

1 Nathan Freed Wessler (*pro hac vice application pending*)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
2 125 Broad Street, 18th Floor
New York, NY 10004
3 (212) 549-2500
nwessler@aclu.org
4 *Attorney for Amici Curiae*

5 Matthew T. Cagle (SBN 286101)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA
6 39 Drumm Street
San Francisco, CA 94111
7 (415) 293-6336
mcagle@aclunc.org
8 *Attorney for Amici Curiae*

9
10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 NELSON SEQUEIRA, ORSAY ALEGRIA,
13 and ISMAEL CORDERO, individually and on
behalf of all others similarly situated,

14 Plaintiffs,

15 v.

16 U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION &
17 CUSTOMS ENFORCEMENT; WESTERN
UNION FINANCIAL SERVICES, INC., a
18 Colorado corporation; CONTINENTAL
EXCHANGE SOLUTIONS, INC., a Kansas
19 corporation, d/b/a RIA FINANCIAL
SERVICES and AFEX MONEY EXPRESS;
20 VIAMERICAS CORPORATION, a Delaware
Corporation; and DOLEX DOLLAR
21 EXPRESS, INC., a Texas corporation,

22 Defendants.
23
24

Case No. 4:22-CV-07996-HSG

MOTION FOR LEAVE TO FILE BRIEF
OF *AMICI CURIAE* AMERICAN CIVIL
LIBERTIES UNION, AMERICAN
CIVIL LIBERTIES UNION OF
ARIZONA, AND AMERICAN CIVIL
LIBERTIES UNION OF NORTHERN
CALIFORNIA IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
MONEY TRANSFER BUSINESS
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' SECOND AMENDED
COMPLAINT

1 The American Civil Liberties Union (ACLU), American Civil Liberties Union of Arizona,
 2 and American Civil Liberties Union of Northern California, by and through undersigned counsel,
 3 respectfully move for leave to file the attached letter brief in support of Plaintiffs' Opposition to
 4 Money Transfer Business Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint
 5 in the above-captioned case.¹ In support of this motion, *amici* state the following:

6 "The district court has broad discretion to appoint amici curiae." *NetChoice, LLC v. Bonta*,
 7 No. 22-CV-08861-BLF, 2023 WL 6131619, at *1 (N.D. Cal. Sept. 18, 2023) (citation omitted).
 8 "There are no strict prerequisites to qualify as amici. . . Amici need show only that their
 9 participation is useful to the court." *Id.* (citation and quotation marks omitted); *see also* Fed. R.
 10 App. P. 29(a)(3) (motion for leave to file must state the movant's interest, the reason why an
 11 *amicus* brief is desirable, and why the matters asserted are relevant to the disposition of the case).
 12 The "classic role" of *amici* includes "assisting in a case of general public interest" and
 13 "supplementing the efforts of counsel." *Miller-Wohl Co. v. Comm'r of Lab. & Indus. State of*
 14 *Mont.*, 694 F.2d 203, 204 (9th Cir. 1982).

15 Each of the *amici* has a strong interest in the issues before the Court. The ACLU is a
 16 nationwide, nonprofit, nonpartisan organization dedicated to defending the principles of liberty
 17 and equality embodied in the Constitution. The ACLU of Arizona and ACLU of Northern
 18 California are affiliates of the national ACLU. The ACLU and its affiliates share a longstanding
 19 commitment to protecting individuals against unjustified invasions of privacy by the government
 20 and private corporations, and have served as counsel or *amicus curiae* in multiple cases concerning
 21

22 ¹ No party's counsel authored the proposed brief of *amici curiae* in whole or in part nor
 23 contributed money that was intended to fund preparing or submitting the brief. No person other
 24 than *amici* contributed money that was intended to fund preparing or submitting the brief. *See*
 Fed. R. App. P. 29(a)(4)E).

1 enforcement of consumer privacy statutes and the Fourth Amendment. *See, e.g., Carpenter v.*
2 *United States*, 585 U.S. 296 (2018) (counsel); *United States v. Moalin*, 973 F.3d 977 (9th Cir.
3 2020) (counsel); *Patel v. Facebook, Inc.*, 932 F.3d 1264 (9th Cir. 2019) (amicus); *ACLU v.*
4 *Clearview AI, Inc.*, No. 20 CH 4353, 2021 WL 4164452 (Ill. Cir. Ct., Cook Cnty, Aug. 27, 2021)
5 (counsel).

6 *Amici* also have particular interest in the subject matter of this lawsuit. For example, in
7 2022 the ACLU and ACLU of Arizona sent public records requests to the Arizona Attorney
8 General's office and the U.S. Department of Homeland Security seeking records related to the bulk
9 collection of information from money transfer companies, including Defendants in this action.
10 Last year, the ACLU and ACLU of Arizona published more than 200 documents released by the
11 Arizona Attorney General's office that shed light on Arizona's collection and use of these bulk
12 money transfer records. *See Arizona AG Money Transfer Surveillance FOIA Database*, ACLU
13 (Dec. 22, 2022), [https://www.aclu.org/foia-collection/arizona-ag-money-transfer-surveillance-](https://www.aclu.org/foia-collection/arizona-ag-money-transfer-surveillance-foia-database)
14 [foia-database](https://www.aclu.org/foia-collection/arizona-ag-money-transfer-surveillance-foia-database). *See also* Fikayo Walter-Johnson & Nathan Freed Wessler, *How the Arizona*
15 *Attorney General Created a Secretive, Illegal Surveillance Program to Sweep up Millions of Our*
16 *Financial Records*, ACLU (Jan. 18, 2023), <https://perma.cc/Z7MJ-XTHP>.

17 *Amici* respectfully submit that their proposed letter brief will significantly aid the Court
18 in its resolution of this matter. In particular, *amici* seek to address one important issue regarding
19 the Money Transfer Business Defendants' argument that this action should be dismissed
20 pursuant to Federal Rule of Civil Procedure 19 for failure to join a necessary party, the State of
21 Arizona. *See* Money Transfer Bus. Defs' Mot. To Dismiss Pls' Second Am. Compl. 6–12, ECF
22 No. 157; Money Transfer Bus. Defs' Suppl. Br. in Resp. to Ct. Order, ECF No. 182. *Amici's*
23
24

1 brief expands on an argument that Plaintiffs raise in their September 26, 2024, supplemental
2 brief. *See* Pls. Suppl. Br. Re Money Transfer Bus. Defs’ Mot. to Dismiss 1–2, ECF No 183.

3 Although the Arizona Attorney General has submitted a letter to this Court claiming an
4 “interest” in this matter, ECF No. 181, *amici* write to explain why Arizona’s asserted interest
5 does not amount to a “legally protected interest” as required under Rule 19. As the proposed
6 *amicus* filing explains, the basis of the state’s asserted interest—its use of bulk, prospective
7 subpoenas for out-of-state money transfer records—has already been ruled illegal in a binding
8 opinion by an Arizona appellate court. Because an entity cannot have a legally protected interest
9 in continuing to engage in illegal conduct, Arizona’s asserted interest does not satisfy the
10 requirements of Rule 19. The correct resolution of this issue is important, as a state should not be
11 able to stymie litigation of claims between other parties based on invocation of an interest in
12 conduct that its own courts have ruled illegal.

13 Mindful of the Court’s limited judicial resources, *amici* seek to file a letter brief of only
14 three pages, and do not seek to intervene as a party or receive any oral argument time. Permitting
15 *amici* to file the attached letter brief will not prejudice any party or delay resolution of this
16 matter. *Amici* are filing as soon as possible after the filing of the Arizona Attorney General’s
17 letter of interest late last week, *see* ECF No. 181 (docketed Sept. 26, 2024), and *amici* introduce
18 no new issues not already put in play by the parties in their recent supplemental briefs, *see* ECF
19 Nos. 182 & 183 (each docketed Sept. 26, 2024).

20 Plaintiffs and Defendants U.S. Department of Homeland Security and U.S. Immigration
21 and Customs Enforcement have consented to *amici*’s filing of the proposed brief. The Money
22 Transfer Business Defendants oppose *amici*’s motion for leave to file.

1 WHEREFORE, the ACLU, ACLU of Arizona, and ACLU of Northern California
2 respectfully request leave to file the attached Brief of *Amici Curiae*.

3 Dated: September 30, 2024
4

5
6 Nathan Freed Wessler (*pro hac vice*
7 *application pending*)
8 AMERICAN CIVIL LIBERTIES UNION
9 FOUNDATION
10 125 Broad Street, 18th Floor
11 New York, NY 10004
12 (212) 549-2500
13 nwessler@aclu.org
14 *Attorney for Amici Curiae*

/s/ Matthew T. Cagle
Matthew T. Cagle (SBN 286101)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
(415) 293-6336
mcagle@aclunc.org
Attorney for Amici Curiae



September 30, 2024

Honorable Haywood S. Gilliam, Jr.
United States District Court, Northern District of California
Ronald V. Dellums Federal Building & United States Courthouse
1301 Clay Street
Oakland, CA 94612

Re: *Sequeira v. U.S. Dep't of Homeland Sec.*, No. 4:22-cv-7996-HSG

Letter Brief of *Amici Curiae* American Civil Liberties Union, ACLU of Arizona, and ACLU of Northern California in Support of Plaintiffs' Opposition to Money Transfer Business Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint

Dear Judge Gilliam,

Pursuant to the accompanying motion for leave, *amici curiae* American Civil Liberties Union (ACLU), ACLU of Arizona, and ACLU of Northern California write to address one important issue regarding the Money Transfer Business Defendants' argument that this action should be dismissed pursuant to Federal Rule of Civil Procedure 19 for failure to join a necessary party. *See* ECF No. 157 at 6–12; ECF No. 182.

On September 25, 2024, the Arizona Attorney General submitted a letter to the Court claiming “a very strong interest” in this matter. ECF No. 181 at 2. This appears intended to satisfy the prong of Rule 19 defining a “Required Party” as a person who “claims an interest relating to the subject of the action” Fed. R. Civ. P. 19(a)(1)(B).

Merely asserting an interest (even a “very strong” one) does not suffice under the rule, however. As the Ninth Circuit has repeatedly explained, “[t]o satisfy Rule 19, an interest must be *legally protected*.” *Dine Citizens Against Ruining Our Env't v. Bureau of Indian Affs.*, 932 F.3d 843, 852 (9th Cir. 2019) (emphasis added). *See also, e.g., Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990).

The problem with Arizona's invocation of an interest here is that the basis of the state's asserted interest—its use of bulk, prospective subpoenas for out-of-state money transfer records—has already been ruled illegal in a binding opinion by an Arizona appellate court. *State ex rel. Goddard v. W. Union Fin. Servs., Inc.*, 166 P.3d 916, 923–97 (Ariz. Ct. App. 2007). Put simply, an asserted “interest” in ongoing illegal



activity “is not ‘legally protected.’” *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1093 (10th Cir. 2006) (addressing definition of “legally protected interest” in standing context).¹ See also *Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992) (“We do not hold, of course, that a district court would be required to find a party necessary [under Rule 19] based on patently frivolous claims made by that party.”).

The Arizona AG’s letter asserts an interest in continuing “to issue and enforce . . . subpoenas” to “Money Service Businesses” for bulk records regarding Californians’ money transfers. ECF No. 181 at 2. Those subpoenas are issued under the purported authority of Ariz. Rev. Stat. § 13-2315, an anti-racketeering statute. However, the Arizona Court of Appeals has foreclosed use of section 13-2315 to issue just the type of bulk, prospective subpoena for money transfer records at issue here.

In 2006, the Arizona Attorney General’s office issued a subpoena under section 13-2315 to Western Union, seeking records of “any wire-transfers made in an amount of \$300 or more to any location in Sonora, Mexico from any Western Union location worldwide for a three-year period.” *State ex rel. Goddard*, 166 P.3d at 917. Western Union refused to comply, on the grounds that the subpoena violated state law and the Fourth Amendment. The Arizona Court of Appeals agreed, in a unanimous decision issued on state-law grounds.

As the court explained, section 13-2315 requires that government requests for financial records be “reasonable” in light of the circumstances and “relevant to a civil or criminal investigation of an offense.” *Id.* at 921. The court held that the subpoena violated section 13-2315 because it was unreasonably overbroad, including because it sought records of money transfers that occurred wholly outside of Arizona (for example, between California and Mexico) and thus were beyond the State’s jurisdiction under its anti-racketeering statute. *Id.* at 923–29. Because much of the information prospectively requested was by definition not relevant to any identified current investigation, much less to an investigation into conduct over which Arizona had jurisdiction, the subpoena exceeded the authority of section 13-2315. *Id.* As the court put it, the State’s bulk subpoena amounted to a claim of “limitless” investigative power not authorized by statute. *Id.* at 926. And because “[s]ubpoenas that are

¹ Cf. *Alcatel USA, Inc. v. DGI Techs., Inc.*, 166 F.3d 772, 798 (5th Cir. 1999) (“[I]nterference with an affirmatively illegal act is not a tort for which damages may be recovered because it does not impinge upon any legally protected interest.” (alteration in original) (citation omitted); *Bell v. Redflex Traffic Sys., Inc.*, 374 F. App’x 518, 520 (5th Cir. 2010) (in standing context, finding no “legally protected” interest in seeking redress for plaintiff’s alleged injuries stemming from illegal conduct of running a red light).



overbroad are not enforceable,” *id.* at 924, Western Union was under no obligation to comply.

The bulk subpoenas issued to money transfer companies over the last decade are even broader, and thus cannot be distinguished in any way that aids Arizona’s claim of a protected interest here. While the 2006 subpoena sought records of money transfers involving one Mexican state, the recent subpoenas seek records of transfers to, from, or within any of the southern-border states, as well as to, from, or within all of Mexico.² There is no plausible argument (and certainly neither the Money Transfer Business Defendants nor the Arizona AG have offered one) that these bulk subpoenas can satisfy section 13-2315’s reasonableness and relevance requirements. By seeking large volumes of prospective data on transactions that have not yet occurred, that are not relevant to any particular investigation, and that have no nexus with Arizona, the subpoenas violate the statutory relevance and reasonableness requirements.³

Because the Arizona Court of Appeals has already ruled Arizona’s use of bulk, prospective, extraterritorial section 13-2315 subpoenas illegal and unenforceable, this Court need not itself pass on the “legal validity of the Arizona Attorney General’s subpoenas.” ECF No. 182 at 4. The Arizona Court of Appeals has already done so. The implication of that ruling is that Arizona cannot claim a legally protected interest in subpoenas that “that are overbroad [and thus] not enforceable.” *State ex rel. Goddard*, 166 P.3d at 924.

² Last year, the ACLU published 140 bulk subpoenas issued under the purported authority of section 13-2315 from 2014 to 2021, which the Arizona Attorney General’s office disclosed under the Arizona Public Records Law. See *Arizona AG Money Transfer Surveillance FOIA Database*, ACLU (Dec. 22, 2022), <https://www.aclu.org/foia-collection/arizona-ag-money-transfer-surveillance-foia-database>. See also Fikayo Walter-Johnson & Nathan Freed Wessler, *How the Arizona Attorney General Created a Secretive, Illegal Surveillance Program to Sweep up Millions of Our Financial Records*, ACLU (Jan. 18, 2023), <https://perma.cc/Z7MJ-XTHP>.

³ For much the same reason, the subpoenas are also unreasonable under the Fourth Amendment. See *Okla. Press Publ’g Co. v. Walling*, 327 U.S. 186, 208 (1946) (addressing Fourth Amendment relevance and reasonableness requirements). “[D]ocument subpoenas typically seek the records of a particular individual or corporation under investigation, and cover particular time periods when the events under investigation occurred.” *ACLU v. Clapper*, 785 F.3d 787, 813 (2d Cir. 2015). Subpoenas seeking prospective production of bulk records are vanishingly rare, but the few courts that have encountered them have not hesitated to invalidate them. The Ninth Circuit, for example, has held that the government cannot indiscriminately collect bulk transactional records without first making “a showing of relevance to a particular authorized investigation *before* collecting the records.” *United States v. Moalin*, 973 F.3d 977, 996 (9th Cir. 2020). The Second Circuit has explained that subpoenas for “records that do not *yet* exist” are invalid because they indiscriminately seek records whose relevance cannot be known at the time they are requested. *Clapper*, 785 F.3d at 813.



Nathan Freed Wessler (*pro hac vice
application pending*)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
nwessler@aclu.org
Attorney for Amici Curiae

Respectfully Submitted,

/s/ Matthew T. Cagle
Matthew T. Cagle (SBN 286101)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
(415) 293-6336
mcagle@aclunc.org
Attorney for Amici Curiae