

1 ANTHONY L. FRANÇOIS, Cal. Bar No. 184100
Email: TFrancois@pacificlegal.org
2 TIMOTHY R. SNOWBALL, Cal. Bar No. 317379
Email: TSnowball@pacificlegal.org
3 Pacific Legal Foundation
930 G Street
4 Sacramento, California 95814
Telephone: (916) 419-7111
5 Facsimile: (916) 419-7747

6 JAMES M. MANLEY, Ariz. Bar No. 031820* (*Pro Hac Vice*)
Email: JManley@pacificlegal.org
7 Pacific Legal Foundation
3217 E. Shea Blvd., # 108
8 Phoenix, Arizona 85028
Telephone: (916) 288-1405
9 Facsimile: (916) 419-7747

10 Attorneys for Plaintiffs

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

15 PETER STAVRIANOUDAKIS, et al.,

16 Plaintiffs,

17 v.

18 UNITED STATES FISH & WILDLIFE SERVICE,
19 et al.,

20 Defendants.

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

**RESPONSE TO NORTH
AMERICAN FALCONERS'
BRIEF *AMICUS CURIAE***

21
22
23
24
25
26
27
28 *Licensed to practice law in Arizona and Colorado. Not licensed to practice law in California.

1 **INTRODUCTION**

2 Amicus Curiae North American Falconers Association (NAFA), supports “the proper
3 practice of the sport of falconry and the wise use and conservation of birds of prey.” Amicus Brief
4 of the North American Falconers Association, ECF No. 33 at 1. Plaintiffs Peter Stavrianoudakis,
5 Katherine Stavrianoudakis, Eric Ariyoshi, Scott Timmons, and American Falconry Conservancy
6 (Plaintiffs) also care about the proper practice of the sport of falconry and conservation of falconry
7 birds. *See, e.g.*, AFC Mission Statement.¹ The critical difference being that NAFA’s amicus brief
8 gives no consideration to the Constitution, *see, e.g.*, ECF No. 33 at 7 (NAFA “support[s] regulations
9 designed to protect individual raptors possessed, *at the expense of the sport and even of the*
10 *falconers*”) (emphasis added), while Plaintiffs are concerned with both.

11 Despite apparent confusion as to Plaintiffs’ claims, *see, e.g., id.* at 7:11–12 (“NAFA
12 supports the current legal framework which allows only duly licensed persons to possess raptors.”),
13 Plaintiffs do not challenge those regulations generally governing the practice of falconry, the
14 necessity of falconry licensing, or the government’s interest in protecting falconry birds. *See* First
15 Amended Complaint (FAC), ECF No. 16. Instead, Plaintiffs simply ask this Court to enforce the
16 constitutional and statutory limits on Defendants’ regulatory authority as to warrantless searches
17 and speech restrictions. This relief is warranted.

18 **ARGUMENT**

19 **A. Falconry and the Constitution Can Coexist**

20 NAFA’s apparent concerns that falconry and the Constitution cannot coexist are without
21 merit. As Plaintiffs have explained, Opp’n to Mot. to Dismiss, ECF No. 38 at 3:13–25, the assertion
22 that injunctive relief in this case would lead to “an immediate and complete termination of the right
23 to practice falconry in the State of California,” ECF No. 33 at 9:14–15, is incorrect.

24 Plaintiffs challenge both the offending state search and speech regulations and the
25 corresponding federal regulations, ECF No. 16 at 12–20, and seek to preliminarily, Plaintiffs’
26 Notice of Motion and Motion for Preliminary Injunction, ECF No. 17, and permanently enjoin both
27

28 ¹ <https://www.falconryconservancy.org/index.php>.
Response to North American Falconers’ Brief *Amicus Curiae*
No. 1:18-cv-01505-LJO-BAM 2

1 sets of regulations, ECF No. 16 at 21:9–11. Enjoining the challenged federal regulations along with
2 the challenged California regulations will leave the California falconry licensing program in
3 compliance with all federal requirements in force, and foreclose the decertification scenario put
4 forward by NAFA. With this regulatory worry out of the way—and putting aside NAFA’s
5 questionable decision to endorse wholesale Defendant Bonham’s unsupported constitutional
6 arguments and the federal Defendants’ cursory statutory arguments—there is much agreement
7 between NAFA and the Plaintiffs that bears highlighting.²

8 **B. NAFA’s Brief Supports Plaintiffs’ Contention That Falconry Is**
9 **Not a “Heavily Regulated Industry”**

10 NAFA agrees with Plaintiffs: the practice of falconry is not a business or industry. *See, e.g.,*
11 ECF No. 33 at 8:10–11 (“Nor does the definition of falconry permit the use of raptors for
12 commercial purposes.”); *id.* at 8:13–15 (alleging that a falconry permit “prohibits the commercial
13 use of ‘falconry’ raptors”); *id.* at 3:14–22 (discussing the difference between abatement (a
14 commercial activity), and falconry (a non-commercial activity)).

15 Rather, the practice of falconry is, as NAFA states repeatedly, a non-commercial pastime.
16 *See, e.g., id.* at 2:6 (“Falconry is the ‘taking [of] wild quarry in its natural state with a trained
17 raptor.”); *id.* at 2:16 (falconry is an “intangible cultural heritage.”); *id.* at 2:22 (falconry is a “living
18 cultural heritage”); *id.* at 1:3 (falconry is a “sport”); *id.* at 6:11–12 (the very definition of falconry
19 is the “ability to pursue wild quarry in its natural habitat with a trained raptor.”); *id.* at 2:18–19
20 (“falconry is ‘a practice, a craft, and a way of life’”).

21 All agree that falconry is not a business or industry; NAFA’s brief, perhaps inadvertently,
22 undercuts Defendants’ reliance on the “heavily regulated *industry*” exception to the Fourth
23 Amendment’s privacy protections. *See* ECF No. 38 at 17–21.

24 ///

25 ² NAFA asks this Court to take judicial notice of a great many “articles and other documents.” ECF
26 No. 33 at 1:19–2:1–3. To the extent NAFA “requests judicial notice of the existence of certain
27 statements, and not the accuracy of such statements, judicial notice of the statements’ existence is
28 appropriate.” *Palma v. Select Portfolio Servicing, Inc.*, 2017 WL 1364667, at *3 (E.D. Cal. Apr.
14, 2017). If, however, NAFA seeks “judicial notice of the veracity or authenticity of any
arguments or conclusions of fact or law contained in documents, the request should be denied.” *Id.*

1 sport”); *id.* at 2:18–20 (“[F]alconry is “a practice, a craft ... [and] demonstrate[s] the extraordinary
2 creativity of humanity.”). NAFA does not explain how the underlying activity becomes something
3 other than falconry just because a falconer speaks or an onlooker snaps a picture. The FAC alleges
4 that certain state and federal falconry regulations limit what licensed falconers can say about their
5 birds, prevent them from photographing or filming their birds, prohibit creating movies,
6 commercials, or other commercial ventures unrelated to falconry, limit compensation for falcon-
7 related educational speech, and dictate the content of conservation education programs. *See* ECF
8 No. 16 ¶ 10; 50 C.F.R. § 21.29(f)(8)–(9); 14 C.C.R § 670(h)(13)(A).

9 Plaintiffs have not argued that falconry itself is protected expression, ECF No. 17 at 19:1–
10 3, but rather that the speech regulations govern what falconers can say and what pictures and videos
11 they can take in the presence of their birds. ECF No. 38 at 24–30. What Falconers seek to do here
12 is “falconry” by NAFA’s definition—“training and using a raptor to hunt quarry for sport”—they
13 simply wish to talk about it or have pictures and video taken while they do it. *Opp’n to Mot. to*
14 *Dismiss* at 24–25.

15 CONCLUSION

16 NAFA is not the sole representative of the falconry community in North America. *Contra*
17 ECF No. 33 at 1:4–6. Plaintiffs, including the American Falconry Conservancy, are also passionate
18 spokespeople for their sport—and they hope to share the sport they love even more broadly once
19 the fear imposed by the warrantless search regulations and the limits on expression imposed by the
20 speech regulations are both lifted. In this case, Plaintiffs do not question the government’s authority
21 to generally regulate falconry, the need for falconry licensing, or the interest Defendants have in
22 protecting falconry birds. ECF No. 16. They simply ask that their constitutional rights as
23 Americans—rights that NAFA never acknowledges or addresses in its brief—be recognized and
24 protected along with their falconry birds.

25 NAFA wants the falconry regulations enforced “in a courteous, respectful manner and
26 confined to a legitimate regulatory need.” ECF No. 33 at 7:4-5. Adding only the word
27 “constitutional,” that is the exact relief that Plaintiffs request in this case.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: April 2, 2019.

Respectfully submitted,

TIMOTHY R. SNOWBALL
ANTHONY L. FRANÇOIS
JAMES M. MANLEY (*Pro Hac Vice*)

By: s/Timothy R. Snowball
TIMOTHY R. SNOWBALL

Attorneys for Plaintiffs