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

_____	)	
<b>United States of America,</b>	)	
	)	No.
Plaintiff,	)	
v.	)	
	)	<b>COMPLAINT</b>
<b>Douglas A. Ducey, in his official capacity as</b>	)	
<b>Governor of the State of Arizona; the State</b>	)	
<b>of Arizona; Arizona Department of</b>	)	
<b>Emergency and Military Affairs; Kerry L.</b>	)	
<b>Muehlenbeck, in her official capacity as</b>	)	
<b>Adjutant General, Arizona Department of</b>	)	
<b>Emergency and Military Affairs; and Allen</b>	)	
<b>Clark, in his official capacity as Director of</b>	)	
<b>the Arizona Division of Emergency</b>	)	
<b>Management, Arizona Department of</b>	)	
<b>Emergency and Military Affairs,</b>	)	
	)	
Defendants.	)	

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1 Plaintiff the United States of America, through its undersigned attorneys and by the  
2 authority of the Attorney General, brings this civil action against Defendants Douglas A.  
3 Ducey, in his official capacity as Governor of Arizona; the State of Arizona; the Arizona  
4 Department of Emergency and Military Affairs (“AZDEMA”); Maj. Gen. Kerry L.  
5 Muehlenbeck, in her official capacity as Adjutant General, AZDEMA; and Allen Clark, in his  
6 official capacity as Director of the Arizona Division of Emergency Management, AZDEMA  
7 (collectively, “Arizona”), and allege as follows:

8 **INTRODUCTION**

9 1. The United States owns and manages lands on the Arizona-Mexico border under  
10 the plenary authority granted by Article IV, Section 3, Clause 2 of the U.S. Constitution  
11 (Property Clause). Those lands can be used or occupied only with permission from the United  
12 States through the issuance of permits or other authority under federal law. Under the  
13 Supremacy Clause of the U.S. Constitution, Article VI, Clause 2, the United States’ sovereign  
14 constitutional rights in its properties are paramount to the sovereign interests of the States, and  
15 any law or other action by a State that interferes with the United States’ paramount sovereign  
16 property rights is invalid, violates the U.S. Constitution, and must yield.

17 2. The State of Arizona, acting through AZDEMA pursuant to an executive order  
18 from the Governor of Arizona, has entered and occupied lands owned by the United States and  
19 managed by the U.S. Bureau of Reclamation, an agency of the U.S. Department of the Interior,  
20 and the U.S. Forest Service, an agency of the U.S. Department of Agriculture, without  
21 obtaining the required permits or authorization. In particular, Arizona has entered Reclamation  
22 and Forest Service lands along the Arizona-Mexico border and installed—and continues to  
23 install—hundreds of double-stacked multi-ton shipping containers that damage federal lands,  
24 threaten public safety, and impede the ability of federal agencies and officials, including law  
25 enforcement personnel, to perform their official duties.

26 3. Officials from Reclamation and the Forest Service have notified Arizona that it is  
27 trespassing on federal lands. Not only has Arizona refused to halt its trespasses and remove the

1 shipping containers from federal lands, but it has indicated that it will continue to trespass on  
2 federal lands and install additional shipping containers. As a result, the United States brings  
3 this action to obtain appropriate relief for Arizona’s unlawful continuing trespasses and  
4 invasions of the United States’ paramount sovereign property rights and interests under the U.S.  
5 Constitution. This action seeks injunctive relief prohibiting Arizona from continuing to  
6 trespass on federal lands and violating and infringing on the United States’ constitutional rights  
7 and interests; halting ongoing installation and related activities; requiring the removal of  
8 previously installed shipping containers and all other associated materials, equipment, and  
9 vehicles; and requiring remediation of the environmental harm caused by Arizona’s unlawful  
10 actions. This action also seeks damages for Arizona’s trespasses, to compensate the United  
11 States for any actions it needs to take to undo Arizona’s actions and to remediate—to the extent  
12 possible—any injuries to the United States’ properties and interests.

13 **PARTIES**

14 4. Plaintiff is the United States of America, acting through the United States  
15 Department of Agriculture and the United States Department of the Interior.

16 5. Defendant State of Arizona is a State of the United States. The State of Arizona  
17 includes all of its officers, employees, and agents in their official capacity.

18 6. Defendant Douglas A. Ducey is the current Governor of the State of Arizona and  
19 is sued in his official capacity.

20 7. Defendants AZDEMA is an agency of the State of Arizona established under  
21 A.R.S. 26-101.

22 8. Defendant Maj. Gen. Kerry L. Muehlenbeck is the Adjutant General of  
23 AZDEMA and is sued in her official capacity.

24 9. Defendant Allen Clark is the Director of the Arizona Division of Emergency  
25 Management within AZDEMA and is sued in his official capacity.

**JURISDICTION AND VENUE**

1  
2 10. This Court has jurisdiction under 28 U.S.C. § 1345 (United States as plaintiff), 28  
3 U.S.C. § 1331 (federal question), 28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 2202  
4 (injunctive relief).

5 11. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b)(1)-(2)  
6 because Defendants reside within this judicial district, a substantial part of the acts or omissions  
7 giving rise to this action arose from events occurring within this judicial district, and the federal  
8 lands at issue are situated in this judicial district.

9 **LEGAL BACKGROUND**

10 **The Property Clause**

11 12. The Property Clause provides that “Congress shall have power to dispose of and  
12 make all needful rules and regulations respecting the territory or other property belonging to the  
13 United States.” U.S. Const. art. IV, § 3, cl. 2. The United States holds federal public land “as  
14 trustee for the people of the United States” and is entitled to “maintain its possession and to  
15 prosecute trespassers.” *Camfield v. United States*, 167 U.S. 518, 524 (1897). Congress’ power  
16 under the Property Clause to enact legislation pertaining to federal public lands administered by  
17 the federal land management agencies is exclusive and without limitation. *Alabama v. Texas*,  
18 347 U.S. 272, 273 (1954) (per curiam). Stated differently, “the Property Clause gives Congress  
19 plenary power to legislate the use of . . . federal land.” *Cal. Coastal Comm’n v. Granite Rock*  
20 *Co.*, 480 U.S. 572, 581 (1987).

21 13. Congress has exercised its plenary power over federal land to, among other  
22 things, authorize and charge the Forest Service with administering and protecting National  
23 Forest System lands and Reclamation with administering and protecting lands within its  
24 jurisdiction and control.

25 **The Supremacy Clause**

26 14. The Supremacy Clause of the U.S. Constitution mandates that “[t]his  
27 Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . .

1 shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,  
2 any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S.  
3 Const., art. VI, cl. 2. In conjunction with the Property Clause, the Supremacy Clause dictates  
4 that any State laws or actions that conflict with Congress’s exercise of its authority over federal  
5 public lands are unconstitutional and must yield.

### 6 **National Forest System Lands**

7 15. National Forest System lands include “all national forest lands reserved or  
8 withdrawn from the public domain of the United States.” 16 U.S.C. § 1609(a). Congress  
9 instructed the Forest Service to manage the “occupancy and use” of those lands under “rules  
10 and regulations . . . as will insure the objects of such reservations.” *Id.* § 551.

11 16. To do this, the Forest Service has issued detailed regulations under which “[a]ll  
12 uses of National Forest System lands, improvements, and resources” are designated “special  
13 uses.” 36 C.F.R. § 251.50(a). Without a special use authorization (or other applicable  
14 permission), Forest Service regulations prohibit, among other things:

- 15 • “Use or occupancy of National Forest System land or facilities,” *id.* § 261.10(k);
- 16 • “Constructing, placing, or maintaining any kind of road, trail, structure, fence,  
17 enclosure, communication equipment, significant surface disturbance, or other  
18 improvement on National Forest System lands or facilities,” *id.* § 261.10(a);
- 19 • “Abandoning any personal property,” *id.* § 261.10(e);
- 20 • “Placing a vehicle or other object in such a manner that it is an impediment or  
21 hazard to the safety or convenience of any person,” *id.* § 261.10(f);
- 22 • “Damaging and leaving in a damaged condition any such road, trail, or segment  
23 thereof,” *id.* § 261.12(c);
- 24 • “Blocking, restricting, or otherwise interfering with the use of a road, trail, or  
25 gate,” *id.* § 261.12(d);

- 1 • “Cutting or otherwise damaging any timber, tree, or other forest product, except  
2 as authorized by a special-use authorization, timber sale contract, or Federal law  
3 or regulation,” *id.* § 261.6(a);
- 4 • Damaging or removing “any natural feature or other property of the United  
5 States,” *id.* § 261.9(a)-(b); and
- 6 • Operating any vehicle off National Forest System, State, or County roads in “a  
7 manner which damages or unreasonably disturbs the land, wildlife, or vegetative  
8 resources,” *id.* § 261.15(h).

### 9 **Bureau of Reclamation Lands**

10 17. Reclamation is responsible for protecting federal lands under its authority and  
11 control by regulating the occupancy and use of those lands. The Secretary of the Interior has  
12 discretion to “grant leases and licenses for periods not to exceed fifty years, and easements or  
13 rights-of-way with or without limitation as to period of time affecting lands or interest in lands  
14 withdrawn or acquired and being administered under the Federal reclamation laws in  
15 connection with the construction or operation and maintenance of any project.” 43 U.S.C.  
16 § 387. In exercising this discretion, Congress expressly charged Reclamation with protecting  
17 the United States’ interests: “Such permits or grants shall be made only when, in the judgment  
18 of the Secretary, their exercise will not be incompatible with the purposes for which the lands  
19 or interests in lands are being administered, and shall be on such terms and conditions as in [the  
20 Secretary’s] judgment will adequately protect the interests of the United States and the project  
21 for which said lands or interests in lands are being administered.” *Id.*

22 18. To do this, Reclamation issued regulations requiring prospective users of  
23 Reclamation lands to apply for use permits. “[A]ny possession or occupancy of any portion of,  
24 and the extraction or disturbance of any natural resources from Reclamation land, facilities, or  
25 waterbodies are prohibited without written authorization from Reclamation, unless excepted as  
26 listed in § 429.4.” 43 C.F.R. § 429.1; *see also id.* § 429.3 (“Possession or occupancy of . . .  
27

1 Reclamation land, facilities, or waterbodies [including through the construction of linear  
2 infrastructure] require a use authorization in accordance with this part.”).

3 19. In reviewing an application for an occupancy and use authorization,  
4 “Reclamation will consider . . . (a) Compatibility with authorized project purposes, project  
5 operations, safety, and security; (b) Environmental compliance; (c) Compatibility with public  
6 interests; (d) Conflicts with Federal policies and initiatives; (e) Public health and safety; (f)  
7 Availability of other reasonable alternatives; and (g) Best interests of the United States.” *Id.*  
8 § 429.14.

9 20. The “unauthorized use of Reclamation land, facilities, or waterbodies is a trespass  
10 against the United States.” *Id.* § 429.33(g). Under Reclamation’s regulations, trespass includes  
11 “[u]nauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies,” and  
12 “[u]nauthorized dumping or abandonment of personal property on Reclamation facilities, lands,  
13 or waterbodies.” *Id.* § 423.24.

#### 14 **Department of Homeland Security**

15 21. Congress delegated to the Department of Homeland Security “the power and duty  
16 to control and guard the boundaries and borders of the United States against the illegal entry of  
17 aliens.” 8 U.S.C. § 1103(a)(5).

18 22. In furtherance of this authority, Congress in the Illegal Immigration Reform and  
19 Immigration Responsibility Act (“IIRIRA”), among other things, authorized the Secretary of  
20 the Department of Homeland Security to “take such actions as may be necessary to install  
21 additional physical barriers and roads . . . in the vicinity of the United States border.” IIRIRA  
22 § 102 (codified as amended at 8 U.S.C. § 1103 note). Congress also gave the Secretary the  
23 discretion to decide how, when, and where to construct barriers. *See* IIRIRA § 102(b)(1)(D).

#### 24 **International Boundary and Water Commission**

25 23. The United States Section of the International Boundary and Water Commission  
26 (“USIBWC”) was established to implement treaties between the United States and Mexico.  
27 One of the USIBWC’s several obligations on the border is to monitor water sharing with

1 Mexico in accordance with a 1944 Treaty between the United States and Mexico called the  
2 “Utilization of Waters of the Colorado and Tijuana and of the Rio Grande.” To implement that  
3 obligation, USIBWC maintains gauging stations used to measure water levels in the adjacent  
4 Colorado River that it accesses both through Reclamation lands and over an easement.

### 5 **FACTUAL BACKGROUND**

#### 6 **The United States’ Acquisition of Lands**

7 24. The area now comprising the State of Arizona was acquired by the United States  
8 through the Treaty of Guadalupe Hidalgo in 1848, as modified by the 1853 Gadsden Purchase,  
9 and the 1854 Treaty of Mesilla, which affirmed the Gadsden Purchase.

10 25. The 1854 Treaty of Mesilla modified the border set forth in Article 5 of the 1848  
11 Treaty to conform to the border described in Article 1 of the 1854 Treaty. This resulted in the  
12 United States becoming the owner of the land north of the border with Mexico encompassed in  
13 the Gadsden Purchase, subject only to reservations of certain specified private land grants  
14 consistent with the 1848 and 1854 Treaties.

15 26. Since that time, the United States has exercised its sovereign and proprietary  
16 rights over this property, including transferring specific lands to Arizona and private  
17 individuals and reserving other lands for various purposes. The United States has also re-  
18 acquired other lands that it had previously disposed of.

#### 19 **Coronado National Forest**

20 27. The Coronado National Forest is a unit of the National Forest System in Arizona  
21 that borders Mexico. The Forest consists of lands that were originally reserved under 16 U.S.C.  
22 § 471 [repealed by P.L. 94-679, October 21, 1976] as the Huachuca Forest Reserve in 1906,  
23 which was later consolidated into the Garces National Forest in 1908. The Garces National  
24 Forest was then consolidated into the Coronado National Forest in 1911.



1 28. The property comprising the Coronado National Forest is National Forest System  
2 land owned by the United States and administered by the U.S. Secretary of Agriculture acting  
3 through the Forest Service.

#### 4 **Reclamation Lands**

5 29. As relevant here, Reclamation manages certain lands owned by the United States  
6 along or near the Arizona-Mexico border that were withdrawn from the public domain or  
7 acquired at different times under the Reclamation Act of 1902, which authorized the Secretary  
8 of the Interior to withdraw lands from public entry that were required for any irrigation works  
9 under the Act and to acquire lands by purchase or condemnation where necessary. Reclamation  
10 Act, 32 Stat. 388, §§ 3, 7 (1902).

11 30. In 1904, the Secretary authorized the withdrawal and purchase of lands for the  
12 Yuma Project to irrigate lands with water from the Colorado River.

13 31. In 1927, Congress authorized the Secretary to acquire lands for the Colorado  
14 River Front Work and Levee System—intended to control floods, improve navigation, and  
15 regulate the flow of the Colorado River—consistent with the authorization in the Reclamation  
16 Act of 1902.

17 32. As part of the Colorado River Front Work and Levee System, Reclamation also  
18 obtained an easement over certain lands along the Arizona-Mexico border within the Cocopah  
19 Indian Reservation.

#### 20 **Roosevelt Reservation**

21 33. In 1907, President Theodore Roosevelt issued a proclamation known as the  
22 “Roosevelt Reservation,” declaring that it was “necessary for the public welfare that a strip of  
23 land lying along the boundary line between the United States and the Republic of Mexico be  
24 reserved from the operation of public land laws and kept free from obstruction” to protect  
25 against the smuggling of goods between Mexico and the United States. 35 Stat. 2136.

26 34. To do this, the President “reserved from entry, settlement or other form of  
27 appropriation under the public land laws and set apart as a public reservation, all public lands

1 within sixty feet of the international boundary between the United States and the Republic of  
2 Mexico, within the State of California and the Territories of Arizona and New Mexico.” *Id.*

3 35. The Roosevelt Reservation applied only to public lands (i.e., those lands owned  
4 by the United States). The Reservation excluded lands (1) already legally claimed or covered  
5 by a properly recorded right of way, (2) “upon which any valid settlement has been made  
6 pursuant to law, and the statutory period within which to make entry or filing of record ha[d]  
7 not expired,” and (3) that were “embraced within any withdrawal or reservation for any use or  
8 purpose to which th[e] reservation for customs purposes [was] repugnant.” *Id.*

### 9 **Arizona Statehood**

10 36. Three years after the Roosevelt Reservation, in 1910, Congress exercised its  
11 authority under Article IV, Section 3 of the U.S. Constitution to “dispose of and make all  
12 needful rules and regulations respecting the territory or other property of the United States,”  
13 and to admit new states to the union, by passing an enabling statute with conditions that, if met,  
14 would allow Arizona to become a state.

15 37. One of those conditions required that “[t]he people inhabiting said proposed State  
16 do agree and declare that they forever disclaim all right and title to the unappropriated and  
17 ungranted public lands lying within the boundaries thereof . . . .” 36 Stat. 557, 569 (1910).

18 38. Arizona adopted a constitution with this disclaimer, Ariz. Const. Art. XX, sec. 4,  
19 and was admitted to the union in 1912, 37 Stat. 1728 (1912).

### 20 **Arizona’s Trespasses**

21 39. The Department of Homeland Security has exercised its authority under IIRIRA  
22 § 102 to install certain sections of physical barriers, including pedestrian and vehicle barrier,  
23 along the border with Arizona and Mexico where it is most practical and effective. The  
24 pedestrian barrier is not contiguous. There are areas along the border where there are gaps in  
25 the pedestrian barrier or where vehicle barrier exists rather than pedestrian barrier.

26 40. Governor Ducey purported to declare an emergency under Arizona Revised  
27 Statutes § 26-303(d) on April 20, 2021, asserting that “soon after January 20, 2021, as a result

1 of a new Presidential administration’s anticipated policy changes regarding immigration,  
2 foreign nationals began entering the United States at substantially higher rates through both  
3 legal and illegal means.”

4 41. Following the State legislature’s appropriation of \$335 million for Fiscal Year  
5 2023 (available July 1, 2022) for border security measures, Governor Ducey issued Executive  
6 Order 2022-04 on August 12, 2022.

7 42. Executive Order 2022-04 ordered AZDEMA to “immediately initiate operations  
8 to close the gaps in Arizona’s southern border wall, regardless of location,” and to “work with  
9 other Arizona state agencies, local authorities, private organizations and, to the extent possible,  
10 federal agencies to accomplish this mission as quickly as possible.”

11 *Interference with Reclamation’s Easement and Trespasses on Reclamation Lands*

12 43. In August 2022, without federal authorization, Arizona, or individuals acting  
13 under Arizona’s authority or control, placed approximately 42 shipping containers on  
14 Reclamation’s easement acquired under the Colorado River Front Work and Levee System  
15 within the exterior boundaries of the Cocopah Indian Tribe’s West Reservation within portions  
16 of Section 11, Township 10 South, Range 25 West, Gila-Salt River Meridian, Arizona. Those  
17 shipping containers remain in place. None of the shipping containers are within the boundaries  
18 of the Roosevelt Reservation. Arizona has no property interests in the land on which the  
19 shipping containers were placed.

20 44. In August 2022, without federal authorization, Arizona, or individuals acting  
21 under Arizona’s authority or control, placed an additional 80 containers on Reclamation lands  
22 withdrawn and acquired pursuant to the Yuma Project and the Colorado River Front Work and  
23 Levee System and located between four gaps in existing border wall in Yuma County, Arizona  
24 within portions of Section 35, Township 16 South, Range 21 East, San Bernardino Meridian,  
25 Arizona; and Section 28, Township 8 South, Range 24 West, Gila-Salt River Meridian,  
26 Arizona. Those shipping containers remain in place. None of the shipping containers are  
27

1 within the boundaries of the Roosevelt Reservation. Arizona has no property interests in the  
2 land on which the shipping containers were placed.

3 45. Reclamation's Regional Director notified AZDEMA in a letter dated October 13,  
4 2022, that the "unauthorized placement of those containers constitutes a violation of federal law  
5 and is a trespass against the United States," which is "harming federal lands and resources and  
6 impeding Reclamation's ability to perform its mission."

7 *Trespasses on National Forest System Lands*

8 46. In mid-September 2022, an AZDEMA employee contacted Forest Service  
9 personnel, indicating that AZDEMA was "looking to get approval from [the] Coronado  
10 National Forest to place barriers on National Forest land in all areas that currently have gaps in  
11 the federal wall."

12 47. The Forest Service advised Arizona that it needed to obtain authorization for such  
13 use through the federal regulatory process governing the use and occupancy of National Forest  
14 System lands. Arizona did not do so.

15 48. On October 5, 2022, Forest Service personnel observed around fifteen shipping  
16 containers and associated construction equipment at a staging area just north of the  
17 international border on the Coronado National Forest in Cochise County, located approximately  
18 in the West 700 feet of the South 250 feet of Lot 2 of Section 22 of Township 24 South, Range  
19 20 East, Gila and Salt River Meridian.

20 49. The Forest Supervisor for the Coronado National Forest sent a letter to Arizona  
21 two days later, advising Arizona again on the process for obtaining a permit and asking that  
22 Arizona "refrain from any further activity associated with the containers on [National Forest  
23 System] lands, including the use of any equipment, until such time as a proper authorization is  
24 secured."

25 50. Arizona notified the Forest Service that same day that it would continue the work  
26 on National Forest System lands without seeking a permit.

1           51. On October 8, 2022, the Regional Forester for the Southwestern Region of the  
2 U.S. Forest Service, sent a letter to AZDEMA stating that “there is a regulatory approval  
3 process that governs the use and occupancy of National Forest System lands to allow the Forest  
4 Service to fulfill its federal land management obligations under federal law.” The letter further  
5 noted that Arizona had “not pursued that process,” and that “all state activities on National  
6 Forest land related to the shipping container project are occurring without the permits and  
7 authorization required.”

8           52. AZDEMA and its agents have continued to work on National Forest System lands  
9 without the permits and authorization required, with hundreds of shipping containers placed  
10 along the border on National Forest System lands for approximately four miles as of December  
11 8, 2022. Arizona also graded and cleared of vegetation at least two staging areas on National  
12 Forest System lands as part of this work. Arizona has indicated that it will place additional  
13 shipping containers for approximately six more miles on National Forest System lands.

14           53. The National Forest System lands along which Arizona has placed, or caused to  
15 be placed, shipping containers are owned by the United States and located in Sections 21, 22,  
16 and 23 of Township 24 South, Range 20 East, Gila and Salt River Meridian. That land was  
17 obtained by the United States in the Gadsden Purchase and reserved as a Forest Reserve in  
18 1906 under 16 U.S.C. § 471, and made part of the Coronado National Forest in 1912. Most of  
19 the shipping containers are within the boundaries of the Roosevelt Reservation but some are  
20 outside of that boundary. The staging areas are outside of the boundaries of the Roosevelt  
21 Reservation. Arizona has no property interests in the land on which the shipping containers  
22 were placed or in the land where the staging areas are located.

### 23                           **Harm from Arizona’s Trespasses**

24           54. The shipping containers on Reclamation’s easement on the Cocopah Indian  
25 Tribe’s West Reservation have reduced the top width of the levee, constraining Reclamation’s  
26 operations and maintenance activities and limiting its ability to inspect and access the levee’s  
27

1 embankment. The shipping containers also present a safety risk, as one or more of them has  
2 shifted during a storm event and at least one fell into a concrete-lined canal that conveys water  
3 to Mexico. Similarly, the shipping containers on other Reclamation lands are interfering with  
4 the agency's ability to access, operate, and maintain its facilities and pose a threat to those  
5 facilities.

6 55. In installing shipping containers on National Forest System lands, Arizona has  
7 widened roads and cleared lands for staging areas. In doing so, Arizona has cut down or  
8 removed scores of trees, clogged drainages, and degraded the habitat of species listed under the  
9 Endangered Species Act. The shipping containers are blocking approximately thirty naturally  
10 occurring ephemeral watercourses, which will interrupt natural watershed patterns, erode soil in  
11 the immediate area, and damage vegetation and forage. Arizona has also prevented public  
12 access to National Forest System lands and interfered with the Forest Service's ability to carry  
13 out its official duties by, among other things, causing the National Forest System lands to be  
14 occupied by armed private security guards and blocking access to National Forest System  
15 roads.

16 56. Arizona's installation of shipping containers along the border on federal public  
17 lands is also detrimentally affecting law enforcement functions. Arizona's installation activities  
18 have substantially curtailed the Forest Service's ability to freely access the border area, and the  
19 installation of the containers could impede access to crime scenes or to investigating criminal  
20 activity originating on the other side of the containers, including drug trafficking. Further,  
21 when responding to incidents in the area, the containers could compromise the safety of law  
22 enforcement by blocking visibility, preventing the assessment of threats on the other side of the  
23 border, and giving the observational advantage to armed scouts for transnational criminal  
24 organizations. The shipping containers can feasibly be entered on the ends or by cutting access  
25 points into the containers, allowing for the concealment of individuals, weapons, or contraband,  
26 effectively creating a fortified bunker that would pose a grave threat to unsuspecting Forest  
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1 Service personnel and the public. This situation is inherently dangerous and inconsistent with  
2 the purpose of the Roosevelt Reservation.

3 57. Arizona's shipping containers are also interfering with the ability of Customs and  
4 Border Protection to close four gaps in existing border barrier with engineered barriers that  
5 include important design standards and requirements, such as allowing for visibility through the  
6 barriers, preventing perching on the barriers, and creating access through the barrier for  
7 emergency vehicles and other authorized parties. Customs and Border Protection has awarded  
8 contracts for the construction of such barriers. Unless removed, the shipping containers  
9 installed by Arizona will result in these construction activities being paused or suspended.

10 58. The shipping containers on the USIBWC's easement are interfering with that  
11 agency's ability to carry out its official duties.

12 59. Arizona's trespasses also invade the United States' paramount sovereign property  
13 interests under the Property Clause and conflict with Congress' laws governing the United  
14 States' properties. Arizona's actions thus violate the Supremacy Clause and harm the United  
15 States' constitutional rights and interests.

16 **CLAIMS FOR RELIEF**

17 **Count I – Trespass**

18 60. The United States incorporates its previous allegations as though fully set forth  
19 herein.

20 61. Arizona has installed and is installing shipping containers along the Arizona-  
21 Mexico border on lands owned by the United States without obtaining the required federal  
22 permits or other authorization.

23 62. Arizona is in trespass on these lands in violation of applicable statutes and  
24 regulations, including those set forth in paragraphs 15 to 20.

25 63. The United States is entitled to a declaration under the Federal Declaratory  
26 Judgment Act, 28 U.S.C. § 2201, that Arizona's use and occupancy of lands owned by the  
27 United States without the required permits or other authorizations are trespasses.

1         64.     The United States is entitled to injunctive relief prohibiting Arizona’s continuing  
2 trespasses; prohibiting any future trespasses and ongoing installation activities; requiring  
3 immediate removal of the shipping containers, under the federal agencies’ direction to  
4 minimize further harms to the United States; and requiring remediation of the harm caused by  
5 their installation.

6         65.     The United States is entitled to an award of damages resulting from Arizona’s  
7 trespasses.

8                                 **Count II – Ejectment**

9         66.     The United States incorporates its previous allegations as though fully set forth  
10 herein.

11         67.     At all times material to this Complaint, the United States has held and holds legal  
12 title to and is legally entitled to possession of National Forest System lands and Reclamation  
13 lands on which Arizona has installed shipping containers along the Arizona-Mexico border.

14         68.     Arizona has unlawfully and without authority failed to remove the shipping  
15 containers from lands owned by the United States or over which the United States holds  
16 easements, thereby damaging the United States.

17         69.     The United States is entitled to an order of ejectment, removing Arizona and its  
18 property from the lands owned by the United States or over which the United States holds  
19 easements upon which Arizona has installed shipping containers.

20                                 **Count III – Interference with Easements**

21         70.     The United States incorporates its previous allegations as though fully set forth  
22 herein.

23         71.     At all times material to this Complaint, the United States has held and holds an  
24 easement for Reclamation purposes over lands along the Arizona-Mexico border within the  
25 Cocopah Indian Reservation on which Arizona has installed shipping containers.



1 72. At all times material to this Complaint, the United States, through the USIBWC,  
2 has held and holds an easement over lands along the Arizona-Mexico used to effectuate the  
3 USIBWC's treaty obligations.

4 73. Arizona's installation of these shipping containers interferes with and encroaches  
5 on the United States' easements.

6 74. The United States is entitled to a declaration under the Federal Declaratory  
7 Judgment Act, 28 U.S.C. § 2201, that Arizona's installation of shipping containers on lands  
8 within the Cocopah Indian Reservation over which the United States' holds an easement and  
9 lands on which the USIBWC holds an easement unlawfully interferes with those easements.

10 75. The United States is entitled to injunctive relief prohibiting Arizona's continuing  
11 interference with and encroachment on the United States' easements, prohibiting any future  
12 interference and encroachment, and requiring immediate removal of the shipping containers  
13 and remediation of the harm caused by their installation.

14 76. The United States is entitled to an award of damages resulting from Arizona's  
15 interference with and encroachment on the United States' easements.

16 **Count IV – Violations of U.S. Constitution**

17 77. The United States incorporates its previous allegations as though fully set forth  
18 herein.

19 78. Arizona has installed and is installing shipping containers along the Arizona-  
20 Mexico border on lands owned by the United States without obtaining the required federal  
21 permits or other authorizations. Arizona has taken these actions under Executive Order 2022-  
22 04. As applied by Arizona, Executive Order 2022-04 and Arizona's actions in trespass on the  
23 United States' properties directly conflict with federal law, including the statutes and  
24 regulations set forth in paragraphs 15 to 20, and violate the Property Clause and Supremacy  
25 Clause of the U.S. Constitution. U.S. Const. art. IV, § 3, cl. 2 (Property Clause); U.S. Const.  
26 art. VI, cl. 2 (Supremacy Clause)  
27

1           79. The United States is entitled to a declaration under the Federal Declaratory  
2 Judgment Act, 28 U.S.C. § 2201, that application of Executive Order 2022-04 to purportedly  
3 authorize Arizona to trespass on lands owned by the United States or over which the United  
4 States holds easements violate the U.S. Constitution.

5           80. The United States is entitled to a declaration under the Federal Declaratory  
6 Judgment Act, 28 U.S.C. § 2201, that Arizona’s trespasses under the putative authority of  
7 Executive Order 2022-04 on lands owned by the United States or over which the United States  
8 holds easements infringe on the United States’ paramount sovereign property rights and violate  
9 the U.S. Constitution.

10          81. The United States is entitled to injunctive relief prohibiting Arizona’s continuing  
11 infringement on the United States’ paramount sovereign property rights and violations of the  
12 U.S. Constitution, prohibiting any future trespasses and ongoing installation activities, and  
13 requiring immediate removal of the shipping containers and remediation of the harm caused by  
14 their installation.

15   **PRAYER FOR RELIEF**

16          WHEREFORE, the United States respectfully requests the following relief:

17          A. A declaration that Arizona’s use and occupancy of lands owned by the United  
18 States without the required permits or other authorization constitutes unlawful trespasses;

19          B. An award of damages for Arizona’s unlawful trespasses, including any costs and  
20 expenses incurred by the United States in removing Arizona’s containers and associated  
21 materials and in remediating the sites to their prior condition, to the extent possible;

22          C. A writ of ejectment and such other appropriate writs and orders providing for the  
23 removal of Arizona’s shipping containers and any associated property or equipment from lands  
24 owned by the United States along the Arizona-Mexico border;

25          D. A declaration that Arizona’s installation of shipping containers on lands within  
26 the Cocopah Indian Reservation over which the United States holds an easement unlawfully  
27 interferes with and encroaches on that easement;

1 E. A declaration that Arizona’s installation of shipping containers on lands over  
2 which the United States, through the USIBWC, holds an easement unlawfully interferes with  
3 and encroaches on that easement;

4 F. An award of damages for Arizona’s unlawful interference with the United States’  
5 easements, including any costs and expenses incurred by the United States in removing  
6 Arizona’s containers and associated materials and in remediating the sites to their prior  
7 condition;

8 G. A declaration that Executive Order 2022-04 violates the U.S. Constitution as  
9 applied to Arizona’s occupancy and use of lands owned by the United States without the  
10 required permits or other authorizations;

11 H. A declaration that Arizona’s use and occupancy of lands owned by the United  
12 States without the required permits or other authorization infringes on the United States’  
13 paramount sovereign property interests, conflicts with and violates federal laws and regulations,  
14 and is pre-empted by and violates the U.S. Constitution.

15 I. A preliminary and permanent injunction requiring Arizona to cease installing  
16 shipping containers and all related installation activities on lands owned by the United States  
17 along the Arizona-Mexico border; to cease the continuing trespasses and violations of the U.S.  
18 Constitution by removing all shipping containers Arizona previously installed on lands owned  
19 by the United States, under the federal agencies’ direction to minimize further harms to the  
20 United States; and to remediate any and all harm to the lands owned by the United States  
21 caused by Arizona’s installation of shipping containers;

22 J. A permanent injunction enjoining Arizona from using or occupying lands owned  
23 by the United States along the Arizona-Mexico border without the required federal permits or  
24 other authorizations;

25 K. A preliminary and permanent injunction requiring Arizona to remove all shipping  
26 containers installed on lands within the Cocopah Indian Reservation over which the United  
27 States holds an easement’ under the federal agencies’ direction to minimize further harms to the

1 United States, and remediation of any and all harm caused by Arizona’s installation of those  
2 shipping containers;

3 L. A permanent injunction enjoining Arizona from interfering with the United  
4 States’ easement on lands within the Cocopah Indian Reservation;

5 M. A preliminary and permanent injunction requiring Arizona to remove all shipping  
6 containers installed on lands over which the United States, through the USIBWC, holds an  
7 easement, under the federal agencies’ direction to minimize further harms to the United States,  
8 and remediation of any and all harm caused by Arizona’s installation of those shipping  
9 containers;

10 N. A permanent injunction enjoining Arizona from interfering with the easement that  
11 the United States holds through the USIBWC;

12 O. An award to the United States of costs in this action; and

13 P. Any other relief the Court deems just and proper.  
14

15 Respectfully submitted this 14th day of December, 2022,  
16

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