



PACIFIC LEGAL FOUNDATION

Frequently Asked Questions (FAQ): *Peter Stavrianoudakis, et al., v. United States Fish and Wildlife Service, et al.*

What does this case address?

For decades, the California Department of Fish and Wildlife and the United States Fish and Wildlife Service have demanded Americans give up their constitutional rights in order to obtain falconry licenses. This is both unconstitutional and un-American.

- **Currently, falconers are forced to allow armed law enforcement officers into their homes or onto their property without a warrant for unannounced inspections.**
- Falconers are also prohibited from taking pictures or video of their birds unless the project is about falcons—and they can forget about being paid for pictures of their birds or for giving educational demonstrations.

Falconers should be able to practice their sport without undue interference by the government and maintain their constitutional rights.

There is nothing incompatible about ensuring the proper practice of falconry, protecting falconry birds, *and* the Constitution.

What does this case NOT address?

The lawsuit does not challenge falconry licensing itself, nor the government's (and falconers') interest in ensuring the safety of falconry birds.

- Whether victorious or not, the resolution of this case will have no effect on abatement practices, wild take, or any other regulations.
- Whether falconry birds are private property—an important but separate issue—the Constitution protects falconers from unreasonable, warrantless searches and rules prohibiting free speech.
- The only claims the lawsuit makes are those explained above. The lawsuit does not make separate claims based on the Equal Protection Clause of the Fourteenth Amendment.

Who are the clients in this case?

Long-time falconers Peter Stavrianoudakis, Eric Ariyoshi, and Scott Timmons. The American Falconry Conservancy, an organization that exists to protect and preserve the art and practice of falconry for future generations and to protect falconers' rights, is also a plaintiff in the case.

Also represented as a plaintiff is Katherine Stavrianoudakis, a non-falconer whose constitutional rights are nonetheless threatened simply by virtue of being married to a licensed falconer. Katherine's

situation exemplifies that the constitutional issues related to falconry extend beyond the proper practice of the sport or the health and safety of the falconry birds.

What claims are being made in this lawsuit?

The lawsuit makes three claims:

- 1) The Constitution's **Fourth Amendment protects all Americans from unreasonable, warrantless searches of their homes and private property**. Falconers, and their spouses and other family members, are no exception. Agencies cannot use the licensing process to force people to give up this right.
- 2) The **First Amendment protects the ability of Americans to speak their minds** free from government coercion. Neither the state of California nor the federal government can limit falconers from sharing pictures and videos of the sport they love.
- 3) **Regulations enacted by federal agencies have to follow the statutes passed by Congress**. The Migratory Bird Treaty Act (MBTA) is the law that gives the Fish and Wildlife Service the power to regulate falconry birds.
 - But the MBTA says the government needs a warrant before it does a search; the regulations ignore this warrant requirement.
 - Nor does the MBTA give the government any authority to regulate falconers' speech; the regulations ignore that limit on the government's power, too.

The point of both the constitutional claims is the same: Falconers do not lose their constitutional rights just because they accept a falconry license.

These claims stand independently of one another. The plaintiffs could lose one and win on another or prevail on all three.

What happens if the plaintiffs (falconers) win this case?

Government agents will have appropriate, rational limits on their ability to restrict licensed falconers' constitutional rights. In particular:

- Government agents will be prohibited from invading the homes or property of licensed falconers without a warrant.
 - Even in states where the falconry community has a good relationship with regulators, a warrant requirement helps ensure that relationship stays strong.
 - A warrant requirement means that a judge signs off on searches as a check against harassment and abuse by well-intentioned but overzealous individual wardens.
- Falconers will be able to communicate about and sell photos and videos of their birds—for profit or not-for-profit.
 - Regulations about falconers' speech *will not* necessarily disappear.
 - The government will have to show that its regulations are necessary to achieve a compelling interest—in other words, their regulatory authority will be held to a standard of evidence and rationality.

- The government has not explained why it needs to limit falconers' speech, except to suggest that it wants to limit interest in falconry birds.
- Falconers will have more choices and more protection for their sport.

The general regulation of falconry will remain in place, and the sport itself cannot simply be banned or outlawed with the snap of a finger.

Securing a warrant before a search, or respecting falconers' free speech rights, leaves plenty of room for the government to ensure the proper practice of falconry and the safety of falconry birds.

If the plaintiffs win, game wardens will still be able to police any illegal trafficking in falconry birds, which is the primary point of both the MBTA and falconry licensing.

What happens if the plaintiffs (falconers) lose the case?

The current status quo prevails if falconers lose the case; nothing will change.

Can the government retaliate because of the lawsuit?

It's illegal for the government to retaliate against plaintiffs in a civil rights lawsuit or the population whose interests the plaintiffs represent.

- One of the freedoms the First Amendment protects is the right to "petition the Government for a redress of grievances"—a lawsuit is a classic "petition for a redress of grievances" and it violates the First Amendment for the government to retaliate against citizens who file lawsuits—even if the original lawsuit isn't successful. This principle ensures that Americans can argue for their constitutional rights in court without fearing retribution.
- Litigation in court has been an essential and common way to preserve and expand our Constitutional protections throughout American history. Lawsuits play a vital role in checking the excesses of government power, which is why the government is prohibited from retaliating against civil rights lawsuits.

Pacific Legal Foundation (PLF) attorneys have successfully defended their clients when the government took retaliatory actions against them.

- If California attempts to eliminate falconry permitting in response to the lawsuit, which is itself a long drawn out and highly difficult process, falconers could still get permits from the federal government, and the state would likely have to defend against a new retaliation lawsuit.
- If the federal government attempts to eliminate falconry permitting, it would be a years-long process, and the government would need to explain why the decision to ban a 3,000-year-old sport that has been safely practiced for decades in the United States is not "arbitrary and capricious." The federal government, too, would likely face a retaliation lawsuit.
- The sport of falconry, and all licensed falconers in the United States, can only be helped by this lawsuit, not hurt.

Why does PLF care about these falconry regulations?

Pacific Legal Foundation (PLF) is a national public interest law firm with a 45-year history of fighting back against government overreach. They have won 11 of 13 cases at the United States Supreme Court against government defendants, a track record on par with the ACLU. This does not mention the countless victories PLF has achieved at all levels of the state and federal courts since its founding. Last year, they represented clients in over 170 lawsuits nationwide.

Where can I learn more?

For more information on the case, or to learn more about PLF, please visit:

- <https://pacificlegal.org/>
- <https://pacificlegal.org/case/peter-stavrianoudakis-et-al-v-united-states-department-of-fish-wildlife-and-california-department-of-fish-wildlife/>