

1 Dan Stormer, Esq. (CA Bar # 101967)*
2 Cindy Pánuco, Esq. (CA Bar #266921)*
3 HADSELL STORMER & RENICK LLP
4 128 N. Fair Oaks Avenue
5 Pasadena, California 91103
6 Telephone: (626) 585-9600
7 Facsimile: (626) 577-7079
8 Emails: dstormer@hadsellstormer.com
9 cpanuco@hadsellstormer.com

6 Joshua Piovia-Scott, Esq. (CA Bar #222364)*
7 HADSELL STORMER & RENICK LLP
8 4300 Horton Street, #15
9 Emeryville, CA 94608
10 Telephone: (626) 585-9600
11 Facsimile: (626) 577-7079
12 Email: jps@hadsellstormer.com

10 Attorneys for Plaintiffs

11 [Additional counsel cont. on next page]

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 Puente, an Arizona nonprofit corporation; et
15 al.,

16 Plaintiffs,

17 v.

18 City of Phoenix, a municipal corporation; et
19 al.,

20 Defendants.

Case No. CV-18-02778-PHX-JJT

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER**

ORAL ARGUMENT REQUESTED

21
22
23
24
25
26
27
28

1 [Additional counsel cont. from first page]

2 Kathleen E. Brody (Bar No. 026331)

3 Darrell L. Hill (Bar No. 030424)

4 ACLU Foundation of Arizona

5 3707 North 7th Street, Suite 235

6 Phoenix, AZ 85014

7 Telephone: 602-650-1854

8 Emails: kbrody@acluaz.org

9 dhill@acluaz.org

10 Daniel J. Pochoda (Bar No. 021979)

11 c/o ACLU Foundation of Arizona

12 3707 North 7th Street, Suite 235

13 Phoenix, AZ 85014

14 Telephone: 602-532-0486

15 Email: danpoc@cox.net

16 * *Pro hac vice*

17

18

19

20

21

22

23

24

25

26

27

28

1 Plaintiffs Puente, Poder in Action (“Poder”), Ira Yedlin, Janet Travis, Cynthia
2 Guillen, and Jacinta Gonzalez Goodman move the Court to enter a Temporary Restraining
3 Order (“TRO”), pursuant to Fed. R. Civ. P. 65, to enjoin Defendants City of Phoenix and
4 Police Chief Jeri Williams, and their officers, agents, servants, employees, attorneys, and
5 others acting in concert or participation with them, from violating Plaintiffs’ fundamental
6 First Amendment rights to peacefully assemble and protest, and rights to be free from
7 excessive use of force by police in violation of the Fourth Amendment, during an anti-
8 Trump protest in Phoenix, Arizona, in connection with an upcoming appearance by
9 President Trump, reported to occur some time in September 2018. The precise details of
10 Trump’s upcoming appearance in Phoenix have not been announced, but many media
11 articles have reported that it will occur,¹ and Plaintiffs bring this Motion now to avoid
12 potential last-minute litigation and to give adequate time for the Court’s consideration.²

13 Given that the same participants and similar dynamics will be present for Trump’s
14 upcoming visit as during an anti-Trump protest on August 22, 2017, which is the focus of
15 this litigation, and in light of the Chief’s and City leadership’s strong ratification of the

16
17 ¹ E.g., AZCentral, *Would Trump Rally Help or Hurt Ducey’s Re-Election Bid?*,
18 [https://www.azcentral.com/story/news/politics/elections/2018/09/12/arizona-would-](https://www.azcentral.com/story/news/politics/elections/2018/09/12/arizona-would-donald-trump-rally-phoenix-help-hurt-doug-ducey-re-election-bid/1258166002/)
19 [donald-trump-rally-phoenix-help-hurt-doug-ducey-re-election-bid/1258166002/](https://www.azcentral.com/story/news/politics/elections/2018/09/12/arizona-would-donald-trump-rally-phoenix-help-hurt-doug-ducey-re-election-bid/1258166002/) (Sept.
20 12, 2018); KTAR News, *Trump Phoenix Visit Not Confirmed by Law Enforcement Is*
21 *Preparing*, [http://ktar.com/story/2213470/trump-phoenix-visit-not-yet-confirmed-but-](http://ktar.com/story/2213470/trump-phoenix-visit-not-yet-confirmed-but-law-enforcement-is-preparing/)
22 [law-enforcement-is-preparing/](http://ktar.com/story/2213470/trump-phoenix-visit-not-yet-confirmed-but-law-enforcement-is-preparing/) (Sept. 11, 2018); ABC15 Arizona, *President Trump*
23 *Eyeing Possible Phoenix Visit Later This Month*, [https://www.abc15.com/news/region-](https://www.abc15.com/news/region-phoenix-metro/central-phoenix/president-trump-eyeing-possible-valley-visit-later-this-month)
24 [phoenix-metro/central-phoenix/president-trump-eyeing-possible-valley-visit-later-](https://www.abc15.com/news/region-phoenix-metro/central-phoenix/president-trump-eyeing-possible-valley-visit-later-this-month)
25 [this-month](https://www.abc15.com/news/region-phoenix-metro/central-phoenix/president-trump-eyeing-possible-valley-visit-later-this-month) (Sept. 6, 2018); AZCentral, *Will President Donald Trump Go Through with*
26 *Phoenix Trip After John McCain’s Death?*,
27 [https://www.azcentral.com/story/news/politics/arizona/2018/08/25/donald-trump-go-](https://www.azcentral.com/story/news/politics/arizona/2018/08/25/donald-trump-go-through-phoenix-trip-following-john-mccain-death/1101887002/)
28 [through-phoenix-trip-following-john-mccain-death/1101887002/](https://www.azcentral.com/story/news/politics/arizona/2018/08/25/donald-trump-go-through-phoenix-trip-following-john-mccain-death/1101887002/) (Aug. 25, 2018);
12News, *Trump Seeks Phoenix Site for Post-Primary Rally*,
[https://www.12news.com/article/news/politics/trump-seeks-phoenix-site-for-post-](https://www.12news.com/article/news/politics/trump-seeks-phoenix-site-for-post-primary-rally/75-586374128)
[primary-rally/75-586374128](https://www.12news.com/article/news/politics/trump-seeks-phoenix-site-for-post-primary-rally/75-586374128) (Aug. 21, 2018); ABC15 Arizona, *Sources: President*
Trump Planning Return to Arizona After Primaries,
[https://www.abc15.com/news/region-phoenix-metro/central-phoenix/sources-](https://www.abc15.com/news/region-phoenix-metro/central-phoenix/sources-president-trump-planning-return-to-arizona-after-primaries)
[president-trump-planning-return-to-arizona-after-primaries](https://www.abc15.com/news/region-phoenix-metro/central-phoenix/sources-president-trump-planning-return-to-arizona-after-primaries) (Aug. 21, 2018).

² Plaintiffs will withdraw this Motion if it is announced that Trump will not appear in Phoenix.

1 Phoenix Police Department's ("PPD") prior violent conduct, the same illegal conduct by
2 PPD is all but guaranteed.

3 A TRO is needed to prevent the widespread unconstitutional and harmful acts that
4 Defendants committed against peaceful anti-Trump protestors one year ago during a
5 similar Trump rally in Phoenix on August 22, 2017. Plaintiffs seek the following Order:

6 A. Defendants shall not disperse anti-Trump protestors or forcefully interfere with or
7 disrupt their exercise of First Amendment rights to speak and protest, and to
8 associate with others with similar views, unless: (1) there is a valid and documented
9 justification for so doing such as a threat of imminent serious harms to others
10 because of the actions of numerous protestors; if such actions are done by a small
11 number of protestors they may be isolated and the protest continued; and (2) the
12 assembly has been publicly declared to be unlawful on valid and documented
13 grounds; and (3) adequate audible warnings have been given in English and Spanish
14 about how to disperse and where the protest can re-convene; and (4) adequate
15 audible warnings are given about the planned use of force by Defendants or their
16 agents in English and Spanish before any force is used against any protestors.

17 B. Defendants shall not use projectile or chemical weapons against protestors in a
18 manner contrary to legal requirements, manufacturers' directions, and PPD policy,
19 including not aiming them at upper bodies or heads, nor firing at close range of any
20 protestors.

21 This class action seeks damages and injunctive relief stemming from Trump's last
22 visit to Phoenix on August 22, 2017. That night, a force of close to 900 PPD officers
23 conducted an unannounced attack with at least 590 projectiles on hundreds of peaceful
24 anti-Trump protestors outside of the Phoenix Convention Center. *See Pánuco Decl., Ex. 1.*
25 The factors that resulted in PPD's violent and unlawful actions against hundreds of anti-
26 Trump protestors remain present, and a repeat of the resulting behavior is likely absent
27 Court direction. These factors include: the dismissive approach of Defendant Chief
28 Williams to the legal requirement of adequate audible notice before use of force against

1 First Amendment-protected protesters; the PPD practice of indiscriminately using weapons
2 capable of causing serious harm against groups of protestors knowing that the great
3 majority if not all in the group have been peaceful and pose no threat; the animus of PPD
4 officers toward the Plaintiff organizations; and the fact of Trump’s visit and the interest of
5 federal and local agencies to insure that he is protected from critical messages no matter
6 the costs. Last year, PPD used pepper spray, tear gas, flash-bang grenades, and impact
7 munitions against hundreds of peaceful protesters without the required prior order to
8 disperse and warning that force and a police attack was imminent.

9 These unconstitutional and harmful actions brought only praise from Defendants
10 City and Police Chief. After the smoke cleared, Chief Williams and other City leadership
11 commended the officers for their actions that night. *Id.*, Ex. 2 at 1:00-1:20; 2:30-5:22. The
12 PPD’s After Action Report (“AAR”) issued in January 2018 confirms that only five people
13 were arrested during the entire day, that officers used numerous munitions against peaceful
14 protesters in an apparent attempt to smoke out the few individuals they believed had acted
15 improperly (if they were even present at the time of attack), and that no warnings were
16 given for at least nineteen minutes after the police attack began. *Id.*, Ex. 3 at 13-14. Chief
17 Williams reported no disciplinary actions or remedial plans; she literally blamed the
18 protestors—despite many precedents requiring notice before weaponry and force is used,
19 she claimed that the mere presence of armed police officers was enough warning for
20 hundreds of peaceful protesters. *Id.*, Ex. 4 at 0:30-1:10. After this suit was filed, the
21 Phoenix Law Enforcement Association (“PLEA”), to which PPD officers belong, lauded
22 the PPD’s “textbook” tactics. *Id.*, Ex. 5.

23 Defendants’ conduct has predictably deterred people who would otherwise
24 demonstrate at the upcoming anti-Trump protest and is deeply chilling to the exercise of
25 their basic constitutional rights to criticize and organize opposition to Trump and his
26 supporters. In addition to applauding PPD’s conduct, PLEA has characterized Plaintiffs in
27 this case as “radical, leftist, and anarchist groups who don’t believe in the rule of law.” *Id.*,
28 Ex. 5. Such animus alone greatly increases the likelihood of hostile and dangerous acts.

1 In light of these factors, absent Court intervention, there are no constraints on a
2 likely repetition of the illegal PPD actions during Trump’s upcoming visit. This is a classic
3 case for a TRO; it would protect Plaintiffs from serious harms while causing no prejudice
4 to Defendants. Plaintiffs proposed TRO should be granted.

5 **FACTUAL BACKGROUND**

6 **I. Plaintiffs Planned to Engage in Protected Political Expression on** 7 **Quintessential Public Fora.**

8 On August 16, 2017, Trump announced plans to speak in Phoenix, just before his
9 anticipated pardon of former Maricopa County Sheriff Joe Arpaio, activating Plaintiffs
10 Puente and Poder to organize an anti-Trump demonstration. Puente, Poder, and other
11 activists and groups mobilized and worked with PPD to plan a safe protest before Trump’s
12 rally scheduled for early evening on August 22, 2017 (“anti-Trump Protest”). Garcia
13 Decl. ¶¶ 8-9; Hernandez Decl. ¶¶ 8-9; Goodman Gonzalez Decl. ¶ 5. The streets and
14 sidewalks of downtown Phoenix slated for use by anti-Trump protesters were traditional
15 public fora regularly used by demonstrators for expressive activities. Puente and Poder
16 planned for the demonstration to continue through the time that Trump’s speech and rally
17 ended and he and his supporters exited the Phoenix Convention Center. The key audience
18 for the messages of the anti-Trump protesters were the Trump supporters. *See* Guillen
19 Decl. ¶ 6. These persons would be leaving the Convention Center after Trump’s speech
20 ended. PPD was aware of the protestors’ intended audience. Garcia Decl. ¶ 9.

21 **II. PPD Used Excessive Force to Unlawfully Disperse Anti-Trump Protestors in** 22 **Violation of the Fourth and First Amendments.**

23 PPD officers were present from the beginning of the demonstration and carried
24 heavy weaponry including:

- 25 a. Pepper bullets;
- 26 b. 40 mm foam impact rounds, which travel at speeds of 89 miles per hour and
27 contained “CS” (irritant) powder and cayenne pepper to deliver both blunt
28 trauma and the effects of a chemical irritant;

- 1 c. Flash-bang grenades, which are devices that produce loud explosive noises and
- 2 bright flashes of light;
- 3 d. Smoke grenades, which are explosive devices that release smoke;
- 4 e. “Stingers,” which are explosive devices that release smoke, rubber, pellets, and
- 5 a chemical irritant within a radius of approximately 50 feet;
- 6 f. Canisters containing “CS,” or tear gas; and
- 7 g. “Bean bag” rounds which are small fabric “pillows” filled with lead shot.

8 The manufacturers’ specifications describe these munitions as designed to
9 incapacitate subjects, and to inflict pain to compel compliance. “Bean bag” rounds deliver
10 blows that cause muscle spasms and render “violent suspects” immobile.

11 Trump arrived at the Convention Center around 6:32 pm. Without provocation, at
12 about 7:00 pm, PPD officers in riot gear formed a line (“Police Line”) on Monroe Street in
13 a “safety zone” in front of anti-Trump protestors who assembled in their PPD-designated
14 and confined location directly across from the north entrance of the Convention Center.
15 Anti-Trump protestors were awaiting the end of Trump’s rally inside the Convention
16 Center, and his and his supporters’ exit from the building. Pánuco Decl., Ex. 6 (map of
17 designated anti-Trump protest area).

18 During the next ten minutes PPD increased its already significant presence in that
19 area; additional police units arrived to join the growing Police Line on Monroe Street
20 facing the protestors. As the rally inside the Convention Center was ending, dozens of
21 officers filed out of the Convention Center in riot gear heading west towards Second Street
22 to join the Police Line. During this time, one PPD officer was captured on body camera
23 ridiculing protestors because he “can’t believe [the anti-Trump protestors] actually think
24 this shit makes a difference.” *Id.*, Ex. 35 at 1:50-1:55.

25 By 8:29 pm, there were many more PPD officers in the Police Line confronting anti-
26 Trump protestors. *See* Goodman Gonzalez Decl. ¶ 8; Guillen Decl. ¶ 7. No imminent
27 threats or seriously harmful actions had been made by a significant number or even a few
28 protestors, and none of the officers had been injured. Pánuco Decl., Ex. 3 at 8-9 (water

1 bottles), 28 (only reported officer injuries related to heat and environment).

2 PPD did not attempt to identify and isolate the few individuals they apparently
3 considered problematic. At about 8:30 pm, Trump and other officials were exiting the
4 Convention Center. Goodman Gonzalez Decl. ¶ 10. After assembling for hours in
5 sweltering heat, anti-Trump protesters were now preparing to express their views and
6 display their signs to Trump and his supporters. Garcia Decl. ¶¶ 12-13.

7 At 8:32 pm, hundreds of anti-Trump protesters were assembled behind the
8 pedestrian fencing along Monroe Street. Pánuco Decl., Ex. 7. As a result of the limited
9 assigned space, a twenty-foot portion of the fence shook. *Id.*, Ex. 7. PPD gave no warnings
10 that force would be used if the fence shook, or that the protest would be disrupted. Garcia
11 Decl. ¶ 14; Goodman Gonzalez Decl. ¶ 13. Without instructing officers to warn protestors,
12 Defendant Lieutenant Moore and Defendant Sergeant McBride then ordered an attack with
13 pepper balls. Pánuco Decl., Exs. 9-10.

14 PPD's later reports admit that at no time between 2:00 and 8:32 pm did PPD
15 announce to the assembled protesters that force would be used against them or that an
16 attack by PPD was imminent. *Id.*, Ex. 3 at 7-10; Exs. 9-22. Lt. Moore continued ordering
17 officers to shoot gas, projectiles, and munitions at the protestors, without mention of the
18 need to warn protesters before opening fire. *Id.*, Ex. 9 at 1; Ex. 10 at 2; Ex. 12 at 2. No
19 declaration of an unlawful assembly or order to disperse was made between 2:00 and 8:32
20 pm. *Id.*, Ex. 3 at 14 ("unlawful assembly" first announced at 9:02 pm).

21 At 8:35 pm, anti-Trump protesters were chanting, "Hands up! Don't shoot!" as well
22 other anti-Trump and social justice messages. *Id.*, Ex. 16 at 1. Without any provocation or
23 warning, an officer on Monroe Street threw a tear gas canister towards anti-Trump
24 protesters standing behind the pedestrian fencing. *Id.*, Ex. 23. That canister erupted in
25 yellow smoke, harming protesters who had been peacefully assembled. *Id.* Without
26 warning, a second officer threw another gas canister toward protestors. *Id.* Utter chaos
27 ensued. Protestors, including children and elderly people, ran from the gas, screaming,
28 coughing, and crying. Garcia Decl. ¶ 13; Goodman Gonzalez Decl. ¶ 11; Travis Decl. ¶ 7;

1 Guillen Decl. ¶¶ 8-9. Persons with mobility issues and others required assistance to get to
2 safety and treatment. Garcia Decl. ¶ 13. Some in the area acted to kick and clear the gas
3 canisters away from protestors to protect them from the chemicals.

4 PPD fired three more gas canisters, two of which were kicked or thrown in
5 directions away from the anti-Trump protestors, and attacked using a mix of chemical
6 weapons and projectiles. Protesters continued running away, screaming, confused, and
7 terrified, dodging rubber bullets, gas canisters, and unidentifiable projectiles launched at
8 their torsos and heads in violation of PPD policy. Garcia Decl. ¶ 13; Goodman Gonzalez
9 Decl. ¶ 11. Anti-Trump protestors fled while holding shirts over their noses and mouths to
10 block the gas and pepper spray that burned their eyes, throats, and lungs; they were
11 unprepared for this unannounced barrage. Pánuco Decl., Ex. 3 at 11-14.

12 PPD escalated its force against protestors by deploying flash-bang grenades on the
13 ground and in the air, which emitted ear-splitting booms and clouds of green and grey gas.
14 *Id.*, Ex. 3 at 11-14, 20; Ex. 12 at 2. Plaintiffs were not given information about where to go
15 for safety or to continue their assembly. *Id.*, Ex. 3 at 11-14.

16 Anti-Trump protestors understandably reacted to the indiscriminate police violence
17 by quickly clearing the area. *Id.*, Exs. 24-26. PPD officers still shot pepper bullets at close
18 range at a remaining anti-Trump protester who was filming the police response, hitting his
19 upper torso in violation of PPD policy. *Id.*, Exs. 25, 26.

20 Lt. Moore then ordered PPD officers to use force against anti-Trump protestors by
21 “mov[ing] into the crowd and clear[ing] the area all the way to Van Buren,” without
22 warning or directions. *Id.*, Ex. 10 at 3. PPD officers with riot helmets and shields drawn,
23 rifles aimed to shoot chemical munitions and projectiles, advanced on the anti-Trump
24 protestors and breached the pedestrian gate on Monroe Street, at the location where Puente
25 and Poder had positioned much of the water for protestors at PPD’s direction. *Id.*, Ex. 27.
26 PPD fired pepper spray at protestors filming their attack. *Id.*

27 Rather than isolating, and arresting if necessary, any alleged problem individuals,
28 PPD instead opted for a “let’s fire on all” tactic that endangered the rights and well-being

1 of hundreds of peaceable protestors, including children and the elderly; PPD personnel
2 were apparently trained in the tactic of firing on everyone in a crowd as the best method
3 for shaking out a small number of people of concern, if any were present at all. The riot-
4 gear-clad officers moved into the areas of assembly designated for anti-Trump protesters
5 while firing projectiles indiscriminately at all present. Garcia Decl. ¶ 14; Guillen Decl.
6 ¶ 10. Anti-Trump protesters had no opportunity to collect their personal property and signs
7 containing their political messages. Garcia Decl. ¶ 15. Puente was forced to leave behind
8 equipment it uses for demonstrations and other events, including a large inflatable screen
9 and amplifiers. *Id.* PPD shoved anti-Trump protesters with their shields as they were
10 moving out of the area. Pánuco Decl., Ex. 28. PPD trapped Plaintiffs within the barricades
11 of the designated zone, forcing them to climb, jump, or otherwise find a way over them to
12 escape harms. Garcia Decl. ¶ 13. No considerations were given to the elderly or persons
13 with limited mobility, some in wheelchairs. *Id.*

14 The Police Line moved north on both Second and Third Streets until 9 pm,
15 forcefully driving anti-Trump protesters from the area by indiscriminately shooting
16 canisters and pepper bullets at close range at heads and faces in violation of department
17 policy and other areas. Pánuco Decl., Ex. 29 at 1:00-1:15. PPD sprayed a member of the
18 media as she was moving away from them. *Id.*, Exs. 30-34.

19 PPD's own AAR confirms that *at least nineteen minutes* elapsed between the first
20 attack at 8:33 pm (*id.*, Ex. 7) and the dispersal instructions at 8:52 pm,³ and the unlawful
21 assembly announcement was delayed until 9:02 pm. *Id.*, Ex. 3 at 14. The dispersal orders
22 from the helicopter were in English only. Dozens of individuals were shot at close range
23 as officers unloaded their weapons at anti-Trump protesters. *Id.* PPD officers shouted
24 derisive comments at the peaceful protesters, including: "stun bag that guy, oh yeah, yep
25 that'll teach him." Ex. 44 at 2:45-3:00. At 9:14 pm, "grenadiers" were instructed to "target
26

27 ³ Officer body camera footage indicates that the first audible helicopter directions to
28 disperse came at 8:56 pm. Pánuco Decl., Ex. 36 at 6:29 (no dispersal orders between 8:50-
8:56 pm, and dispersal instructions heard are only in English).

1 anyone who aggressively approaches the police line with pepper balls.” *Id.*, Ex. 3 at 14.
2 They shot projectiles and chemicals despite having no evidence that persons hit had
3 engaged in improper conduct. *Id.*, Ex. 3 at 6 (documenting only five arrests).

4 Throughout, Defendant officers were unconcerned about attacking groups of
5 protestors, the great majority, if not all, of whom had done nothing wrong. The City
6 Manager acknowledged in a report dated August 28, 2017, “*It is important to note that the*
7 *vast majority of participants on August 22 in both the campaign rally and the protests*
8 *outside were peaceful, prepared and civil.*” *Id.*, Ex. 37 at 1 (emphasis added).

9 **III. PPD Officers Shot Plaintiffs with Projectiles, Tear Gas, and Pepper Spray**
10 **Without Warnings and Against PPD Policy.**

11 Force was used on all the individual Plaintiffs without justification or warnings, and
12 in violation of law and PPD policy. Video footage captures Plaintiff Janet Travis walking
13 calmly away with her back to the Police Line when an officer shot her upper back, near her
14 head, with a projectile that knocked her to the ground. Pánuco Decl., Ex. 29 at 0:54-0:59;
15 12-13; Exs. 38-39; Travis Decl. ¶ 9. As protesters attempted to assist Ms. Travis to her feet,
16 PPD officers sprayed their eyes and faces with pepper spray. Pánuco Decl., Ex. 40 (entire
17 video clip); Exs. 38-39; Travis Decl. ¶ 9. As Ms. Travis and those assisting her fled PPD’s
18 attack, PPD officers shot her again with a projectile striking her buttock. Pánuco Decl., Ex.
19 40; Travis Decl. ¶ 9.

20 Similarly, Plaintiff Ira Yedlin, who is 70 years old, was peacefully protesting when
21 PPD targeted him with tear gas without warning and hit him with unidentified projectiles
22 five times in the legs, and against policy, hitting his back and face. Doc. 1, ¶ 66.d.

23 Plaintiff Cynthia Guillen was peacefully chanting and filming the protest and police
24 response, when without warning PPD gassed her, and against policy, shot her in the lower
25 back and near her stomach and hip, with an unidentified projectile. Guillen Decl. ¶¶ 9-10.
26 PPD’s projectile forcefully hit Ms. Guillen, and others had to help her limp away from the
27 assembly area as she suffered severe pain. Guillen Decl. ¶¶ 11-12.
28

1 Plaintiff Jacinta Gonzalez Goodman was peacefully protesting and coordinating
2 public safety for anti-Trump protesters when PPD launched an unannounced tear gas volley
3 at her and other protesters, causing her to prematurely flee the protest area before delivering
4 her message to Trump and his supporters. Gonzalez Goodman Decl. ¶¶ 5, 16.

5 **IV. Chief Williams, City Officials, and PPD Claim That Their Violent Assault on**
6 **Protesters Was “Textbook” and Consistent with PPD Policies and Practices—**
7 **Guaranteeing That It Will Be Repeated.**

8 After reviewing PPD’s violent unannounced actions against the protestors,
9 Defendant Chief Williams stated that she was “so proud to be the police chief of men and
10 women who literally showed that professionalism—under contentious scenarios and
11 situations—they demonstrated it flawlessly.” Brody Decl., Ex. 1 at 3. Chief Williams also
12 said that, on August 22, 2017, the night of Trump’s rally, she “believe[d] the actions of our
13 officers reflected the direction I gave them,” *id.*, Ex. 2 at 1, and that their actions were
14 “textbook perfect” *id.*, Ex. 3 at 4, 11.

15 Similarly, City Manager Ed Zuercher issued a memorandum on August 28, 2017,
16 to Chief Williams stating,

17 What all members of the Phoenix Police Department accomplished on
18 August 22 was notable. In an emotional atmosphere, our police officers
19 showed professionalism in ensuring the safety and First Amendment rights
20 of the community. There were no serious injuries or property damage and
21 only four related arrests. . . .

22 Pánuco Decl., Ex. 37 at 1. Zuercher’s praise of Chief Williams, and his calling the PPD’s
23 assaults on anti-Trump protesters under her leadership “notable” and “professional,” is
24 further after-the-fact ratification of these practices by City officials. It demonstrates the
25 high-level City approval of PPD’s harmful and illegal actions, and the clear need for at
26 least temporary court intervention.

27 PPD’s AAR documents that the only verbal dispersal order given on August 22,
28 2017, was made about 9:00 pm in English only, despite PPD’s knowledge that a significant
number of protestors were Spanish speakers. Pánuco Decl., Ex. 3 at 11-14. Defendants
conceded that their notification practices were inadequate in telling the City Council:

1 PPD's own AAR admits (1) it made only five arrests in connection with only eight reported
2 incidents; (2) there were close to 1,000 Phoenix public safety personnel at the event; (3) PPD
3 personnel were in contact with community groups and organizers before the event and
4 throughout the event, including the organizational Plaintiffs; (5) PPD deployed pepper balls
5 around 8:30 pm, although there was no unlawful activity among the anti-Trump protesters;
6 (6) PPD escalated its attack on protesters steadily over five minutes; and (7) PPD made no
7 announcement at all to the anti-Trump protesters that any force would be used against them.
8 Pánuco Decl., Ex. 3 at 5-6, 8, 9-10, 13-14, 22-23, 29. The Chief and City Manager publicly
9 praised their officers for this blatantly unconstitutional behavior. Pánuco Decl., Ex. 37 at 1;
10 Brody Decl., Ex. 1.

11 This conduct by the PPD violated Plaintiffs' Fourth and First Amendment rights on
12 August 22, 2017. Organizational Plaintiffs Puente and Poder had their expressive activity
13 abruptly cut off, and their members, supporters, and allies were prevented from delivering
14 their message to their intended audience, Trump and his supporters. Likewise, Plaintiffs
15 Yedlin, Guillen, Travis, and Gonzalez Goodman were prevented from exercising their First
16 Amendment rights of speech and assembly. Like others present that night, Plaintiffs suffered
17 from inhaling tear gas and pepper spray, being terrified by flash-bang grenades, and being
18 struck by projectile weapons. In the wake of this attack, their speech is predictably "chilled"
19 to the freezing point; they are afraid of more police violence at future protests in Phoenix.⁶

20 **A. PPD's Use of Force Violated the Fourth Amendment.**

21 In connection with the August 22, 2017 anti-Trump protest, the PPD clearly violated
22 Plaintiffs' Fourth Amendment rights: they used unreasonable force against peaceful
23 protesters, and they did so without required warnings that such force was imminent. Without
24 a TRO, the same is likely to occur at the upcoming anti-Trump protest.

25
26
27 ⁶ Plaintiffs' Complaint alleges sufficient facts to establish their standing to bring this
28 lawsuit and seek the relief they have requested in their Complaint and in this Motion. *See*
Doc. 1, ¶¶ 7-28, 62, 66.

1 The Fourth Amendment prohibits the police from using excessive or unreasonable
2 force. When force is used against protestors or others exercising their First Amendment rights,
3 this prohibition “must be applied with scrupulous exactitude.” *Lamb v. City of Decatur*, 947
4 F. Supp. 1261, 1263 (C.D. Ill. 1996) (quoting *Zurcher v. Stanford Daily*, 436 U.S. 547, 564
5 (1978)). In the context of so-called less-lethal weapons similar to those used by PPD, the
6 Ninth Circuit has said that using “such force, though less than deadly, . . . is permissible only
7 when a strong governmental interest compels the employment of such force.” *Glenn v. Wash.*
8 *Cnty.*, 673 F.3d 864, 872 (9th Cir. 2011) (beanbag gun) (quoting *Deorle v. Rutherford*, 272
9 F.3d 1272, 1280 (9th Cir. 2001)).

10 “The strength of the government’s interest in the force used is evaluated by examining
11 three primary factors: (1) whether the suspect poses an immediate threat to the safety of the
12 officers or others, (2) the severity of the crime at issue, and (3) whether he is actively resisting
13 arrest or attempting to evade arrest by flight.” *Glenn*, 673 F.3d at 872 (citing *Graham v.*
14 *Connor*, 490 U.S. 386, 396 (1989)) (internal quotation marks omitted). “Other relevant factors
15 include the availability of less intrusive alternatives to the force employed, [and] whether
16 proper warnings were given.” *Id.* “[W]here there is no need for force, any force used is
17 constitutionally unreasonable.” *Logan v. City of Pullman*, 392 F. Supp. 2d 1246, 1261 (E.D.
18 Wash. 2005). And even when there is a need for some force, “force is least justified against
19 nonviolent misdemeanants who do not flee or actively resist arrest.” *Buck v. City of*
20 *Albuquerque*, 549 F.3d 1269, 1289 (10th Cir. 2008) (citation omitted).

21 The degree of violent intrusion upon the anti-Trump protesters by the multitude of
22 weapons used against them was unquestionably great—they were sprayed at close range with
23 chemical munitions, including directly in the face, they were hit with projectiles which were
24 aimed at and hit their heads and upper bodies, and they suffered physical and emotional
25 injuries from the attack. Ninth Circuit precedent and other court cases indicate that this type
26 of intense and dangerous force requires a strong government interest to justify it. *E.g.*, *Nelson*
27 *v. City of Davis*, 685 F.3d 867, 877-78 (9th Cir. 2012) (the “application of force” with pepper
28 ball guns “unquestionably constitute[s] a seizure under the Fourth Amendment” and

1 constitutes “substantially more than a minimal intrusion”); *Boyd v. Benton Cnty.*, 374 F.3d
2 773, 779 (9th Cir. 2004) (“[G]iven the inherently dangerous nature of the flash-bang device,
3 it cannot be a reasonable use of force under the Fourth Amendment to throw it ‘blind’ into a
4 room occupied by innocent bystanders absent a strong governmental interest”); *United*
5 *States v. Jones*, 214 F.3d 836, 837 (7th Cir. 2000) (flash-bang grenade is more accurately
6 called a bomb or concussion grenade); *Spain v. Proconier*, 600 F.2d 189, 195-96 (9th Cir.
7 1979) (tear gas can be “extremely dangerous” when used in excessive quantities) (Eighth
8 Amendment); see *Logan*, 392 F. Supp. 2d at 1261 (Pepper spray is a “dangerous weapon,”
9 and “[t]he Ninth Circuit has held that the intrusion caused by pepper spray is certainly ‘more
10 than minimal.’”) (citations omitted).

11 The vast majority of anti-Trump protesters posed no threat of harm. Pánuco Decl., Ex.
12 37 at 1 (“It is important to note that the **vast majority** of participants on August 22 in both the
13 campaign rally and the protests outside were peaceful, prepared and civil. . . . “[A]t the end
14 of the evening, the PPD engaged in crowd control tactics that involved pepper balls and tear
15 gas due to a **very small number of participants** who became unruly.”) (emphasis added).
16 None of the anti-Trump protesters was accused of any crime, and PPD made only five arrests
17 in connection with the event. Given the size of the police presence that night, less violent
18 means were available to address any issues—police could have identified and removed the
19 “very small number” of “unruly” protesters, or deployed the mounted units from the Tempe
20 and Scottsdale police departments, which are intended specifically for crowd-control
21 situations. Doc. 1, ¶ 36. Moreover, PPD deployed weapons in violation of its own policy.⁷
22 See *Nelson*, 685 F.3d at 880 (Even if officers have an interest in clearing an area, “the desire
23 to do so quickly, in the absence of any actual exigency, cannot legitimize the application of

24
25 ⁷ See, e.g., PPD Operations Order 1.5 (Use of Force), § 4.D(1) (Limits use of Oleoresin
26 Capsicum spray (pepper spray) to certain circumstances not present on August 22, 2017.
27 “Employees using the Mark-9 canister OC spray will direct a one-second burst into the face
28 of the subjects from a **minimum distance of 15 feet**.” “Employees using the Mark-9 canister
OC spray in a riot control situation should direct the spray face level, from a **minimum**
distance of 15 feet, into the crowd until the desired effect is achieved.”) (emphasis added),
available at https://www.phoenix.gov/policesite/Documents/operations_orders.pdf.

1 force when it is not otherwise justified.”); *Deorle*, 272 F.3d at 1281 (“A desire to resolve
2 quickly a potentially dangerous situation is not the type of governmental interest that, standing
3 alone, justifies the use of force that may cause serious injury. There must be other significant
4 circumstances that warrant the use of such a degree of force at the time it is used.”).

5 “‘Appropriate warnings comport with actual police practice’ and ‘such warnings
6 should be given, when feasible, if the use of force may result in serious injury.’” *Glenn*, 673
7 F.3d at 876 (quoting *Deorle*, 272 F.3d at 1284). “The Ninth Circuit has defined the warning
8 required *before* using force—even force that does not qualify as deadly force—as a ‘warning
9 of the imminent use of such a significant degree of force.’” *Hulstedt v. City of Scottsdale*, 884
10 F. Supp. 2d 972, 992 (D. Ariz. 2012) (quoting *Deorle*, 272 F.3d at 1285) (emphasis added).
11 “Mere commands, absent a statement that force will be used if the command is ignored, have
12 not been found to constitute adequate warning.” *Id.*

13 It is undisputed that PPD gave no commands for the anti-Trump protesters to disperse
14 and no warnings that any force would be used before officers deployed pepper spray and then
15 escalated their force with additional weapons. This failure plainly falls short of Fourth
16 Amendment requirements. Firing such dangerous weapons directly at peaceful protesters who
17 posed no “immediate threat to the safety of the officers or others,” with absolutely no
18 “warning of the imminent use of such a significant degree of force,” *Deorle*, 272 F.3d at 1281,
19 1285, was constitutionally unreasonable and clearly violated the Fourth Amendment.

20 **B. The PPD’s Use of Force to Disperse Protesters with No Lawful**
21 **Justification Violated the First Amendment.**

22 PPD also violated the First Amendment rights of the anti-Trump protesters on August
23 22, 2017, when officers violently dispersed them without legal justification for ending their
24 demonstration. PPD cannot justify its use of force on peaceful protesters simply because a
25 few members of the crowd may have been “unruly.” Pánuco Decl., Ex. 37 at 1.

26 “Effective advocacy of both public and private points of view, particularly
27 controversial ones, is undeniably enhanced by group association.” *NAACP v. Patterson*, 357
28 U.S. 449, 460 (1958). Because of this, “[a]ctivities such as demonstrations, protest marches,

1 and picketing are clearly protected by the First Amendment.” *Collins v. Jordan*, 110 F.3d
2 1363, 1371 (9th Cir. 1996). This means that “governmental action” that “directly suppress”
3 or have “the practical effect of discouraging” protests “can be justified only upon some
4 overriding valid interest of the State.” *Patterson*, 357 U.S. at 460, 461. After all, “[w]hat value
5 would the First Amendment carry if its demonstrators could be dispersed or intimidated by
6 police brutality or unnecessary force?” *Lamb*, 947 F. Supp. at 1264.

7 Courts have therefore repeatedly found First Amendment violations where, as here,
8 the government used excessive force to break up protests. *See, e.g., Keating v. City of Miami*,
9 598 F.3d 753, 767 (11th Cir. 2010) (officers “violated [plaintiffs’] clearly established First
10 Amendment rights . . . by directing and failing to stop subordinate officers to use less-than-
11 lethal weapons to disperse a crowd of peaceful demonstrators”); *Buck*, 549 F.3d at 1292
12 (affirming “district court’s determination that [defendant] violated plaintiffs’ First
13 Amendment rights to freedom of expression and assembly, when he authorized the use of
14 force to break up the protest”); *Jones v. Parmley*, 465 F.3d 46, 53, 60 (2d Cir. 2006) (affirming
15 denial of qualified immunity on First Amendment claim, where law enforcement responded
16 to protest with excessive force).

17 The prospect of being bombarded with such dangerous weapons by police while doing
18 nothing wrong “would chill *or* silence a person of ordinary firmness from future First
19 Amendment activities.” *Brodheim v. Cry*, 584 F.3d. 1262, 1271 (9th Cir. 2009) (citation
20 omitted). PPD cannot justify its violent and indiscriminate use of force against hundreds of
21 anti-Trump protesters simply because a handful of others in the crowd may have been
22 engaged in unlawful activity. *NAACP v. Claiborne Hardware*, 458 U.S. 886, 908 (1982)
23 (“The right to associate does not lose all constitutional protection merely because some
24 members of the group may have participated in conduct or advocated doctrine that itself is
25 not protected.”).

26
27
28

1 **II. Plaintiffs Will Suffer Irreparable Harm If the Court Does Not Enter the**
2 **Requested TRO.**

3 Cutting off and deterring First Amendment activities constitutes irreparable harm.
4 “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably
5 constitutes irreparable injury” as a matter of law. *Elrod v. Burns*, 427 U.S. 347, 373 (1976);
6 *Klein v. City of San Clemente*, 584 F.3d 1196, 1207-08 (9th Cir. 2009). Indeed, PPD’s
7 violence at the Trump rally has actually deterred Puente and Poder from planning a similarly
8 large and inclusive demonstration for Trump’s rally this year. Garcia Decl. ¶¶ 17-20;
9 Hernandez Decl. ¶ 16.

10 Under the Fourth Amendment, “the loss of constitutional freedoms, for even minimal
11 periods of time, unquestionably constitutes irreparable injury” for purposes of preliminary
12 relief. *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (citation and
13 internal quotation marks omitted); *see, e.g., Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
14 Cir. 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably
15 constitutes irreparable injury.’”) (quoting *Elrod*, 427 U.S. at 373) (affirming injunction
16 against Fourth Amendment violations); *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d
17 1486, 1501-02 (9th Cir. 1996) (same). Plaintiffs here face the real possibility that Defendants
18 will repeat their “textbook” practices, clearly praised and ratified by Chief Williams, unless
19 the Court intervenes.

20 PPD committed widespread violations of constitutional rights and physically and
21 emotionally harmed many people during Trump’s last rally. Chief Williams and City
22 Manager Zuercher publicly approved of their conduct and failed to take any disciplinary
23 action against individual officers or any other remedial actions. This happened even after
24 Plaintiffs Puente and Poder engaged in planning communications with PPD and the ACLU
25 spoke with representatives of the City and PPD to urge them to protect protestors’ safety. And
26 the very nature of the PPD’s violations—indiscriminate use of highly dangerous weapons
27 against hundreds of peaceful protesters—cast a wide and injurious net.
28

1 **III. The Balance of Equities Tips in Plaintiffs' Favor and the Requested Order**
2 **Serves the Public Interest.**

3 When an injunction is sought against the government, these two prongs of the standard
4 for preliminary relief can be considered together. *Ariz. Dream Act Coal. v. Brewer*, 818 F.3d
5 901, 920 (9th Cir. 2016) (analyzing both public interest and equities factors simultaneously).
6 Many courts have recognized the public interest in upholding the Constitution. *See, e.g.,*
7 *Klein*, 584 F.3d at 1208 (public interest favors upholding First Amendment); *Giovani*
8 *Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (“upholding constitutional rights
9 surely serves the public interest”); *Marchwinski v. Howard*, 113 F. Supp. 2d 1134, 1144 (E.D.
10 Mich. 2000) (“Perhaps no greater public interest exists than protecting a citizen’s [Fourth
11 Amendment] rights under the constitution.”) (citation omitted). Thus, federal courts have
12 issued injunctions to stop the police from interfering with protests. *Houser v. Hill*, 278 F.
13 Supp. 920, 926 (M.D. Ala. 1968) (enjoining police from “[u]nlawfully interfering, through
14 the use of force and intimidation, with the peaceful and lawful assemblies”); *Cottonreader v.*
15 *Johnson*, 252 F. Supp. 492, 499 (M.D. Ala. 1966) (preliminarily enjoining police from
16 “[c]ommitting acts of violence upon, or threatening, intimidating, assaulting or harassing any
17 of the plaintiffs and those similarly situated in the exercise of their constitutional rights of free
18 speech, assembly and petition”).

19 Plaintiffs seek a narrow and “precisely drawn” TRO that will apply to the conduct of
20 the City and PPD, their employees, and those acting in concert or active participation with
21 them during Trump’s upcoming appearance in Phoenix. *Union Pac. R.R. Co. v. Mower*, 219
22 F.3d 1069, 1077 (9th Cir. 2000); *see* Fed. R. Civ. P. 65(d)(2). The City and PPD have no
23 legitimate interest in violating the First and Fourth Amendments. Defendants can fulfill both
24 their legitimate public safety interests and their constitutional duties, and the requested TRO
25 will not prevent PPD from addressing legitimate safety concerns.⁸ *See Waldman Pub. Corp.*

26 ⁸ No bond is necessary in this case for three separate and independent reasons. First,
27 Plaintiffs have a strong likelihood of success on the merits. *See Scherr v. Volpe*, 466 F.2d
28 1027, 1035 (7th Cir. 1972). “[W]aiving the bond requirement is particularly appropriate
where a plaintiff alleges the infringement of a fundamental constitutional right.” *Complete*

1 v. *Landoll, Inc.*, 43 F.3d 775, 785 (2d Cir. 1994) (“an injunction should not impose
2 unnecessary burdens on lawful activity”).

3 **CONCLUSION**

4 For the foregoing reasons, the Court should issue the requested TRO. A proposed form
5 of order accompanies this Motion.

6 Respectfully submitted this 18th September, 2018.

7
8 ACLU FOUNDATION OF ARIZONA

9 By Kathleen E. Brody
Kathleen E. Brody
Darrell L. Hill

10
11 HADSELL STORMER & RENICK LLP

12 Dan Stormer
13 Josh Piovia-Scott
Cindy Pánuco

14
15 DANIEL J. POCHODA

16 Daniel J. Pochoda
17 *Attorneys for Plaintiffs*

18
19
20
21
22
23

Angler, LLC v. City of Clearwater, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009). Second,
24 an injunction here would “enforce ‘public interests.’” *See Pharm. Soc. v. N.Y. State Dep’t*
25 *of Soc. Servs.*, 50 F.3d 1168, 1175 (2d Cir. 1995). Third, there is no realistic likelihood of
26 harm to Defendants resulting from a TRO, which merely would prohibit PPD from
27 interfering with First Amendment activities without justification and from using excessive
28 force against crowds. *See Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 1997). Fourth,
the “equities of potential hardships to the parties” weighs in favor of Plaintiffs. *Temple*
Univ. v. White, 941 F.2d 201, 220 (3d Cir. 1991). Defendants will not be hamstrung in
legitimate law enforcement activities, but Plaintiffs will be spared further constitutional
violations.

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

I hereby certify that on 18th day of September, 2018, I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing. Notice of this filing will be sent by operation of the Court’s electronic filing system or by mail as indicated on the Notice of Electronic Filing.

/s/ Kathleen E. Brody
Kathleen E. Brody