

1 James H. Maynard (N.J. Bar No. 040801992)  
2 Maynard Law Office, LLC  
3 65 Madison Avenue, Suite 540  
4 Morristown, New Jersey 07960  
5 Phone: 973-540-0054  
6 jhm@maynardlawoffice.com  
7 LEAD COUNSEL  
8 *Pro Hac Vice*

9 René P. Voss (CA Bar No. 255758)  
10 Natural Resources Law  
11 15 Alderney Road  
12 San Anselmo, CA 94960  
13 Phone: (415) 446-9027  
14 Email: renepvoss@gmail.com  
15 LOCAL COUNSEL

16 *Attorneys for Amicus Curiae*

17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA  
19 FRESNO DIVISION

20 PETER STAVRIANOUDAKIS, et al.,  
21 Plaintiffs,  
22 v.  
23 UNITED STATES FISH AND WILDLIFE  
24 SERVICE, et al.,  
25 Defendants.

No. 1:18-cv-01505-LJO-BAM

**AMICUS BRIEF OF THE NORTH  
AMERICAN FALCONERS  
ASSOCIATION**

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**REGULATIONS**

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1 **IDENTITY AND INTEREST OF *AMICUS CURIAE***

2 The North American Falconers Association (hereinafter, referred to as “NAFA”) is a  
3 non-profit organization established to “encourage the proper practice of the sport of falconry and  
4 the wise use and conservation of birds of prey.”<sup>1</sup> NAFA is the largest membership falconry  
5 organization in the world and represents the interests of the North American falconry  
6 community. *Id.* The intrinsic value of wildlife and conservation-ethics constitutes a core guiding  
7 principle of both NAFA and the falconry community.

8 As members of NAFA were instrumental in the creation of the federal and state  
9 regulations at issue in this case, NAFA is uniquely positioned to provide definitional clarity  
10 regarding “falconry,” as well as key historical and contextual information related to the  
11 development of both falconry and falconry regulations in the United States. Specifically, this  
12 brief will address the appropriateness of regulations governing falconry inspections, the extent to  
13 which raptors held under a falconry permit may be used in commercial and other activities, and  
14 the derivation of authority to regulate falconry, including inspections. To avoid redundancy,  
15 NAFA will not include discussion of subject matter addressed by the State Defendants’ brief at  
16 pp. 10-18 and pp. 19-20, and the Federal Defendants’ Brief at pp. 20-21. NAFA concurs with the  
17 legal argument and analyses set forth therein, and adopts and incorporates by reference those  
18 portions of the State and Federal Defendants’ briefing.<sup>2</sup>

19 NAFA provides references to articles and other documents in its brief, including via  
20 hyperlinks, and asks the Court to take judicial notice of this publicly-available evidence. See  
21

22 <sup>1</sup> North American Falconers Association, About the North American Falconers Association,  
23 <https://www.n-a-f-a.com/AboutNAFA> (last visited March 21, 2019).

24 <sup>2</sup> NAFA concurs with the position and articulation of the State Defendants’ brief regarding the  
25 constitutionality of regulations governing inspections in this matter; therefore, NAFA adopts  
26 and incorporates by reference those portions of the State Defendants’ briefing, beginning on  
27 ¶1, on p. 10 to ¶1 on p. 18. NAFA concurs with the position and articulation of the State  
28 Defendants’ brief in response to Plaintiffs’ Free Speech claims; therefore, NAFA adopts and  
incorporates by reference that portion of the State Defendants’ briefing, beginning on ¶2 on p.  
19 to ¶3 on p. 20. NAFA concurs with the position and articulation of the Federal Defendants’  
brief related to Plaintiffs’ claim that the federal regulations exceed the authority of the MBTA  
under the APA; therefore, NAFA adopts and incorporates by reference that portion of the  
Federal Defendants’ briefing, beginning on ¶4 on p. 20 to ¶2 on p. 21.

1 Fed. R. Evid. 201(b) (court may take judicial notice of facts that are not subject to reasonable  
2 dispute because they “can be accurately and readily determined from sources whose accuracy  
3 cannot reasonably be questioned”).

## 4 I. INTRODUCTION

### 5 A. Definition and Historical Origins Of “Falconry”

6 Falconry is the “taking [of] wild quarry in its natural state with a trained raptor.”<sup>3</sup> Raptors  
7 are birds of prey, which includes (among others) eagles, hawks, falcons, and the Great Horned  
8 Owl.<sup>4</sup> Federal regulations more formally define raptors permitted for use in falconry as “live  
9 migratory bird[s] of the Order *Falconiformes* or the Order *Strigiformes*, other than a bald eagle  
10 (*Haliaeetus leucocephalus*) or a golden eagle (*Aquila chrysaetos*).” *Id.*, citing 50 C.F.R. § 21.3.

11 The practice of falconry is ancient and dates back more than 3,000 years, with evidence  
12 pointing to its origins in Japan, the Middle East, and Central Asia. *Id.*, at 352. Falconry has been  
13 practiced by a multitude of cultures, and passed down over the course of many generations.  
14 Falconry is as much of an art form as it is an activity, and in 2016, the United Nations  
15 Educational, Scientific and Cultural Organization, (hereinafter “UNESCO”) officially designated  
16 it as an “intangible cultural heritage.”<sup>5</sup> As a “**Living Human Heritage**,” the United Nations  
17 documented falconry’s long-held role in culture and conservation.

18 As a “cultural heritage,” UNESCO states that falconry is “a practice, a craft, and a way of  
19 life that showcases diversity in its practice across countries...and represents cultural diversity  
20 [and] demonstrate[s] the extraordinary creativity of humanity.” *Id.*, at 9. “The modern practice of  
21 falconry aims at safeguarding not only falcons [i.e., raptors], quarry, and habitats but also the  
22 practice itself as a living cultural tradition.” *Id.*, at 6.

23  
24 <sup>3</sup> North American Falconers Association, *What is Falconry?*, [https://www.n-a-f-a.com/page/What\\_is\\_Falconry](https://www.n-a-f-a.com/page/What_is_Falconry) (last visited March 12, 2019).

25 <sup>4</sup> Robert F. Kennedy Jr., *Falconry: Legal Ownership and Sale of Captive-Bred Raptors*, 4 PACE  
26 ENVTL. L. REV. 349, 350 (1987) (available for download at:  
<https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1222&context=pehr>).

27 <sup>5</sup> UNESCO, Intangible Cultural Heritage, 11.33 Falconry- A living heritage, Nomination Form  
28 (File 00732) (Dec. 2012) (<https://ich.unesco.org/doc/download.php?versionID=17016>)  
(available for download at: <https://ich.unesco.org/en/11-representative-list-00520>)

1 **B. Raptor-Related Activities That Are Not Properly Considered “Falconry”.**

2 Falconry places great emphasis on the welfare of the birds it employs, and values the  
3 deep relationship that develops between raptor and falconer. The falconry community is  
4 comprised of a broad array of individuals and groups, including: citizen scientists,  
5 conservationists, biologists, villages and kinship groups, tribes, families and individuals, falconry  
6 clubs, and falconry heritage trusts and institutions. *Id.* at 2. Though the community is diverse,  
7 with local traditions and culture contributing to the distinct ways in which falconry is practiced,  
8 the well-being of raptor populations is fundamental to the continued practice of falconry, and  
9 remains at the heart of the falconry community. As a result of the falconry community’s priority  
10 on the welfare and safety of the birds in their possession, many falconers are involved in the  
11 health management and rehabilitation of injured birds of prey.<sup>6</sup> Falconers possess expertise in  
12 preventative care and the physical conditioning of raptors, as well as skills in advanced  
13 husbandry and raptor behavior.

14 While many raptor-related activities involve both raptors and the use of falconry  
15 techniques, it is important to distinguish those activities from the true activity of “falconry.” For  
16 example, pursuant to the United States Fish and Wildlife Service, “abatement” is clearly  
17 distinguished from falconry. Indeed, the forms for obtaining an abatement permit explicitly state  
18 that “Falconry is the art of training and using a raptor to hunt quarry for sport,” whereas  
19 “Abatement is the act of using a raptor to pursue (and in some cases to take) depredating birds or  
20 other wildlife to mitigate damage.”<sup>7</sup> The federal abatement permit also indicates that the permit  
21 holder may “...receive payment for providing abatement services,” (*id.*), further demonstrating  
22 how the commercial activity of abatement is distinct from “falconry.” Additionally, falconry  
23 “does not include the keeping of birds of prey as pets or prestige items, for captive-breeding  
24

25 <sup>6</sup> UNESCO, Intangible Cultural Heritage, 6.45 Falconry- A living human heritage, Nomination  
26 Form (File 00442) (Nov. 2010) <https://ich.unesco.org/doc/download.php?versionID=07511>  
(available for download at: <https://ich.unesco.org/en/6-representative-list-00335>)

27 <sup>7</sup> U.S. Fish & Wildlife Service, *Frequently Asked Questions About a Federal Special Purpose –*  
28 *Abatement Permit*, p. 1 (Rev 6/2018), (available for download at:  
<https://www.fws.gov/migratorybirds/pdf/policies-and-regulations/3-200-79FAQ.pdf>)

1 purposes, for rehabilitation or education purposes, for shows, renaissance fairs and the like, or  
2 for purely scientific purposes.”<sup>8</sup>

## 3 II. THE INTERESTS OF “FALCONRY” VERSUS THE 4 INTERESTS OF OTHER RAPTOR-RELATED 5 ACTIVITIES

### 6 A. The Primary Interests of the North American Falconry Community

7 The history of North American falconry is deeply intertwined with conservation  
8 leadership and the advocacy of fair regulations to protect raptor populations and their  
9 environment. A large group of notable falconers who were also conservationists and/or biologists  
10 was instrumental in advancing legal protections for the Peregrine Falcon under the **Endangered**  
11 **Species Act**, 16 U.S.C.A. §§1531-1543, the banning of DDT under the authority of the Clean  
12 Water Act, 33 U.S.C.A., §§1311-1330, the inclusion of raptors under the authority of the  
13 **Migratory Bird Treaty Act**, 16 U.S.C.A. §§701-719, the establishment of the Raptor Research  
14 Foundation and the recovery of Peregrine Falcon populations, among other achievements.<sup>9</sup> These  
15 early falconry leaders advocated for the protection of wildlife in the face of economic interests  
16 that threatened their existence.

17 The North American Falconers Association was integrally involved in the formulation of  
18 federal falconry regulation –assisting in producing the first draft of the federal regulations, which  
19 were adopted in 1976 and revised twice thereafter (first in 1989 and then again in 2008).<sup>10</sup>  
20 Indeed, several of the key regulatory mechanisms were volunteered by NAFA; including, the  
21 requirement of a qualifying test, facility inspections, a sponsor/apprentice mentoring system, a  
22 mandatory two-year apprenticeship, and limits on the raptor species available to apprentices.  
23 NAFA also provided suggestions for the contents of the qualifying tests and facility guidelines.  
24 *Id.*

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25 <sup>8</sup> North American Falconers Association, *Falconry Ethics*: NAFA Policy: 09-004,  
26 <https://www.n-a-f-a.com/page/Ethics> (last visited March 15, 2019).

27 <sup>9</sup> *See*, n. 4, above, at pp. 361-362

28 <sup>10</sup> *See*, S.K. Carnie & R.R. Rogers, *A Quarter Century of American Falconry Regulation: An Example of Management/User Cooperation*, attached hereto as Exhibit 1.

1           Shortly after the 1976 federal falconry rules were adopted, half of the states in the  
2 country adopted falconry as a legal hunting method. Currently, all forty-nine states in the United  
3 States (with the exception of Hawaii) recognize falconry as a legitimate hunting activity and  
4 have set forth legal regulations for the possession of protected raptors for use in falconry. *See*, 50  
5 *C.F.R.* § 21.29(b)(9).

6  
7                                   **III. THE NORTH AMERICAN MODEL OF WILDLIFE**  
8                                   **CONSERVATION UNDERLIES CURRENT UNITED**  
9                                   **STATES FALCONRY REGULATION**

10           The “North American Model of Wildlife Conservation” is “a distillation of regulations  
11 that govern wildlife management in the United States and Canada.”<sup>11</sup> The Model comprises  
12 seven main tenets, which are based on statutory and case law, as well as administrative rules and  
13 regulations. The seven tenets of the *North American Model of Wildlife Conservation (id.)*,  
14 include the following:

- 15           1) Wildlife Resources Are a Public Trust
- 16           2) Markets for Wildlife Are Eliminated
- 17           3) Allocation of Wildlife Is by Law
- 18           4) Wildlife Can Be Killed Only for a Legitimate Purpose
- 19           5) Wildlife Is Considered an International Resource
- 20           6) Science Is the Proper Tool to Discharge Wildlife Policy
- 21           7) Democracy of Hunting Is Standard

22           At its core, the Model is “based on recognition that the privatization of wildlife and  
23 related open commerce fuels exploitation and reduces public access. Privatization and  
24 commercialization of wildlife places economic value on wildlife and further incentivizes  
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26 <sup>11</sup> J. F. Organ, et al. 2012. The North American Model of Wildlife Conservation. 12 THE  
27 WILDLIFE SOCIETY TECHNICAL REVIEW 04, 2 (2012) (available for download at:  
28 <https://wildlife.org/wp-content/uploads/2014/05/North-American-model-of-Wildlife-Conservation.pdf>).

1 privatization and unregulated commerce. These market forces often lead to an increase in illegal  
2 take.”<sup>12</sup>

3 The North American Wildlife Model provides several strategic protections for falconry.  
4 The Model provides a legal buffer from future public opposition to the practice of falconry by  
5 aligning the falconry community with the conservation community, and with the state and  
6 federal regulatory agencies that are legally mandated to conserve wildlife for present and future  
7 generations. The Model also provides the falconry community with the right to take raptors from  
8 the wild and to possess them for the purpose of falconry, as well as the right to pursue wild  
9 quarry with trained raptors. As a result of these key protections, the Model is the foundation  
10 upon which the falconry community has achieved a legally permitted status, equitable access to  
11 wild raptors and the legal ability to pursue wild quarry in its natural habitat with a trained raptor  
12 —the very definition of falconry.

#### 13 14 **IV. NAFA’S RESPONSE TO THE LEGAL ISSUES RAISED 15 BY PLAINTIFFS**

##### 16 **A. Plaintiffs’ Fourth Amendment Arguments**

17 It is common knowledge that wildlife populations are sensitive to disruption of their  
18 environment, and that human interaction with wildlife has the potential to impact the well-being  
19 of the individual specimen, or even the sustainability of the species. Therefore, the take and  
20 possession of wildlife is a rational basis to trigger elevated levels of regulation. Because  
21 falconry involves wildlife (both raptors and quarry), that are subject to the Public Trust Doctrine,  
22 it is governed by many state and federal regulations –indeed, it is difficult to conceive of a more  
23 “pervasively regulated” activity. *See* ECF No. 25-1, pp. 10-18.

24 Governmental oversight plays an important role in ensuring compliance with wildlife  
25 laws and regulations, and therefore measures such as compliance inspections are foreseeable and

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26 <sup>12</sup> G.R. Batcheller, et al., *The Public Trust Doctrine: Implications for Wildlife Management and*  
27 *Conservation in the United States and Canada*. 10 THE WILDLIFE SOCIETY TECHNICAL  
28 REVIEW 01 (2010) (available for download at: [https://wildlife.org/wp-content/uploads/2014/05/ptd\\_10-1.pdf](https://wildlife.org/wp-content/uploads/2014/05/ptd_10-1.pdf))

1 normal in highly-regulated activities like falconry –as well as other raptor-related activities.  
2 NAFA accepts the need for measures such as compliance inspections to ensure adherence to  
3 falconry regulations. However, such inspections must be reasonable in scope and  
4 implementation, conducted in a courteous, respectful manner and confined to a legitimate  
5 regulatory need. “[F]alconers support regulations designed to protect individual raptors  
6 possessed, at the expense of the sport and even of the falconers, if necessary. Current falconry  
7 regulations, as championed by the falconry community, ensure that only individuals who  
8 demonstrate the knowledge and possess the equipment and motivation to possess raptors safety  
9 are allowed to do so.”<sup>13</sup>

## 10 **B. Plaintiffs’ Free Speech Claims**

11 NAFA supports the current legal framework which allows only duly licensed persons to  
12 possess raptors, and provides separate permits for different raptor-related activities. The federal  
13 falconry regulations, adopted in 2008 and codified at 50 *C.F.R.* § 21.29(f)(9), set forth specific  
14 provisions regarding the use of raptors held pursuant to a “falconry” permit in “other educational  
15 uses.” NAFA’s position is that raptors held pursuant to a “falconry” permit must be used  
16 exclusively for falconry, with the limited exceptions provided for in 50 *C.F.R.* § 21.29(f)(9).  
17 However, there is no exception to the requirement that such “other educational uses” must be  
18 non-commercial.<sup>14</sup> NAFA strongly opposes the use of raptors possessed under a “falconry”  
19 permit in a manner that is compensated for profit.

## 21 **CONCLUSION**

22 NAFA believes that the contextual and definitional information contained herein provides  
23 a critical “subtext” to the adjudication of the claims raised by Plaintiffs. It is intended that the  
24 information and argument of this brief should be viewed in conjunction with the components of  
25

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26 <sup>13</sup> See, n. 10 above, at p. 143.

27 <sup>14</sup> Charitable and educational purposes may be permitted and reimbursement for costs  
28 permissible.

1 the State and Federal Defendants’ briefing, which has been adopted and incorporated herein by  
2 reference.

3 First, NAFA believes that the definition of “falconry” is key to determining the primary  
4 legal issues raised by Plaintiffs, and the requested injunctive relief. The appropriateness of  
5 regulations governing falconry inspections, as well as the extent to which raptors held under a  
6 falconry permit may be used in commercial and other activities, are questions that may only be  
7 resolved based on the law and regulations that are applied to “falconry.” By definition, falconry  
8 does not include the keeping of birds of prey as pets or prestige items, for captive-breeding  
9 purposes, for rehabilitation or education purposes, for shows, renaissance fairs and the like, or  
10 for purely scientific purposes. Nor does the definition of falconry permit the use of raptors for  
11 commercial purposes.

12 Regarding the free speech claims made by Plaintiffs, such claims are intrinsically mooted  
13 by the fact that their assertions are based on activities (and interests) that are not consistent with  
14 the possession of their raptors pursuant to a “falconry” permit, which prohibits the commercial  
15 use of “falconry” raptors. Similarly, any claims made by Plaintiffs regarding the appropriateness  
16 of regulations governing falconry inspections must be determined based on the context of  
17 possession and use of raptors for “falconry” – not raptors possessed and used for abatement<sup>15</sup> or  
18 any other raptor-related use that is not “falconry.”

19 The claims made by Plaintiffs must be evaluated and adjudicated in light of the  
20 overarching legal and historical context, which places modern American falconry within the  
21 North American Model of Wildlife Conservation, and also recognizes that the current falconry  
22 regulations in the United States are the product of a collaborative process between the falconry  
23 community and the regulatory agencies. The appropriateness of regulations governing falconry  
24 inspections and the limitations on the use of raptors held pursuant to a falconry permit has been,  
25 as a general proposition, endorsed by the falconry community.

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27 <sup>15</sup> Some raptors held under a falconry permit may be used for abatement by the abatement  
28 permit holder.

1 Modifications of specific provisions of falconry regulation may be desired, or subject to  
2 ongoing negotiation between the falconry community and the regulatory agencies, but such  
3 continued evolution of falconry regulation must be based on the fundamental principles that have  
4 established the legal existence of falconry in the United States, the collaborative relationship  
5 between the falconry community and the regulatory authorities, and the ethics of falconry —  
6 which places the well-being of their birds before their own interests. For example, while NAFA  
7 is a strong supporter of private ownership rights of captive-bred falconry raptors, NAFA also  
8 believes that administrative “compliance” inspections are a reasonable and necessary component  
9 of the balance envisioned by the Public Trust Doctrine, and the right to possession and private  
10 ownership of wildlife.

11 NAFA encourages the Court to examine and consider the interests of the larger falconry  
12 community because the issues raised by Plaintiffs in this matter will likely affect many other  
13 falconers, both in and beyond California. For example, the relief requested by Plaintiffs’  
14 Preliminary Injunction Motion has the potential to lead to an immediate and complete  
15 termination of the right to practice falconry in the State of California, because state falconry  
16 regulations must be at least as restrictive as the federal falconry regulations. See 50 *C.F.R.* §  
17 21.29(b)(1)(ii). The preliminary injunctive relief requested by Plaintiffs, if granted by the Court,  
18 would result in a violation of that regulatory requirement, and therefore could lead to the  
19 suspension of all California falconry permits.

20 In sum, NAFA believes that the regulation of falconry, and other raptor-related activities,  
21 must prioritize the welfare of the wildlife that is at the core of these activities and which forms  
22 the basis of the legal analysis.

23  
24 Date: March 22, 2019

Respectfully submitted,

25 /s/ James H. Maynard  
26 James H. Maynard, *Pro Hac Vice*  
René Voss, *Local Counsel*

27 *Attorneys for Amicus Curiae*