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11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF CALIFORNIA  
13 FRESNO DIVISION

15 PETER STAVRIANOUDAKIS; KATHERINE  
16 STAVRIANOUDAKIS; SCOTT TIMMONS;  
ERIC ARIYOSHI; **and** AMERICAN FALCONRY  
17 CONSERVANCY,

18 Plaintiffs,

19 v.

20 UNITED STATES FISH & WILDLIFE SERVICE;  
21 CHARLTON H. BONHAM, in his official capacity  
as Director of California Department of Fish and  
22 Wildlife; **and** MARGARET EVERSON, in her  
official capacity as Principal Deputy Director  
23 Exercising the Authority of the Director of United  
States Fish & Wildlife Service,

24 Defendants.

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

**MEMORANDUM IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

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1 Plaintiffs Peter Stavrianoudakis, Eric Ariyoshi, Scott Timmons, and American Falconry  
2 Conservancy (hereafter Falconers) and Katherine Stavrianoudakis (*in toto* Plaintiffs) respectfully  
3 move pursuant to Fed. R. Civ. P. 65 for a preliminary injunction enjoining California and federal  
4 regulations that continuously subject Plaintiffs to unreasonable warrantless searches of their homes  
5 and private property, *see* 50 C.F.R. § 21.29(b)(4)(i); 50 C.F.R. § 21.29(d)(2) and (d)(9); 14 C.C.R.  
6 § 670(j)(3)(A), infringe on their right to free speech, *see* 50 C.F.R. § 21.29(f)(8)–(9); 14 C.C.R.  
7 § 670(h)(13)(A), and subject them to falconry licensure denial or suspension of previously issued  
8 licenses for noncompliance, 14 C.C.R. § 670(j)(3)(A).

### 9 I. INTRODUCTION

10 Falconry is the time-honored practice of rearing, training, and flying birds of prey—such as  
11 falcons and hawks—to catch wild quarry. Falconry has been a sport and pastime for thousands of  
12 years. *See, generally, A History of Falconry*, International Association for Falconry & Conservation  
13 of Birds of Prey.<sup>1</sup> Since its introduction in the United States, the practice of falconry has drawn a  
14 passionate but relatively small group of enthusiasts. Amongst falconers, the bond of trust between  
15 bird and man takes on a special, almost familial significance.

16 Some 2,000 years after the first falconers flew birds, Defendant U.S. Fish and Wildlife  
17 Service promulgated, for the first time in American history, extensive regulations governing  
18 falconry. 50 C.F.R. § 21.29; 38 Fed. Reg. 20,264 (July 30, 1973). Under the guise of regulating the  
19 “taking, possessing, purchasing, bartering, [or] selling” of certain birds of prey pursuant to the  
20 Migratory Bird Treaty Act of 1918 and the Bald and Golden Eagle Protection Act of 1940, these  
21 regulations encourage states to create licensing and regulatory schemes consistent with the federal  
22 regulations, which California has done. The state regulations are enforced by defendant Bonham.  
23 50 C.F.R. § 21.29(b); 14 C.C.R. § 670. Plaintiffs challenge the portions of those state and federal  
24 regulations that subject Plaintiffs to unreasonable warrantless searches of their homes and property,  
25 and infringe on Falconers’ right to free speech.

26 ///

27  
28 <sup>1</sup> <https://iaf.org/a-history-of-falconry/>.



1 As a condition of holding state-issued falconry licenses that conform to federal  
2 requirements, Plaintiffs are subject to unannounced warrantless searches of their homes at any time.  
3 In the case of Plaintiff Katherine Stavrianoudakis, her Fourth Amendment rights are forfeit simply  
4 for being married to a licensed falconer. Plaintiffs experience continuous anxiety and fear that  
5 armed government agents will appear on their private property and demand entry into their private  
6 homes. These fears are based on experience; two of the named Plaintiffs have been subjected to  
7 warrantless searches in in the past, as have dozens of California falconers in recent years. Such  
8 encounters are not merely brief inspections of hunting or fishing licenses that wildlife officials  
9 make in public places. Rather, state and federal regulations purport to give law enforcement officers  
10 the authority to demand access to Plaintiffs’ homes and papers—backed by the threat of falconry  
11 license revocation, confiscation of personal property, and civil and criminal penalties.

12 These warrantless searches do not require probable cause, and can be carried out with no  
13 justification and for no discernable reason at all. Since they are carried out without advance warning  
14 by armed officials, such random, unrestrained encounters with law enforcement not only threaten  
15 Falconers’ constitutional rights, but their health and safety. Additionally, the falconry regulations  
16 also impose a variety of content-based restrictions on falconers’ speech. The falconry regulations  
17 significantly impair Falconers’ First Amendment rights—both to create expression featuring their  
18 birds and to talk about their birds—based solely on the content of the expression.

## 19 **II. THE REGULATIONS**

20 Nestled among the regulations governing the housing and care of falconry birds are  
21 regulations purportedly granting state and federal agents the power to conduct unreasonable  
22 warrantless searches of falconers’ homes and private property. *See* 50 C.F.R. § 21.29(b)(4)(i); 50  
23 C.F.R. § 21.29(d)(2) and (d)(9); 14 C.C.R. § 670(j)(3)(A). The warrantless search regulations grant  
24 state and federal law enforcement officers the power to inspect “facilities” to ensure that certain  
25 “facilities standards” are met. *See* 50 C.F.R. § 21.29(b)(4)(i); 14 C.C.R. § 670(j)(3)(A). In the vast  
26 majority of cases falconry “facilities” are actually the interior of falconers’ homes, or mews located  
27 directly within their homes’ curtilage. Peter Stavrianoudakis decl. ¶ 14; Ron Kearney decl. ¶¶ 12-  
28 14. The facility standards pertain to the basic physical features of falcons’ housing, including

1 suitable perches, access to clean water, and room for the birds to fly or spread their wings (if  
2 tethered). 50 C.F.R. § 21.29(d)(1)(ii)(A)–(B); 14 C.C.R. § 670(j)(1)–(2). Compliance with these  
3 facilities standards has already been confirmed before a falconer obtains his or her first bird, in an  
4 initial licensing inspection (which Plaintiffs do not challenge). 50 C.F.R. § 21.29(c)(2)(i)(J).<sup>2</sup>

5 The regulations also place content-based restrictions on Falconers’ speech. 50 C.F.R.  
6 § 21.29(f)(8)–(9); 14 C.C.R. § 670(h)(13)(A). Falconers are prohibited from photographing or  
7 filming their birds—but only if the images will be used in a production that is not about falcons or  
8 falconry. 50 C.F.R. § 21.29(f)(9)(i); 14 C.C.R. § 670(h)(13)(A). The regulations also specifically  
9 ban Falconers from creating non-falcon-related commercial speech. 50 C.F.R. § 21.29(f)(9)(ii); 14  
10 C.C.R. § 670(h)(13)(A). Only one sort of falcon-containing speech is allowed: that which is related  
11 to falcons or falconry. 50 C.F.R. § 21.29(f)(8); (f)(9)(ii)(A)–(B). But this outlet for speech comes  
12 with an important financial disincentive. Under the federal regulations Falconers’ “presentation of  
13 a conservation education program” may only be compensated if the fee does “not exceed the  
14 amount required to recoup . . . costs.” 50 C.F.R. § 21.29(f)(8)(iv).

15 The California regulations incorporate the same content-based restrictions as 50 C.F.R.  
16 § 21, but go further by entirely prohibiting compensation above costs for any falcon-containing  
17 expression. 14 C.C.R. § 670(h)(13)(A). Falconers who engage in conservation education programs  
18 despite the financial disincentives must also follow content-based guidelines about what can be  
19 discussed—including “information about the biology, ecological roles, and conservation needs of  
20 raptors and other migratory birds.” 50 C.F.R. § 21.29(f)(8)(v). Graciously, the federal regulations  
21 do not require that “all of these topics must be addressed in every presentation.” *Id.* But any  
22 “presentations that do not address falconry and conservation education” are expressly forbidden.  
23 *Id.*

### 24 **III. FACTUAL AND PROCEDURAL BACKGROUND**

25 The overt abuse of Falconers’ Fourth Amendment rights by California and U.S. Fish and  
26 Wildlife officers has been a pervasive problem for decades, and continues unabated. Peter  
27

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28 <sup>2</sup> Falconers do not challenge the substantive regulations governing the care of their birds.

1 Stavrianoudakis decl. ¶¶ 13, 15, 23, 25-26; Ron Kearney decl. ¶¶ 6-11; Bridget Rocheford-Kearney  
2 decl. ¶¶ 2-3, 8-13; Scott Timmons decl. ¶¶ 8-9. These incidents include armed officers arriving on  
3 private property unannounced and without a warrant and demanding entry into private homes. Peter  
4 Stavrianoudakis decl. ¶¶ 6-10, 13; Ron Kearney decl. ¶¶ 6-11; Bridget Rocheford-Kearney decl.  
5 ¶¶ 8-12, 16. Even non-falconers are forced to allow warrantless searches of their homes and  
6 property by virtue of living with a licensed falconer. Katherine Stavrianoudakis decl. ¶ 4 (“I did not  
7 sign anything like a falconry license, and yet I am assumed to have given up my constitutional  
8 rights.”); Peter Stavrianoudakis decl. ¶ 35 (“I hated to have to tell [my wife Katherine] that, just  
9 because she was married to me, it meant that armed government agents could come into our home  
10 anytime they wanted to.”); Scott Timmons decl. ¶ 6 (“[A] prior conversation did not prepare [my  
11 mother] for the experience of armed law enforcement officers demanding access to our property  
12 . . .”).

13 Repeated pleas from falconers to conform these regulations to the Fourth Amendment have  
14 been met with additional injuries. Peter Stavrianoudakis decl. ¶¶ 24-25. In many cases, falconers  
15 who lobbied defendant Bonham (i.e. petitioned their government for a redress of grievances) were  
16 expressly threatened with the prohibition of falconry and a confiscation of their birds. Peter  
17 Stavrianoudakis decl. ¶ 21 (“Director Bonham told me ‘We are not changing anything, so you’ll  
18 just have to sue us. And if you want to fight us, we can just take falconry away completely.’”);  
19 Bridget Rocheford-Kearney decl. ¶¶ 3, 13-15. These types of threats are common and ongoing.  
20 Bridget Rocheford-Kearney decl. ¶¶ 13-14 (“[T]he common mentality of Fish and Wildlife agents  
21 is: ‘Let us come into your home and answer all of our questions, or else.’”).

22 According to defendant Bonham, “[F]ear of these surprise searches keeps falconers in line.”  
23 Peter Stavrianoudakis decl. ¶ 20. Such abuses have effectively created pervasive fear among  
24 licensed falconers, Peter Stavrianoudakis decl. ¶¶ 15, 23 (“The understanding is that you do what  
25 Fish and Wildlife says, no matter the legality, or you will suffer the consequences.”); Ron Kearney  
26 decl. ¶ 15 (“[The threat of unannounced warrantless searches] causes extreme stress, fear, and  
27 anxiety in many falconers.”); Bridget Rocheford-Kearney decl. ¶¶ 3, 16. Even non-falconers, whose  
28 rights and security in their own home are threatened, understand that fear. Katherine

1 Stavrianoudakis decl. ¶¶ 8-12 (“Will they knock down my door, pin me down, and put me in  
2 handcuffs because I do not want to cooperate in my rights being violated? All because I love and  
3 am married to a falconer?”).

4 Even the effort to protect their constitutional rights through this lawsuit has caused  
5 Plaintiffs’ increased fear and anxiety of retribution by Fish and Wildlife officials. Peter  
6 Stavrianoudakis decl. ¶¶ 21, 33-34 (“[B]eing a named plaintiff in this lawsuit, makes me feel like  
7 there is a target on my back. I live in constant anxiety of retribution . . . .”); Katherine  
8 Stavrianoudakis decl. ¶ 7 (“This fear has only increased since this lawsuit was filed. I am afraid of  
9 retaliation by California Fish and Wildlife officers.”). For many dedicated falconers, the threat of  
10 having their birds taken away is akin to the loss of a family member. Bridget Rocheford-Kearney  
11 decl. ¶ 13 (“For falconers, their birds and practice is more than a passion: it is their entire life.  
12 Essentially they are being told to give up their Fourth Amendment rights or have their entire life  
13 taken away.”).

14 This fear and anxiety also arises from the operation of the regulations prohibiting and  
15 regulating Falconers’ speech. Scott Timmons decl. ¶ 25 (“I don’t think I should have to function  
16 this way, unsure of what speech is prohibited or allowed, or afraid that Fish and Wildlife might  
17 interpret something a certain way and take my birds away.”); Peter Stavrianoudakis decl. ¶¶ 38, 40;  
18 Ron Kearney decl. ¶ 19. Because of the operation of these speech prohibitions, the use of falconry  
19 birds in commercials, films, and for educational presentations has been extremely limited. Scott  
20 Timmons decl. ¶ 9; Peter Stavrianoudakis decl. ¶ 40; Ron Kearney decl. ¶ 16. As a result, the speech  
21 of licensed falconers across the country has been silenced. Scott Timmons decl. ¶¶ 10-24 (“It is  
22 legal for me to fly birds for abatement and make money, but if I want to give a paid presentation  
23 about my birds I cannot charge anything for it, and am told what I can or cannot say?”); Peter  
24 Stavrianoudakis decl. ¶¶ 36-38, 40; Ron Kearney decl. ¶¶ 17-19 (“The prohibitions on falconers’  
25 speech are well-known in the falconry community. The general impression is that we are simply  
26 not allowed to talk at will about falconry or else Fish and Wildlife will take our birds away.”). This  
27 impression has been confirmed by Fish and Wildlife agents. Scott Timmons decl. ¶ 15 (“[Fish and  
28 Wildlife staff told me that] I was not allowed to [] talk to people about my birds at all. That I had

1 to be rude and ignore their questions, or else.”). The only thing stopping Falconers from sharing  
2 the sport that they love is the speech regulations challenged herein. Scott Timmons decl. ¶ 22; Peter  
3 Stavrianoudakis decl. ¶¶ 36-40; Ron Kearney decl. ¶ 18; Bridget Rocheford-Kearney decl. ¶ 15.

4 On October 30, 2018, Plaintiffs filed this lawsuit seeking protection of their Fourth and First  
5 Amendment rights. Plaintiffs seek a declaratory judgment from the Court that (1) the warrantless  
6 search regulations<sup>3</sup> violate the Fourth Amendment both facially and as applied; (2) the speech  
7 regulations<sup>4</sup> violate the First Amendment both facially and as applied; and (3) the search and speech  
8 regulations are in excess of Defendants’ statutory authority under the Migratory Bird Treaty Act,  
9 16 U.S.C. § 703, *et seq.*, and the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668, *et seq.*;  
10 Doc. 1 at 12–21. Plaintiffs currently seek a preliminary injunction on their constitutional claims,  
11 and ask the Court to enjoin Defendants from enforcing or applying the regulations against them  
12 during the pendency of their lawsuit.

#### 13 IV. STANDARD OF DECISION

14 A preliminary injunction to abate Defendants’ warrantless search rules and speech  
15 restrictions is appropriate because: (1) Falconers are likely to succeed on the merits; (2) they are  
16 likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips  
17 in their favor; and (4) an injunction is in the public interest. *Winter v. National Resources Defense*  
18 *Council*, 555 U.S. 7, 20 (2008). The Ninth Circuit has articulated a variation of the *Winter* test,  
19 under which “the elements of the preliminary injunction test are balanced, so that a stronger  
20 showing of one element may offset a weaker showing of another.” *Alliance for the Wild Rockies v.*  
21 *Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011). Falconers are entitled to a preliminary injunction  
22 because each of the *Winter* factors is met.

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27 <sup>3</sup> 50 C.F.R. § 21.29(b)(4)(i); 50 C.F.R. § 21.29(d)(2) and (d)(9); 14 C.C.R. § 670(j)(3)(A).

28 <sup>4</sup> 50 C.F.R. § 21.29(f)(8)–(9); 14 C.C.R. § 670(h)(13)(A).

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## V. ANALYSIS

### A. Likelihood of Success on the Merits

#### 1. Fourth Amendment challenge to the warrantless search rules

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .” U.S. Const. amend. IV (emphasis added).<sup>5</sup> “It is axiomatic that the ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.’” *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) (citation omitted). Further, it is a “basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.” *Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980)). “[W]hen it comes to the Fourth Amendment, the home is *first among equals*. At the Amendment’s ‘very core’ stands ‘the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.’” *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (emphasis added) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

The warrantless searches of private homes and property at issue in this case is a regular and wide-spread practice. Peter Stavrianoudakis decl. ¶ 13 (“The abuse of falconers’ Fourth Amendment rights by Fish and Wildlife officers is widespread, ongoing, and systemic.”); Ron Kearney decl. ¶ 7 (“I am personally aware of many examples of this abuse of power over the years . . . . This abuse continues to this day.”); Bridget Rocheford-Kearney decl. ¶¶ 8-12, 16 (“Every [licensed falconer] knows someone who has gotten a visit from Fish and Wildlife demanding entry into their home.”). But even if Plaintiffs’ homes or curtilage have not been recently searched, these warrantless search regulations still violate their Fourth Amendment property rights, *see United States v. Jones*, 565 U.S. 400 (2012), and privacy rights, *see Kyllo v. United States*, 533 U.S. 27, 34 (2001).

Being subjected to an unconstitutional exercise of government power as a condition of licensure is itself a sufficient constitutional injury for which relief can be granted. *See, e.g., Koontz*

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<sup>5</sup> Fully incorporated against the states via the Due Process Clause of the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643 (1961).

1 *v. St. Johns River Water Management Dist.*, 570 U.S. 595, 607 (2013) (“[When] someone refuses  
2 to cede a constitutional right in the face of coercive pressure, the impermissible denial of a  
3 governmental benefit is a constitutionally cognizable injury.”). “The doctrine [of unconstitutional  
4 conditions] is especially important in the Fourth Amendment context.” *United States v. Scott*, 450  
5 F.3d 863, 867 (9th Cir. 2006). Since warrantless searches are a condition of issuing falconry  
6 licenses, the purported search authority violates the Fourth Amendment even if it is not being  
7 imminently exercised. The Fourth Amendment was intended to prevent precisely this type of  
8 arbitrary abuse of power claimed by Defendants in this case.

9 **a. Warrantless searches violate falconers’ property rights protected by the**  
10 **Fourth Amendment**

11 In *United States v. Jones*, 565 U.S. 400 (2012), and *Florida v. Jardines*, 569 U.S. 1 (2013),  
12 the Supreme Court reaffirmed that property rights provide a wholly independent and sufficient basis  
13 for protection from unreasonable warrantless searches by the government. Long before the Court  
14 articulated the privacy-based approach to unreasonable searches and seizures, *see Katz v. United*  
15 *States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring), it recognized the original grounding of  
16 the Fourth Amendment in property rights, *Jones*, 565 U.S. at 405. “[F]or most of our history the  
17 Fourth Amendment was understood to embody a particular concern for government trespass upon  
18 the areas (‘persons, houses, papers, and effects’) it enumerates.” *Id.* at 406. The *Katz* reasonable-  
19 expectations test “has been added to, not *substituted for*,” the traditional property-based  
20 understanding of the Fourth Amendment. *Jardines*, 569 U.S. at 11 (citing *Jones*, 565 U.S. at 409).

21 Specifically, the Court has held that warrantless physical trespass on a home’s curtilage is  
22 as equally violative as trespass within the home itself. *Id.*<sup>6</sup> In the 2017–2018 term the Court further  
23 solidified the property rights approach to warrantless searches in three cases that either relied upon  
24 a property-based Fourth Amendment analysis, or discussed this approach by way of ancillary  
25 opinions. *See Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (citing *Jardines*, 569 U.S. at 11);

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27 <sup>6</sup> A home’s curtilage, the area “immediately surrounding and associated with the home,” is “part of  
28 [the] home itself for Fourth Amendment purposes.” *Oliver v. United States*, 466 U.S. 170, 180  
(1984).

1 *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018); *Carpenter v. United States*, 138 S. Ct. 2206,  
2 2235 (2018) (Thomas, J., dissenting); *id.* at 2267–68 (Gorsuch, J., dissenting).

3 Here, government officials have purported to grant themselves the power to effect  
4 warrantless searches on falconry “facilities” to ensure that the “facilities standards” are met. *See* 50  
5 C.F.R. § 21.29(b)(4)(i); 14 C.C.R. § 670(j)(3)(A). But the “facilities” in question are actually  
6 falconers’ *private homes* and structures located on *their private curtilage*. The common practice  
7 for the vast majority of falconers—including the named plaintiffs and other members of Plaintiff  
8 American Falconry Conservancy—is to house their birds almost exclusively inside their own  
9 homes. Peter Stavrianoudakis decl. ¶¶ 14, 32 (“The home is an integral part of the average  
10 falconers’ craft and relationship with his bird.”). It is equally common for falconers to build their  
11 falconry mews (stable-like structures for use when housing a bird temporarily outside) directly  
12 within the curtilage of their home. Ron Kearney decl. ¶¶ 12–14. Plaintiff Katherine Stavrianoudakis  
13 does not, and has never, held a falconry license or practiced falconry. Katherine Stavrianoudakis  
14 decl. ¶ 13. And yet her property rights protected by the Fourth Amendment are continually  
15 threatened, simply because her husband is a licensed falconer.

16 These regulations are unconstitutional on their face and as applied to Plaintiffs, because  
17 they violate their clearly protected property rights in their own homes and curtilage under the Fourth  
18 Amendment. For these reasons, Plaintiffs are likely to succeed on the merits of their facial and as-  
19 applied property-based Fourth Amendment claims.

20 **b. Warrantless searches violate falconers’ privacy rights protected by the**  
21 **Fourth Amendment**

22 While the violation of Plaintiffs’ property rights provides a sufficient basis to find a high  
23 likelihood of success on the merits of their Fourth Amendment claims, Plaintiffs’ Fourth  
24 Amendment protected privacy interest in their homes and curtilage provides an equally strong  
25 alternative basis.

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1 Under the *Katz* test, individuals have a protected Fourth Amendment privacy interest in a  
2 given area where they, (1) Have exhibited a subjective expectation of privacy, and (2) Where the  
3 expectation is one that society is prepared to recognize as reasonable. *See Katz*, 389 U.S. at 361  
4 (Harlan, J., concurring). Under this approach, private homes enjoy a high presumption of protected  
5 privacy. *See, e.g., id.* (“[A] man’s home is, for most purposes, a place where he expects privacy  
6 . . .”). In cases involving homes, “there is a ready criterion, with roots deep in the common law,  
7 of the minimal expectation of privacy that *exists*, and that is acknowledged to be *reasonable*.” *Kyllo*,  
8 533 U.S. at 34.

9 Under the *Katz* test, Plaintiffs’ homes and curtilage enjoy a strong presumption of protected  
10 privacy. The Fourth Amendment privacy-based approach, like the property approach, draws “a firm  
11 line at the entrance to the house.” *Id.* at 40 (quoting *Payton v. New York*, 445 U.S. at 590). This line  
12 also extends to a home’s curtilage, which is “intimately linked to the home, both physically and  
13 psychologically,” and is where “privacy expectations are most heightened.” *California v. Ciraolo*,  
14 476 U.S. 207, 213 (1986). The “firm line at the entrance” of Plaintiffs’ private homes and curtilage  
15 is continuously violated by the purported authority granted by the challenged regulations, and the  
16 threat of warrantless government searches conducted under them. As noted above, Plaintiff  
17 Katherine Stavrianoudakis does not, and has never, held a falconry license or practiced falconry.  
18 Katherine Stavrianoudakis decl. ¶ 13. And yet her privacy rights protected by the Fourth  
19 Amendment are continually threatened, simply because her husband is a licensed falconer. *Id.* ¶ 10  
20 (“Privacy is extremely important to me. My home is my sanctuary. . . . Now I have to worry about  
21 armed government agents showing up unannounced and entering my home without permission.”).

22 These regulations are unconstitutional on their face and as-applied to Falconers, because  
23 they authorize the violation of Falconers’ privacy rights in their own homes and curtilage protected  
24 by the Fourth Amendment. For these reasons, Plaintiffs are likely to succeed on the merits of their  
25 facial and as-applied privacy-based Fourth Amendment claims.

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## 2. First Amendment challenge to the speech regulations

Falconers are also likely to succeed on the merits of their First Amendment claims. Plaintiff Falconers and the Conservancy’s other members are being muzzled from communicating about the pastime that they love. Scott Timmons decl. ¶ 22; Peter Stavrianoudakis decl. ¶¶ 36-40; Ron Kearney decl. ¶ 18; Bridget Rocheford-Kearney decl. ¶ 15. The falconry regulations significantly impair their First Amendment rights to create expression featuring their birds and to talk about their birds, based solely on the content of the expression. They have declined opportunities to photograph their birds and otherwise refrained from speaking about their birds. But for these content-based restrictions, Plaintiff Falconers and many other Conservancy members would engage in the speech that is prohibited by the challenged regulations. *Id.* Regulations such as these that control expression based on its content are “‘presumptively invalid,’ and the Government bears the burden to rebut that presumption.” *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 817 (2000)).

“‘The First Amendment’s hostility to content-based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic.’ Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2230 (2015) (quoting *Consol. Edison Co. of N.Y. v. Public Serv. Comm’n of N.Y.*, 447 U.S. 530, 537 (1980)). Put simply, “[g]overnment regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.* at 2227. “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.” *Id.* at 2228 (quoting *Cincinnati v. Discovery Network*, 507 U.S. 410, 429 (1993)).

Collectively, the state/federal regulations fall into four content-based categories: (1) generally banning images of falcons in all expression that is not about falcons; (2) specifically banning commercials that feature falcons but are not about falcons; (3) limiting compensation for falcon-related educational expression; and (4) dictating the content of conservation education

1 programs. Falconry itself may not be protected expression, but educational demonstrations, movies,  
2 commercials, photography, and filming are unequivocally protected speech—and the regulations  
3 at issue here unconstitutionally interfere with that expression.

4 **a. Limiting images of falcons in all expression that is not about falcons**  
5 **is unconstitutional**

6 The regulations at issue prohibit falconers from photographing or filming their birds—but  
7 only if the images will be used in a production that is not about falcons or falconry. 50 C.F.R.  
8 § 21.29(f)(9)(i); 14 C.C.R. § 670(h)(13)(A). This impairs the creation of protected expression like  
9 movies, photos, and commercials based solely on their communicative content. *See Western*  
10 *Watersheds Project v. Michael*, 869 F.3d 1189, 1196 (10th Cir. 2017) (“An individual who  
11 photographs animals or takes notes about habitat conditions is creating speech in the same manner  
12 as an individual who records a police encounter.”).

13 Rather than ban these images outright, the regulations prohibit taking certain photos and  
14 videos, in an attempt by “the government [to] bypass the Constitution by ‘simply proceed[ing]  
15 upstream and dam[ming] the source’ of speech.” *Id.* at 1196 (quoting *Buehrle v. City of Key West*,  
16 813 F.3d 973, 977 (11th Cir. 2015)). The First Amendment protects a falconer who creates an image  
17 of his soaring eagle—just the same as it protects filming the police on a public street, or filming  
18 wildlife on public lands. *Fordyce v. City of Seattle*, 55 F.3d 436, 439 (9th Cir. 1995); *Western*  
19 *Watersheds*, 869 F.3d at 1196; *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193, 1206–  
20 08 (D. Utah 2017) (collecting cases protecting the First Amendment right to make an audiovisual  
21 recording). The Supreme Court has held that even horrific depictions of animal cruelty cannot be  
22 banned, so long as the underlying activities are legal. *Stevens*, 559 U.S. at 481. Where, as here, the  
23 underlying activity that is the source of the protected expression—flying falconry birds—is neither  
24 cruel nor illegal, there is even less basis for the government to make content-based distinctions  
25 about what sort of speech can and cannot be created by falconers. *Id.*

26 This is not a situation where regulations are directed at conduct that has an incidental effect  
27 on speech. *Cf. Zemel v. Rusk*, 381 U.S. 1 (1965). Rather, the “conduct triggering coverage under  
28 the statute consists of communicating a message.” *Holder v. Humanitarian Law Project*, 561 U.S.

1 1, 28 (2010). Falconers are in the same position as the activists who challenged Wyoming’s “ag  
2 gag” statute in *Western Watersheds Project v. Michael*, which applied heightened penalties to  
3 trespassing committed with the intention of creating speech, including photographing animals.  
4 *Western Watersheds*, 869 F.3d at 1197. The plaintiffs in *Western Watersheds* challenged “the  
5 constitutionality of Wyoming’s differential treatment of individuals who create speech. . . . The  
6 challenged statutes apply specifically to the creation of speech, and thus we conclude they are  
7 subject to the First Amendment.” *Id.* (citing *Brown v. Entm’t Merchants Ass’n*, 564 U.S. 786, 793  
8 n.1 (2011)); *see also Western Watersheds Project v. Michael*, No. 15-cv-169-SWS, 2018 WL  
9 5318261, at \*10 (D. Wyo. Oct. 29, 2018) (striking down the same “ag gag” statutes on remand as  
10 unconstitutionally content-based). The regulations at issue here directly regulate photographing and  
11 filming birds and thus “apply specifically to the creation of speech” and are therefore subject to  
12 First Amendment scrutiny.

13 Preventing Falconers from photographing their birds stymies the creation of speech based  
14 on its content, both because the speech features falcons, and because it is not about falcons.  
15 Regulations that police expression based on its content are “‘presumptively invalid,’ and the  
16 Government bears the burden to rebut that presumption.” *Stevens*, 559 U.S. at 468 (quoting  
17 *Playboy*, 529 U.S. at 817).

18 The only government interest that could be related to the falcon speech ban is the welfare  
19 of the birds. But any concerns about overworking birds or exposing them to dangerous conditions  
20 are easily addressed by regulations that do not impose content-based restrictions on speech. “[T]he  
21 remedy is not to restrict speech but to consider and explore other regulatory mechanisms.” *Citizens*  
22 *United v. Fed. Election Comm’n*, 558 U.S. 310, 362 (2010). Valid regulations might limit the  
23 working hours and conditions of falcons generally, but “[t]he regulatory mechanism here, based on  
24 speech, contravenes the First Amendment.” *Id.*; *see also Minneapolis Star & Tribune Co. v. Minn.*  
25 *Comm’r of Revenue*, 460 U.S. 575, 592 (1983) (“We have long recognized that even regulations  
26 aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the  
27 First Amendment.”). Banning images of falcons in all expression that is not about falcons is  
28 unconstitutional; 50 C.F.R. § 21.29(f)(9)(i) and 14 C.C.R. § 670(h)(13)(A) should be enjoined.

1           **b. Limiting commercials that feature falcons but are not about falcons or**  
2           **falconry is unconstitutional**

3           In addition to banning non-falcon-related movies and photographs generally, the regulations  
4 also specifically ban Falconers from creating non-falcon-related commercial speech. 50 C.F.R.  
5 § 21.29(f)(9)(ii); 14 C.C.R. § 670(h)(13)(A). Commercial speech “does no more than propose a  
6 commercial transaction.” *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425  
7 U.S. 748, 767 (1976) (Stewart, J., concurring). It is generally accepted that regulation of  
8 commercial speech is subject to a lesser degree of scrutiny, under the *Central Hudson* standard.  
9 *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of New York*, 447 U.S. 557, 561 (1980);  
10 *Retail Digital Network, LLC v. Prieto*, 861 F.3d 839, 849–50 (9th Cir. 2017) (en banc).

11           The *Central Hudson* intermediate scrutiny test has four parts: (1) whether the speech at  
12 issue is not misleading and concerns lawful activity; (2) whether the government interest is  
13 substantial; (3) whether the regulation directly advances that interest; and (4) whether the regulation  
14 is not more extensive than necessary to achieve the interest. *Cent. Hudson Gas & Elec. Corp.*, 447  
15 U.S. at 561; *World Wide Rush, LLC v. City of Los Angeles*, 606 F.3d 676, 684 (9th Cir. 2010). The  
16 first step is a threshold issue that determines whether the restricted speech enjoys First Amendment  
17 protection. *World Wide Rush*, 606 F.3d at 684. If the speech at issue passes this threshold, then the  
18 government bears the burden of satisfying the other three steps. *Valle Del Sol Inc. v. Whiting*, 709  
19 F.3d 808, 816 (9th Cir. 2013).

20           The first factor is not at issue here, because the ban applies to all commercial  
21 advertisements, misleading or not, that include falcons but are not about falcons or falconry. The  
22 second factor is likewise uncontroversial; Falconers do not now dispute that the government has an  
23 interest in protecting migratory birds. But the commercial speech ban fails at step three.

24           Step three “concerns the relationship between the harm that underlies the State’s interest  
25 and the means identified by the State to advance that interest.” *Lorillard Tobacco Co. v. Reilly*, 533  
26 U.S. 525, 555 (2001). Any restriction on commercial speech must “directly and materially  
27 advance[] the asserted governmental interest.” *Greater New Orleans Broadcasting Ass’n, Inc. v.*  
28 *United States*, 527 U.S. 173, 188 (1999); *Metro Lights, LLC v. City of Los Angeles*, 551 F.3d 898,

1 905 (9th Cir. 2009) (A restriction on commercial speech must have a “logical connection” between  
2 means and end.).

3 A speech regulation also runs afoul of *Central Hudson’s* step three advancement  
4 requirement if it is under-inclusive. *Valle Del Sol Inc.*, 709 F.3d at 824. Under-inclusivity arises  
5 when a regulation reaches only a subset of the speech that causes the alleged harm, such that the  
6 regulation fails to achieve its purported goal or makes irrational distinctions between regulated and  
7 unregulated speech. *Metro Lights*, 551 F.3d at 906.

8 A classic example of an under-inclusive commercial speech restriction arose in *City of*  
9 *Cincinnati v. Discovery Network*, 507 U.S. 410 (1993). Cincinnati prohibited commercial handbills  
10 in news racks on public property but allowed noncommercial handbills. *Id.* at 412. Cincinnati’s  
11 asserted interest was to reduce the clutter of news racks to promote aesthetics. *Id.* The Court noted,  
12 however, that the distinction between commercial and noncommercial handbills bore no  
13 relationship to the interest in aesthetics, since both types of handbill contributed equally to the  
14 proliferation of news racks. *Id.* at 425. The restriction thus lacked the required “‘fit’ between its  
15 goals and its chosen means” because the distinction drawn between commercial and  
16 noncommercial handbills “has absolutely no bearing on the interests [Cincinnati] has asserted.” *Id.*  
17 at 428.

18 The government’s interest in the welfare of birds is unaffected whether images of the birds  
19 are being shown to sell perches (allowed) or washing machines (not allowed), or to make political  
20 statements about freedom (not allowed). Banning falconers from contributing to commercials  
21 unrelated to falconry does nothing to “directly and materially advance the asserted governmental  
22 interest” in protecting migratory birds and is fatally under-inclusive because it unjustifiably targets  
23 commercial speech. *Id.* Therefore, 50 C.F.R. § 21.29(f)(9)(ii) and 14 C.C.R. § 670(h)(13)(A) should  
24 be enjoined.

25 **c. Limiting compensation for falcon-related expression is unconstitutional**

26 The offending regulations allow only one sort of falcon-containing speech: that which is  
27 related to falcons or falconry. 50 C.F.R. § 21.29(f)(8); (9)(ii)(A)–(B). But this outlet for speech  
28 comes with an important financial disincentive. Under the federal regulations Falconers’

1 “presentation of a conservation education program” may only be compensated if the fee does “not  
2 exceed the amount required to recoup . . . costs.” 50 C.F.R. § 21.29(f)(8)(iv). The California  
3 regulations incorporate the same content-based restrictions as 50 C.F.R. § 21, but Falconers are  
4 entirely prohibited from collecting compensation for any falcon-containing expression that  
5 “exceed[s] the amount required to recover costs.” 14 C.C.R. § 670(h)(13)(A).

6 First Amendment protection does not disappear because falcon-containing speech is  
7 compensated at a fair price that rewards Falconers for their time, their expertise, and the use of their  
8 birds. “[T]he degree of First Amendment protection is not diminished merely because the [protected  
9 expression] is sold rather than given away.” *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S.  
10 750, 756 n.5 (1988); *see also Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 801  
11 (1988) (“It is well settled that a speaker’s rights are not lost merely because compensation is  
12 received; a speaker is no less a speaker because he or she is paid to speak.”); *Nat’l Inst. of Family  
13 & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2375 (2018) (“[N]either California nor the Ninth  
14 Circuit has identified a persuasive reason for treating professional speech as a unique category that  
15 is exempt from ordinary First Amendment principles.”).

16 Nor is preventing compensation a legitimate government interest that can justify speech  
17 restrictions. The First Amendment does not tolerate laws that impose a “disincentive to create or  
18 publish works,” including diminishing the ability of speakers to profit from their communicative  
19 works. *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118  
20 (1991). Barring fair compensation for “presentation of a conservation education program” does  
21 nothing to further the government interest in protecting and preserving birds covered by federal  
22 statutory protections. Indeed, it has the opposite effect by making such presentations not profitable  
23 and thus less likely to occur. Scott Timmons decl. ¶ 22; Peter Stavrianoudakis decl. ¶¶ 36-40; Ron  
24 Kearney decl. ¶ 18; Bridget Rocheford-Kearney decl. ¶ 15. Nor does California have a legitimate  
25 basis for restricting payment for all falcon-related speech; discouraging the promotion of nonprofit  
26 falconry organizations or sale of useful falconry products would likewise harm these majestic birds.  
27 Limiting compensation for falcon-related speech is unconstitutional; 50 C.F.R. § 21.29(f)(8),  
28 (9)(ii)(A)–(B), and 14 C.C.R. § 670(h)(13)(A) should be enjoined.

1           **d. Dictating the content of conservation education programs is unconstitutional**

2           Falconers who engage in conservation education despite the financial disincentives must  
3 also follow content-based guidelines about what can be discussed in conservation education  
4 programs—including “information about the biology, ecological roles, and conservation needs of  
5 raptors and other migratory birds.” 50 C.F.R. § 21.29(f)(8)(v). The federal regulations do not  
6 require that “all of these topics must be addressed in every presentation.” *Id.* But any “presentations  
7 that do not address falconry and conservation education” are expressly forbidden. *Id.*

8           As content-based limits on falconers’ speech, these restrictions are “‘presumptively  
9 invalid,’ and the Government bears the burden to rebut that presumption.” *Stevens*, 559 U.S. at 468  
10 (quoting *Playboy*, 529 U.S. at 817). While the government might have an interest in ensuring the  
11 accuracy of educational materials, this interest in accuracy cannot justify untargeted content-based  
12 speech restrictions. *See, e.g., United States v. Alvarez*, 567 U.S. 709, 727 (2012) (“The remedy for  
13 speech that is false is speech that is true.”); *Edwards v. District of Columbia*, 755 F.3d 996, 1005  
14 n.6 (D.C. Cir. 2014) (“We do not mean to suggest the District could somehow police the accuracy  
15 of a tour guide’s speech by, for example, requiring that tour guides adhere to a script. Even if such  
16 speech advanced the District’s interest in ensuring a quality consumer experience, its compulsion  
17 would doubtless be unconstitutional.”).

18           Like the other content-based restrictions on Falconers’ speech, dictating the content of any  
19 “presentations” falconers give is not necessary to address any actual problem. *Playboy*, 529 U.S. at  
20 822–23. The restrictions are therefore unconstitutional; 50 C.F.R. § 21.29(f)(8)(v) and 14 C.C.R.  
21 § 670(h)(13)(A), and should be enjoined by this Court.

22           **B. Falconers Are Suffering Irreparable Harm from Continuous**  
23           **Constitutional Injuries**

24           A plaintiff seeking preliminary relief must show a likelihood of irreparable harm. *Winter*,  
25 555 U.S. at 22. “When an alleged deprivation of a constitutional right is involved, . . . most courts  
26 hold that no further showing of irreparable injury is necessary.” 11A Charles Alan Wright &  
27 Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 2013) (footnotes omitted).  
28 Indeed, “[u]nder the law of this circuit, a party seeking preliminary injunctive relief in a First



1 Amendment context can establish irreparable injury sufficient to merit the grant of relief by  
2 demonstrating the existence of a colorable First Amendment claim.” *Sammartano v. First Judicial*  
3 *Dist. Court in & for County of Carson City*, 303 F.3d 959, 973–74 (9th Cir. 2002) (citation omitted);  
4 *Warsoldier v. Woodford*, 418 F.3d 989, 1002 (9th Cir. 2005) (same). The same is true for Fourth  
5 Amendment claims. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (“Defendants  
6 operated under the impression that they have authority to detain individuals solely because of their  
7 immigration status . . . Plaintiffs faced irreparable harm in the form of a deprivation of constitutional  
8 rights absent a preliminary injunction.”).

9 Because Falconers raise substantial constitutional claims, no further showing of irreparable  
10 injury is necessary. *See Sanders County Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 744  
11 (9th Cir. 2012) (“When seeking a preliminary injunction ‘in the First Amendment context, the  
12 moving party bears the initial burden of making a colorable claim that its First Amendment rights  
13 have been infringed, or are threatened with infringement, at which point the burden shifts to the  
14 government to justify the restriction.” (quoting *Thalheimer v. City of San Diego*, 645 F.3d 1109,  
15 1116 (9th Cir. 2011)). It is the “purposeful unconstitutional suppression of speech [that] constitutes  
16 irreparable harm for preliminary injunction purposes.” *Goldie’s Bookstore v. Superior Court*, 739  
17 F.2d 466, 472 (9th Cir. 1984); *Melendres*, 695 F.3d at 1002 (threat of Fourth Amendment injuries  
18 also creates irreparable harm); *see also Ochoa v. Campbell*, 266 F. Supp. 3d 1237, 1260 (E.D.  
19 Wash. 2017), *appeal dismissed as moot sub nom. Sanchez Ochoa v. Campbell*, 716 F. App’x 741  
20 (9th Cir. 2018) (deprivation of Fourth Amendment rights “unquestionably constitutes irreparable  
21 injury”).

### 22 **C. The Balance of Equities Weighs in Falconers’ Favor**

23 A plaintiff seeking a preliminary injunction must show that “the balance of equities tips in  
24 his favor.” *Winter*, 555 U.S. at 20. To assess the balance of hardships, the court “balance[s] the  
25 interests of all parties and weigh[s] the damage to each.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109,  
26 1138 (9th Cir. 2009) (quoting *Los Angeles Memorial Coliseum Comm’n v. NFL*, 634 F.2d 1197,  
27 1203 (9th Cir. 1980)). Mere “inconvenience” to the government does not compare to the hardship  
28 imposed by “the potential loss of a constitutionally protected right” like speech or the right to be

1 free from unreasonable warrantless searches. *Citizens for Free Speech, LLC v. County of Alameda*,  
2 62 F. Supp. 3d 1129, 1143 (N.D. Cal. 2014); *Melendres*, 695 F.3d at 1002; *Allen v. County of Lake*,  
3 71 F. Supp. 3d 1044 (N.D. Cal. 2014).

4 In the absence of the regulations challenged here, Defendants will still be able to obtain  
5 lawful warrants if they have a genuine need to search Falconers' homes, but the ongoing threat of  
6 warrantless searches will be abated. Moreover, enjoining the speech restrictions will simply allow  
7 Falconers to speak—no other change in the way they care for, protect, or fly their birds will result  
8 from an injunction. Any harms Defendants might imagine are “entirely speculative and in any event  
9 may be addressed by more closely tailored regulatory measures.” *Ezell v. City of Chicago*, 651 F.3d  
10 684, 710 (7th Cir. 2011). The balance of equities favors Falconers.

11 **D. A Preliminary Injunction Would Serve the Public Interest**

12 A motion for preliminary injunction must show “that an injunction is in the public interest.”  
13 *Winter*, 555 U.S. at 20. Upholding First and Fourth Amendment values is always in the public  
14 interest: “Courts considering requests for preliminary injunctions have consistently recognized the  
15 significant public interest in upholding First Amendment principles.” *Thalheimer*, 645 F.3d at 1129  
16 (citation omitted); *Sammartano*, 303 F.3d at 974 (“[I]t is always in the public interest to prevent  
17 the violation of a party’s constitutional rights.” (citation omitted)); *Preminger v. Principi*, 422 F.3d  
18 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional  
19 right has been violated, because all citizens have a stake in upholding the Constitution.”);  
20 *Melendres*, 695 F.3d at 1002 (“[E]quities favor issuance of a narrow, limited preliminary injunction  
21 . . . [that] does ‘not enjoin[ ] [the Defendants] from enforcing valid state laws, or detaining  
22 individuals when officers have reasonable suspicion that individuals are violating a state criminal  
23 law.’” (citation omitted)). Given the primacy of the constitutional rights at stake, a preliminary  
24 injunction is in the public interest.

25 **E. Waiver of Bond Is Appropriate**

26 This Court has discretion to waive the security requirements of Fed. R. Civ. P. 65(c) or  
27 require only a nominal bond. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).  
28 Where a preliminary injunction merely requires compliance with the Constitution, no bond is

1 required. *Doe v. Pittsylvania County, Va.*, 842 F. Supp. 2d 927, 937 (W.D. Va. 2012) (fixing the  
2 bond at zero dollars where injunction merely required compliance with the Constitution); *Baca v.*  
3 *Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996) (waiving bond because  
4 “to require a bond would have a negative impact on plaintiff’s constitutional rights, as well as the  
5 constitutional rights of other members of the public affected by the policy”).

6 Plaintiffs seek only to vindicate their constitutional rights and to this end are represented  
7 pro bono. To require a bond when a plaintiff seeks to uphold constitutionally protected rights  
8 “would have the effect of discouraging suits to remedy more flagrant abuses.” *Bartels v. Biernat*,  
9 405 F. Supp. 1012, 1019 (E.D. Wis. 1975). Also, because Falconers have demonstrated a high  
10 likelihood of success on the merits, a bond waiver is appropriate. *People of State of Cal. ex rel. Van*  
11 *de Kamp v. Tahoe Regional Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985), *amended on*  
12 *other grounds*, 775 F.2d 998 (9th Cir. 1985). Therefore, it would be appropriate to waive the bond  
13 requirement or to set bond at a nominal amount.

## 14 VI. CONCLUSION

15 Plaintiffs’ Fourth Amendment claims in this case go to the heart of that amendment’s  
16 purpose. Instead of “plac[ing] ‘the liberty of [everyone] in the hands of every petty officer,’” *Boyd*  
17 *v. United States*, 116 U.S. 616, 625 (1886) (citation omitted), the Fourth Amendment protects our  
18 rights to be secure and safe in our own homes. Likewise, Falconers’ First Amendment claims  
19 address the bedrock principle that the government may not ban speech based solely on its  
20 communicative content. *Reed*, 135 S. Ct. 2228–30.

21 Falconry may be older than the U.S. Constitution, but Falconers are still protected by it. A  
22 preliminary injunction is appropriate to prevent the continued violation of Falconers’ Fourth and  
23 First Amendment rights.

24 DATED: January 28, 2019.

25 Respectfully submitted,

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