identity of Defendant, a U.S. Border Patrol agent.¹ But
4 Plaintiff actually *opposes* filing the amended complaint under seal, even temporarily.
5 Plaintiff is filing the amended complaint under seal only as part of an agreement with
6 the United States Attorney's Office for New Mexico, which asked that the identity of
7 Defendant remain under seal until this Court decides whether the sealing is proper.

8 9 **BACKGROUND**

10 Plaintiff, Araceli Rodriguez, is the mother of a teenage boy who was killed in
11 October 2012 by gunfire from a Border Patrol agent. Plaintiff originally filed her
12 complaint in July 2014 against DOE defendants because the government would not
13 provide the name of the Border Patrol agent responsible for shooting her son,
14 notwithstanding repeated requests by counsel for Plaintiff. Soon after filing her DOE
15 complaint, Plaintiff requested that this Court permit her to take third-party depositions
16 of government officials with knowledge of the identity of the responsible Border Patrol
17 agent. The Court granted that motion on August 7, 2014 (Dkt # 12).

18 In response to the Court's Order, U.S. Customs and Border Protection, through
19 the U.S. Attorney's Office in New Mexico, agreed to provide the name of the Border
20 Patrol agent responsible for the shooting. The agency also agreed to provide the name
21 of the private attorney representing the agent, who Plaintiff will serve with the
22 amended complaint and this motion. But the government would only provide the name
23 of the Border Patrol agent if Plaintiff agreed to file the amended complaint under seal
24 pending a ruling by this Court on whether the name could remain under seal. Because
25 Plaintiff is running up against the statute of limitations, Plaintiff agreed to the
26 government's demand. For the reasons set forth below, Plaintiff strongly opposes the
27 sealing of the amended complaint and respectfully requests that the Court issue an

28

¹ Plaintiff is also simultaneously filing a redacted version of the First Amended Complaint.

1 order requiring Defendant to show cause why the name of the agent should remain
2 under seal.

4 **ARGUMENT**

5 The government's request that Defendant's name remain hidden from the public
6 is extraordinary. The strong presumption in civil litigation is that the parties' identities
7 are public information. *See* Fed. R. Civ. P. 10(a) ("The title of the complaint must
8 name all the parties ..."). That is particularly so where, as here, the litigation involves
9 the deadly use of force by law enforcement. To overcome this presumption, a party has
10 the exceptionally high burden of demonstrating that special circumstances exist, such
11 as an objectively reasonable fear of severe harm through disclosure of the party's name,
12 that "outweigh[] prejudice to the opposing party and the public's interest in knowing
13 the party's identity." *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058,
14 1068 (9th Cir. 2000).

15 The public interest in knowing the identity of a federal agent sued for the use of
16 deadly force during his official duties is paramount. As one court has stated regarding
17 a border shooting: "The incident raised issues of legitimate public concern.... [The
18 officer] is alleged to have acted in the course and scope of his duties as a law
19 enforcement officer at the time of the shooting. His name, the location of the event,
20 and the events surrounding the altercation are not private matters." *Lorenzo v. United*
21 *States*, 719 F. Supp. 2d 1208, 1215 (S.D. Cal. 2010).²

22 Plaintiff is aware of no circumstances in this case that would warrant such
23 extraordinary relief to Defendant. Plaintiff has not been provided with any information
24 that would suggest a specific safety issue or threat to Defendant that could overcome
25

26 ² In fact, even outside of litigation, in the context of a public records request, "the public's
27 substantial interest in the conduct of its peace officers outweighs, in most cases, the officer's
28 personal privacy interest." *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.
4th 59, 73 (2014); *see id.* at 74 (stating that when an incident "concerns officer-involved
shootings, the public's interest in the conduct of its peace officers is particularly great because
such shootings often lead to severe injury or death").

1 the presumption against anonymity. Permitting Defendant to proceed anonymously
2 would be contrary to the public's right of access to judicial proceedings and
3 unwarranted in this case.

4
5 **CONCLUSION**

6 For the reasons stated above, Plaintiff respectfully requests that the Court
7 temporarily seal the First Amended Complaint but order Defendant to show cause why
8 the amended complaint should remain under seal.

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11 DATED: September 8, 2014

12 /s/Lee Gelernt
13 ACLU FOUNDATION IMMIGRANTS'
14 RIGHTS PROJECT

15 /s/Luis F. Parra
16 PARRA LAW OFFICES

17 *Counsel for Plaintiff*
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