

## Committee Staff Summary for January 15, 2025 WRC

**4. Falconry****Today's Item**Information Action 

Initial vetting for potential changes to falconry regulations.

**Summary of Previous/Future Actions**

- **Today's initial vetting** **January 15, 2025; WRC**
- Discussion and potential recommendation May 15, 2025; WRC

**Background**

The Commission regulates the licensing and care of raptors, consistent with federal regulations promulgated by the U.S. Fish and Wildlife Service. California's regulations encompass the entire practice of falconry, including importation, handling, care, licensure, and hunting. The Department proposes several changes to falconry regulations (exhibits 1 and 2) regarding raptor housing, bird exhibition, and out-of-state examinations, in response to litigation (exhibits 3 and 4).

Today the Wildlife Resources Committee (WRC) will receive a presentation on, and discuss, the Department's recommendations. WRC's May 2025 meeting is the next opportunity to discuss and potentially make a recommendation to the Commission regarding the proposed regulation changes.

**Significant Public Comments (N/A)****Recommendation (N/A)****Exhibits**

1. [Department presentation](#)
2. [Department's recommended amendments](#) to regulatory language
3. [Stipulated Judgment and Order of the United States District Court](#) (*Stavrianoudakis, et al. v. USFWS, et al.*, Case 1:18-cv-01505-JLT-BAM), filed November 14, 2022
4. [Opinion of the United States Court of Appeals, Ninth Circuit](#) (*Stavrianoudakis, et al. v. USFWS, et al.*, Case 22-16788), filed July 24, 2024

**Committee Direction/Recommendation (N/A)**

# PROPOSED AMENDMENTS TO CALIFORNIA FALCONRY REGULATIONS

*California Code of Regulations, title 14, sections 670 and 703*



## **PRESENTATION TO THE WILDLIFE RESOURCES COMMITTEE**

January 15, 2025 | David Kiene

Office of the General Counsel

# Proposed Amendments to Sections 670 & 703

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1. Delete a provision in subsection 670(e)(2)(D), disfavored by the 9<sup>th</sup> Circuit, in which licensees sign a certification stating that they understand their facilities, equipment or raptors are subject to unannounced inspections.
2. Delete a provision in subsection 670(h)(13)(A) that restricts the purposes for which falconry birds can be exhibited and limits compensation for exhibiting, to be consistent with a court order prohibiting enforcement of this provision.



# Proposed Amendments to §§ 670 & 703 (continued)

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3. Add subsection 670(j)(1)(F) to generally prohibit placement of raptor housing facilities inside dwellings to reduce the likelihood of future litigation.
4. Delete subsection 670(e)(3)(A)1, which allows falconers to take out of state examinations in certain circumstances, for consistency with Federal regulations.



# Proposed Amendments to §§ 670 & 703 (continued)

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5. Update applications for licenses to reflect the deletion of the certification and make several minor changes, and Subsections 703(b)(1)(B) and (C) to update the incorporations of the revised applications.



# Questions | Contact

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§ 670. Practice of Falconry.

(a) General Provisions.

(1) Any person who wants to engage in falconry activities shall first apply for and be issued an annual falconry license from the department.

(2) Except as provided in Section 12300, Fish and Game Code, it shall be unlawful for any person to engage in falconry in California unless they have in their immediate possession a valid original falconry license, a valid original hunting license, and any required stamps.

(3) Falconry activities shall be as provided by the Fish and Game Code and regulations provided herein.

(4) Applicable regulations adopted by the U.S. Secretary of the Interior pursuant to the Migratory Bird Treaty Act (MBTA) and published in Title 50, Code of Federal Regulations, Part 21 (Revised 07/02/2015), hereinafter referred to as 50 CFR 21, are hereby incorporated and made a part of these regulations.

(5) Falconry applications and records as required by this section shall be kept on forms provided by the department and submitted to the department's License and Revenue Branch, 1740 N. Market Blvd., Sacramento, CA 95834; or, submitted to the department's online reporting system website at [wildlife.ca.gov](http://wildlife.ca.gov).

(b) Definitions. For purposes of this section, the following definitions apply:

(1) "Abatement" is the use of trained raptors to reduce human/wildlife conflicts.

(2) "Captive-bred raptor" means the progeny of a mating of raptors in captivity, or progeny produced through artificial insemination.

(3) "Capture" means to trap or capture or attempt to trap or capture a raptor from the wild.

(4) "Eagles" includes golden eagle (*Aquila chrysaetos*), bald eagle (*Haliaeetus leucocephalus*), white-tailed eagle (*Haliaeetus albicilla*), and Steller's sea-eagle (*Haliaeetus pelagicus*).

(5) "Exotic raptor" is a raptor that has no subspecies occurring naturally in the wild in the United States and is not covered under the MBTA.

(6) "Eyas raptor" or "nestling" is a young raptor not yet capable of flight.

(7) "Falconry" means the possession, housing, trapping, transport, and use of raptors for the purpose of hunting or training.

(8) "Hacking" is the temporary or permanent release of a raptor held for falconry to the wild so that it may gain experience and conditioning.

(9) "Hybrid raptor" means offspring of raptors of two or more distinct species listed in Title 50, CFR, Section 10.13.

(10) "Imping" is to cut a broken or damaged feather and replace or repair it with another feather.

(11) "Imprint" means a raptor that is hand-raised in isolation from the sight of other raptors from two weeks of age until it has fledged. An imprinted raptor is considered to be so for its entire lifetime.

(12) "License year" is the 12-month period starting July 1 and ending the following June 30, and is the same as the term "regulatory year" for determining possession and take of raptors for falconry as defined in 50 CFR 21.

(13) "Non-native raptor" is any raptor that does not naturally occur in the state of California

(14) "Passage raptor" is a juvenile raptor less than one year old that is capable of flight.

(15) "Raptor" means any bird of the Order Falconiformes, Accipitriformes or Strigiformes, or a hybrid thereof.

(16) "Wild raptor" means a raptor removed from the wild for falconry. It is considered a wild captured raptor, no matter its time in captivity or whether it is transferred to other licensees or permit types.

(c) Take of Game Species or Nongame Birds or Mammals. Every person using falconry raptors to hunt or take resident small game including upland game species, migratory game birds, or nongame birds or mammals in California shall abide by the laws and regulations authorizing hunting of such species, including, but not limited to, licenses, seasons, bag limits, and hunting hours.

(1) A licensee shall ensure, to the extent possible, that falconry activities do not result in unauthorized take of wildlife.

(A) If an animal is injured as a result of unauthorized take, the licensee shall remove the animal from the raptor and transport the injured animal to the nearest wildlife rehabilitation center.

(B) If an animal is killed as a result of an unauthorized take, the licensee may allow a falconry bird to feed on the kill but the licensee shall not possess the animal and shall leave the kill at the site where taken.

(2) The take shall be reported to the department, with the band or tag number of the species taken (if any), as set forth in subsection (f).

(d) Take of State or Federal Threatened or Endangered Species. This license does not authorize take of state or federally listed threatened, endangered, or candidate wildlife, or wildlife designated as fully protected within the State of California. Any take shall be reported by the licensee to the nearest U.S. Fish and Wildlife Service (USFWS) Ecological Services Field Office and the department's License and Revenue Branch within 10 calendar days of the kill. The licensee shall report his or her name, falconry license number, date, species and sex (if known) of the animal taken, and exact location of the kill as provided in 50 CFR 21.

(e) Licensing.

(1) Falconry Licenses: A falconry license is issued in one of three falconry classes listed in subsection (e)(6) and may be issued to a:

(A) California resident, nonresident, or non-US citizen, who is applying for a new license;



(B) California licensee who is applying to renew a license that has not been expired for more than 5 years;

(C) California licensee who is applying to renew a license that has not expired; and,

(D) Nonresident or non-U.S. citizen falconer who has a valid falconry license issued from another state or country.

(2) Application for License.

(A) The applicant for a new license shall submit a completed New Falconry License Application with the nonrefundable fee, as specified in Section 703, to the address listed on the application.

(B) The applicant for renewal of a license that has not been expired for more than 5 years shall submit a completed Falconry License Renewal Application with the nonrefundable fee, as specified in Section 703, to the address listed on the application.

(C) The department may issue new licenses and renew licenses with the conditions it determines are necessary to protect native wildlife, agriculture interests, animal welfare, and/or human health and safety.

(D) Signed Certification. Each application shall contain a certification worded as follows: "I certify that I have read and am familiar with both the California and U.S. Fish and Wildlife Service falconry regulation, CFR 50, Sections 21.29 through 21.30, and that the information I am submitting is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to cancellation of the application, suspension or revocation of a license, and/or administrative, civil, or criminal penalties. I understand that my facilities, equipment, or raptors are subject to unannounced inspection pursuant to subsection 670(j), Title 14, of the California Code of Regulations. I certify that I have read, understand, and agree to abide by, all conditions of this license, the applicable provisions of the Fish and Game Code, and the regulations promulgated thereto. I certify that there are no pending or previous legal or administrative proceedings that could disqualify me from obtaining this license." The application shall be submitted with the applicant's original signature.

(E) Experience. The department shall consider an applicant's falconry experience acquired in California, as well as another state or country when reviewing an application for any class of license. The department shall determine which class of falconry license is appropriate, consistent with the class requirements herein and the documentation submitted with the application demonstrating prior falconry experience.

(3) Examination Requirement. An applicant not possessing a valid falconry license, or required to apply for a new falconry license in California shall pass the falconry examination to demonstrate proficiency in falconry and raptor-related subject areas before being issued a license. An applicant shall correctly answer at least 80 percent of the questions to pass the examination. An applicant who fails to pass the examination may take another examination no earlier than the next business day following the day of the failed examination. An applicant shall submit the nonrefundable falconry examination fee specified in Section 703 each time the applicant takes an examination.

(A) An applicant who meets one of the following criteria shall be exempt from taking the California falconry examination:

~~1. An applicant who provides documentation of successfully passing a federally approved examination in a state that has had its falconry regulations certified as specified in 50 CFR 21 will not be required to take the examination in California if the applicant took the examination less than five years prior to submitting an application for a California falconry license.~~

~~2.~~ The applicant is a nonresident or non-U.S. citizen falconer who has a valid falconry license issued from another state or country.

~~3.~~ ~~2.~~ The applicant is a member of a federally recognized tribe and has a valid falconry license issued from that member's tribe.

(B) After successfully passing the falconry examination, the raptor housing facility, if any, of a new applicant shall pass an inspection and be certified by the department, pursuant to subsection (j), before a license may be issued.

(4) Expired License. A license for the practice of falconry expires and is not valid unless renewed annually with the required application form and payment of fees as specified in Section 703.

(A) It shall be unlawful for any person to practice falconry, including possession of falconry raptors, without a valid license in their possession.

(B) If a license has not been renewed for a period less than 5 years from the expiration date on the license, the license may be renewed at the class held previously if the applicant provides proof of licensure at that class.

(C) If a license has not been renewed for a period of more than 5 years from the expiration date on the license, it shall not be renewed. The applicant shall apply for a new falconry license and successfully complete the examination as set forth in subsection (e)(3). Upon passing the examination and the payment of the annual license application fee, a license may be issued at the class previously held if the applicant provides proof of prior licensure at that class.

(5) Nonresidents of California and Non-US Citizens.

(A) A person who is a member of a federally recognized tribe and has a valid falconry license from that member's tribe shall be considered a nonresident licensed falconer for purposes of subsection (e)(5).

(B) A nonresident licensed falconer or non-U.S. citizen licensed falconer may temporarily practice falconry in California for up to 120 calendar days without being required to obtain a California falconry license.

1. A nonresident licensed falconer or non-U.S. citizen licensed falconer may practice falconry with raptors from a licensed California falconer, provided that signed and dated written authorization is given to the nonresident or non-U.S. citizen by the licensee. The original written authorization must be carried with the licensee while in possession of the raptor.

2. A nonresident licensed falconer or non-U.S. citizen licensed falconer shall provide and thereafter maintain facilities and equipment for raptors in the licensee's possession while temporarily practicing falconry in California. Temporary facilities shall meet the standards in these regulations, including, but not limited to, provisions described in subsection (j), and pursuant to 50 CFR 21.

3. A nonresident licensed falconer or non-U.S. citizen licensed falconer may house raptors in the licensee's possession at another licensed falconer's facilities while temporarily practicing falconry in California.

(C) A nonresident licensed falconer or non-U.S. citizen licensed falconer applying for a falconry license in California shall submit proof of a valid falconry license held from the licensee's tribe, state or country, along with the completed New Falconry License Application and fee, and pass a facility inspection pursuant to subsection (j).

(D) A nonresident or non-US citizen applicant applying for a falconry license in California but not possessing a valid original falconry license from the applicant's tribe, state, or country of origin shall submit the completed New Falconry License Application and fee, and pass both the examination and a facility inspection pursuant to subsection (e)(3) herein.

(6) Falconry Classes. There are three classes of licensed falconers in California: Apprentice falconer, General falconer, and Master falconer. The department at its sole discretion may issue a falconry license in one of these classes to an applicant who meets the requirements and qualifications for the class as described in these regulations.

(A) Apprentice Falconer.

1. Age. An applicant for an Apprentice falconer license shall be at least 12 years of age at the date of application. If an applicant is less than 18 years of age, a parent or legal guardian shall co-sign the application and shall be legally responsible for activities of the Apprentice falconer.

2. Sponsorship. A sponsor is required for at least the first two years in which an Apprentice falconry license is held, regardless of the age of the Apprentice falconer. A sponsor shall be a Master falconer or a General falconer who has at least two years of experience at the General Falconer class. A sponsor shall certify in writing to the department that the sponsor will assist the Apprentice falconer, as necessary, in learning the husbandry and training of raptors held for falconry; learning the relevant wildlife laws and regulations; and determining what species of raptor is appropriate for the Apprentice falconer to possess; and will notify the department's License and Revenue Branch immediately if sponsorship terminates.

3. Termination of Sponsorship. If sponsorship is terminated, an Apprentice falconer and the Apprentice's sponsor shall immediately notify the department's License and Revenue Branch in writing. The license shall be valid only if the Apprentice falconer acquires a new sponsor within 30 calendar days from the date sponsorship is terminated, and provides written notification, along with the new sponsor's certification, to the department once a new sponsor is secured. Failure to comply with sponsorship requirements shall result in loss of qualifying time from the date sponsorship was terminated to the date of securing a new sponsor, and no subsequent license shall be issued until the required two years of sponsorship have been fulfilled.

4. Possession of Raptors. An Apprentice falconer may possess for falconry purposes no more than one wild or captive-bred red-tailed hawk (*Buteo jamaicensis*) or American kestrel (*Falco sparverius*) at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession and only as long as the raptor in possession is trained in the pursuit of game and used in hunting. An Apprentice falconer may only capture from the wild or possess a passage red-tailed hawk or an American kestrel. The Apprentice may take raptors less than 1 year old, except nestlings. Apprentice falconers are not required to capture a wild raptor

themselves; the raptor can be transferred to the Apprentice by another licensee. An Apprentice falconer may not capture from the wild or possess an eyas raptor or a raptor that is imprinted on humans. An Apprentice falconer must maintain written proof of legal acquisition.

5. Inspection of Facilities. After successfully passing the falconry examination, the facility of an Apprentice applicant shall pass an inspection and be certified by the department, pursuant to subsection (j), before a license may be issued.

6. Advancement From Apprentice Class. An Apprentice falconer shall submit a completed Apprentice Falconer's Annual Progress Report, as specified in Section 703, to the address listed on the report. The report shall demonstrate that the Apprentice falconer has practiced falconry with a raptor at the Apprentice class for at least two years, including maintaining, training, flying, and hunting with the raptor for at least four months in each license year, and a summary of the species the Apprentice possessed, how long each was possessed, how often each was flown, and methods of capture and release. Within the report, the sponsor shall certify in writing to the department that the Apprentice falconer has met the requirements of these regulations. No falconry school program or education shall be substituted for the minimum period of two years of experience as an Apprentice falconer.

#### (B) General Falconer.

1. Age. General falconers shall be at least 16 years of age. If an applicant is less than 18 years of age, a parent or legal guardian shall co-sign the application and shall be legally responsible for activities of the General falconer.

2. Possession of Raptors. A General falconer may possess for falconry purposes any wild raptor species listed in subsection (g)(6), any captive-bred or hybrid of any species of Order Falconiformes, Accipitriformes, or Strigiformes, or any legally acquired raptor from another state or country. A General falconer must maintain written proof of legal acquisition. A General falconer shall possess no more than three raptors for use in falconry at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession; and only two of these raptors may be wild-caught. Only eyas or passage raptors may be wild-caught; except American kestrel (*Falco sparverius*) or great horned owl (*Bubo virginianus*) may be captured at any age.

3. Advancement From General Class. A General falconer shall have practiced falconry with a raptor, including maintaining, training, flying, and hunting with the raptor, at the General class for at least five years before advancing to Master falconer. No falconry school program or education shall be substituted for the minimum period of five years of experience as a General falconer.

#### (C) Master Falconer.

1. Possession of Raptors. A Master falconer may possess for falconry purposes any wild raptor species listed in subsection (g)(6), any captive-bred or hybrid of any species of Order Falconiformes, Accipitriformes, or Strigiformes, or any legally acquired raptor from another state or country. A Master falconer must maintain written proof of legal acquisition. A Master falconer may possess any number of raptors except the licensee shall possess no more than five wild-caught raptors for use in falconry at any one time, regardless of the number of state, tribal, or territorial falconry licenses in possession. Only eyas or passage raptors may be wild-caught; except American kestrel (*Falco sparverius*) or great horned owl (*Bubo virginianus*) may be captured at any age.

2. Possession of Eagles. A Master falconer may possess up to three eagles with proof of legal acquisition at any one time, except no bald eagle shall be possessed.

i. Eagles shall not be captured from the wild in California.

ii. Eagles may only be obtained from a permitted source.

iii. Eagles originating in California from a licensed California rehabilitation facility may be temporarily transferred to a Master Falconer for the purpose of rehabilitation in accordance with 50 CFR 21, and with subsection (h)(3) herein.

iv. The department shall authorize in writing which species of eagles a Master falconer may possess pursuant to 50 CFR 21. The Master falconer shall submit a written request for this authorization and include a resume of the licensee's experience in handling large raptors such as eagles, and two letters of recommendation to the department's License and Revenue Branch. The resume documenting experience shall include information about the type of large raptor species handled, such as eagles or large hawks, the type and duration of the activity in which experience was gained, and contact information for references who can verify the experience. The two letters of recommendation shall be from persons with experience handling and/or flying large raptors. Each letter shall be dated, signed in ink with an original signature and shall describe the author's experience with large raptors, including, but not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter shall also assess the licensee's ability to care for eagles and fly them in falconry. The department may deny a request for a Master falconer to possess an eagle if the applicant has less than the equivalent of two years of experience handling large raptors or, at the department's discretion, the department determines that based on a letter of recommendation the applicant is not capable of caring for the eagle or flying it in falconry.

(7) Fees. The base fee for a falconry license is specified in Fish and Game Code Section 396. Falconry-related fees are specified in Section 703 of these regulations for the following:

(A) Application. An applicant shall submit a nonrefundable falconry license application fee when applying for a new license or renewing a license.

(B) Examination. An applicant shall submit a nonrefundable falconry examination fee each time the applicant takes an examination.

(C) Inspection. An applicant or licensee shall submit a nonrefundable inspection fee prior to the department inspecting the licensee's facilities, raptors, if present, and equipment. The inspection fee provides for inspections of up to five enclosures.

1. If a facility has more than five enclosures, an additional inspection fee is required for every additional enclosure over five.

2. If the applicant or licensee is sharing an existing raptor facility with another licensed falconer, and possesses proof of a passed inspection, there is no requirement for an additional inspection.

(D) Re-inspection. An applicant shall submit an additional nonrefundable re-inspection fee when his or her facility has failed to pass a previous inspection.

(E) Administrative Processing. An applicant shall submit a nonrefundable administrative processing fee for each Resident Falconer Raptor Capture, Recapture and Release Report submitted to the department's License and Revenue Branch when not using the department's online reporting system.

(8) Denial. The department may deny the issuance of a new license or a renewal of an existing or expired license if:

(A) The applicant or licensee has failed to comply with regulations adopted pursuant to the Fish and Game Code related to raptors, Fish and Game Code Section 1054, or Penal Code Section 597; or

(B) The applicant or licensee has failed to comply with any provision of any statute, regulation, rule or ordinance existing in any other state or in any city, county, or other local governing entity in any other state, that is related to the care and licensing of raptors, so long as the failure to comply would constitute a violation of the Fish and Game Code, regulations related to raptors in Title 14, or Penal Code Section 597;

(C) The applicant or licensee has failed to comply with any provision of any federal statute, regulation, or rule that is related to the care and licensing of raptors, including, but not limited to, 50 CFR 21.

(D) The department shall deny the issuance of a license or renewal of an existing license if the applicant or licensee fails to submit all required items or perform any task necessary to obtain a license. Before denying an application for this reason, the department shall notify the applicant in writing that the application is deficient. The applicant may supplement an application by providing the missing required information or materials. If sent by U.S. mail or other carrier, these materials shall be postmarked no later than 30 calendar days after the date of the proof of service accompanying the department's notification. If the 30 calendar day deadline falls on a weekend or holiday the submission of additional information or materials will be accepted until the close of business on the first state business day following the deadline to submit additional information or materials. The department may extend this deadline for good cause. If denied, the applicant or licensee may submit a new application at any time.

(9) Suspension and Revocation. Any license issued pursuant to these regulations may be suspended or revoked at any time by the department for failure to comply with the Fish and Game Code or regulations adopted pursuant to the Fish and Game Code related to raptors, Fish and Game Code Section 1054, or Penal Code Section 597. If the licensee has been convicted in a court of competent jurisdiction of violating one of these provisions, the suspension or revocation shall take effect immediately if the violation pertains to conduct that threatens native wildlife, agricultural interests of this state, the welfare of the birds, or the safety of the public, or if the licensee has been previously convicted of violating the provisions described above or has had his or her license previously suspended or revoked. If the licensee has not been convicted, the suspension or revocation shall take effect when the time to request an appeal as described herein has expired. A timely request for an appeal will stay the department's suspension or revocation if the licensee was not convicted as described above.

(10) Proof of Service. All notices sent from the department to a falconry applicant or licensee as described herein shall include a proof of service that consists of a declaration of mailing, under

penalty of perjury, indicating the date of mailing the department's notification, denial, or other correspondence.

(11) Appeal. Any applicant or licensee who is denied a license, an amendment to an existing license or has a license suspended or revoked by the department pursuant to these regulations may appeal that denial, amendment, suspension, or revocation by filing a written request for an appeal with the commission. If sent by U.S. mail or other carrier, a request for an appeal shall be postmarked no later than 30 calendar days after the date of the proof of service accompanying the department's notice of denial, suspension, or revocation. If submitted electronically or by facsimile, it shall be received no later than 30 calendar days after the date of the proof of service. The commission shall not accept a request for an appeal that is submitted after the 30 calendar day deadline to request an appeal. If the 30 calendar day deadline falls on a weekend or holiday the request for appeal will be accepted until the close of business on the first state business day following the 30 calendar day deadline to submit a request for appeal.

(12) Record Keeping. A licensee shall retain copies of all falconry-related records (hard copy or electronic) including, but not limited to, the applicant's falconry license, raptor transfer records, capture and release and disposition records, import or export documentation, sponsorship information, annual reports submitted to the department, and all health records of raptors possessed pursuant to the falconry license (Falconry Records) for at least five years.

(13) Name or Address Change. The licensee shall notify the department's License and Revenue Branch, in writing, of any change of name or mailing address within 30 calendar days of the change. Facility address changes must be reported within five business days of the change.

(f) Reporting Requirements.

(1) Licensees are required to report all raptor acquisition and disposition information using the Resident Falconer Raptor Capture, Recapture and Release Report within 10 calendar days to the department's online reporting system.

(A) For raptors acquired from the wild or released back to the wild, submission shall include information about the county of capture/release, date of capture/release, a description of the capture/release site, a description of the capture method, species information, and Latitude/Longitude coordinates of capture/release site.

(B) If a licensee is unable to use the department's online reporting system, the licensee may submit relevant forms by mail, fax, or email to the department's License and Revenue Branch, or the licensee may report over the telephone to the License and Revenue Branch. The information will be entered into the department's online reporting system by department staff, and the department shall charge a nonrefundable administrative processing fee, as specified in Section 703, for each form entered.

(2) Upon applying for license renewal or within 10 calendar days after expiration of the license, whichever comes first, a licensee shall submit to the department an annual report using the Falconry Hunting Take Report, as specified in Section 703, summarizing the number and type of prey species taken while hunting, counties hunted, and birds used in hunting during the most recent license year, as well as any inadvertent take of non-target wildlife.

(3) Upon applying for license renewal or within 10 calendar days after expiration of the license, whichever comes first, an Apprentice falconer shall submit to the department's License and

Revenue Branch an annual report using the Apprentice Falconer's Annual Progress Report, as specified in Section 703. The report shall be signed and dated by both the Apprentice falconer and sponsor. The report will be used by the department to determine qualifying experience for future licenses.

(g) Capturing Raptors From the Wild.

(1) A resident licensed falconer may not capture more than two raptors from the wild during the license year and only as authorized for each falconry class license.

(2) A nonresident licensed falconer may request to capture within California one wild raptor of the species specified in subsection (g)(8), excluding species with capture quotas, and shall submit to the department's License and Revenue Branch a complete Nonresident Falconer Application for Raptor Capture Permit, as specified in Section 703. The permit issued shall be valid beginning on July 1 and ending on June 30 of the following year, or if issued after the beginning of the permit year, for the remainder of that permit year. Whether successful or unsuccessful in capturing a raptor, the nonresident licensed falconer shall submit a complete Nonresident Falconer Raptor Capture Permit and Report, as specified in Section 703. Nonresidents shall only capture raptors from the wild in accordance with the conditions of the permit. Nonresidents that request to capture species with capture quotas must submit an application for the random drawing, as specified in subsection (g)(9).

(3) Non-U.S. citizens are not eligible to capture any California wild raptor.

(4) Raptors may be captured by trap or net methods that do not injure them. The licensee shall identify all set traps with the name and address of the licensee and shall check such traps at least once every 12 hours, except that all snare type traps shall be attended at all times when they are deployed.

(5) A licensee shall be present during the capture of a raptor from the wild; however another General or Master licensed falconer may capture the raptor for the licensee. A licensee's presence during capture includes attendance of snare traps, or attendance while checking non-snare traps at least once every 12 hours. If a licensee has a long-term or permanent physical impairment that prevents the licensee from attending the capture of a raptor for use in falconry, then another licensee may capture a bird for the licensee without the licensee being present. The licensee is responsible for reporting the capture. The raptor will count as one of the two raptors the licensee is allowed to capture in that license year.

(6) The following raptor species may be captured from the wild in California: Northern goshawk (*Accipiter gentilis*), Cooper's hawk (*Accipiter cooperii*), sharp-shinned hawk (*Accipiter striatus*), red-tailed hawk (*Buteo jamaicensis*), red-shouldered hawk (*Buteo lineatus*), merlin (*Falco columbarius*), American kestrel (*Falco sparverius*), prairie falcon (*Falco mexicanus*), barred owl (*Strix varia*), and great horned owl (*Bubo virginianus*).

(7) No more than two nestlings of the species allowed for capture from the wild may be captured by the same General or Master licensee during the license year. In no case may all nestlings be captured and removed from any nest. At least one nestling shall be left in a nest at all times.

(8) The following restrictions apply to the total, cumulative capture of wild raptors among all licensees. These restrictions are in addition to the limitation of two wild raptors per licensee during the license year.



(A) Northern Goshawk.

No more than one northern goshawk may be captured within the Lake Tahoe Basin during the license year. There are no restrictions on the cumulative number or location of Northern goshawk captured in the balance of the state during the license year.

1. The Lake Tahoe Basin area is defined as those portions of Placer, El Dorado, and Alpine counties within a line: beginning at the north end of Lake Tahoe, at the California-Nevada state line approximately four miles north of Stateline Point in the near vicinity of Mt. Baldy; westerly along the Tahoe Divide between the Lake Tahoe and Truckee River drainages to the intersection of the north line of Section 36, T17N, R17E, MDM; west along said north section line to the section corner common to section 25, 26, 35, and 36, T17N, R17E, MDM; south approximately one mile along the common section line; southwest to the intersection of the Tahoe Divide and Highway 267 in the near vicinity of Brockway Summit; southwest in the near vicinity of the Tahoe Divide to Mt. Pluto; south to Mt. Watson; westerly approximately two miles to Painted Rock; southerly approximately two miles along the Tahoe Divide to the intersection of Highway 89; southwest along the Tahoe Divide to Ward Peak; southerly approximately 30 miles along the Tahoe Divide to a point on the Echo Lakes Road; southeasterly along said road to Old Highway 50; southeasterly along Old Highway 50 to the intersection of the Echo Summit Tract Road; southerly along said road to Highway 50; easterly along Highway 50 to the intersection of the South Echo Summit Tract Road; southerly along said road to the Tahoe Divide; southerly along the Tahoe Divide past the Alpine county line to Red Lake Peak; northerly along the Tahoe Divide past Monument Peak to the California-Nevada state line; north on the state line to the point of beginning. NOTE: the area described above includes the entire basin of Lake Tahoe within California.

(B) Cooper's Hawk. No restrictions on cumulative number or location of Cooper's hawks captured statewide during the license year.

(C) Sharp-shinned Hawk. No restrictions on cumulative number or location of sharp-shinned hawks captured statewide during the license year.

(D) Red-tailed Hawk. No restrictions on cumulative number or location of red-tailed hawks captured statewide during the license year.

(E) Red-shouldered Hawk. No restrictions on cumulative number or location of red-shouldered hawks captured statewide during the license year.

(F) Merlin. No restrictions on cumulative number or location of merlins captured statewide during the license year. Merlins may be captured only from August 15 through February 28 every year.

(G) American Kestrel. No restrictions on cumulative number or location of American kestrels captured statewide during the license year.

(H) Prairie Falcon. No more than 14 prairie falcons may be captured per license year.

(I) Barred Owl. No restrictions on cumulative number or location of barred owls captured statewide during the license year.

(J) Great Horned Owl. No restrictions on cumulative number or location of great horned owls captured statewide during the license year.

(9) Special Raptor Capture Permit Drawing. A random drawing shall be held by the department to distribute Special Raptor Capture Permits to capture species with quotas, which include one Northern goshawk in the Tahoe Basin and prairie falcons from the wild, as specified in subsection (g)(8). An applicant may be a resident and/or nonresident and must possess a valid General or Master falconry license at the time of application to enter the drawing. Non-U.S. citizens are not eligible to enter the drawing.

(A) A resident applicant shall not submit more than two drawing applications each license year.

(B) A nonresident applicant shall not submit more than one drawing application each license year.

(C) Licensees may apply through the department's Automated License Data System at license agents, department license sales offices, or on the department's website, using a Special Raptor Capture Drawing Application. Each application submitted must specify the species the applicant is applying for to capture from the wild. The applicant shall submit a nonrefundable Special Raptor Capture Drawing Application fee, as specified in Section 703 for each drawing application submitted.

(D) Applications must be received by 11:59pm, Pacific Standard Time, on May 15 each year.

(E) Permits are awarded according to an applicant's choice and computer-generated random number (lowest to highest) drawing. Successful applicants and a list of alternates for each species and/or area shall be determined by random drawing within 10 business days following the application deadline date. If the drawing is delayed due to circumstances beyond the department's control, the department shall conduct the drawing at the earliest date possible.

(F) Successful and alternate applicants will be notified. Unsuccessful applicants shall not be notified. The successful applicant shall submit the Special Raptor Capture Permit fee, as specified in Section 703, to the department's License and Revenue Branch by 5:00 p.m. on June 30 each year to claim the permit. If the deadline to submit the fee falls on a weekend or holiday, payment will be accepted until 5:00 p.m. on the first state business day following the deadline to submit payment. Unclaimed permits shall be awarded to alternates for that species and/or area on an individual basis, in the order drawn.

(G) A Special Raptor Capture Permit shall only be issued to a successful applicant who holds a General or Master falconry license that is valid for the same license year that the permit is valid. Only the permit holder is entitled to capture a raptor, and the permit shall be in immediate possession of the permit holder during the capture. Permits are not transferable and are valid only for the species, area and period as specified on the permit.

(H) A permit holder who successfully captures a Northern goshawk or prairie falcon shall immediately complete the capture portion of the permit and shall return the permit to the department's License and Revenue Branch or enter it on the department's online reporting system within 10 calendar days of the capture. The submission shall include information about the county of capture, date of capture, a description of the capture site, a description of the capture method, species information, and Latitude/Longitude coordinates of capture site.

(I) A permit holder who is unsuccessful in capturing a Northern goshawk or prairie falcon shall indicate "unsuccessful" on the report card portion of the permit and shall return the permit to the

department's License and Revenue Branch within 10 calendar days of the expiration of the permit.

(J) The permit holder shall surrender the permit to an employee of the department for any act by the permit holder that violates any raptor related provision of the Fish and Game Code, or any regulation of the commission adopted pursuant thereto, and any act on the part of the permit holder that endangers the person or property of others. The decision of the department shall be final.

(10) Banded or Marked Raptors. If a licensee captures a raptor that has a band, research marker, or transmitter attached to it, the licensee shall promptly report the band number and all other relevant information to the Federal Bird Banding Laboratory at 1-800-327-2263.

(A) If the raptor has a transmitter attached to it, the licensee may possess the raptor for up to 30 calendar days, during which time the licensee shall make a reasonable attempt to contact the owner of the transmitter. If the owner wants to replace the transmitter or its batteries, or have the transmitter removed and the bird released, the owner or the owner's designee may make such change or allow the licensee to do so before the raptor is released. Temporary possession of the raptor will not count against the licensee's possession limit for falconry raptors. If the owner cannot be contacted or does not want the transmitter to remain on the raptor, the licensee may keep the raptor if it was lawfully captured.

(B) If the raptor belongs to a falconer, subsection (h)(12) shall apply.

(11) Injury Due to Trapping. If a raptor is injured due to trapping, the raptor may be put on the licensee's falconry license and it will count as part of the possession limit. If the licensee adds the raptor on the falconry license, the licensee shall report the capture to the department's online reporting system within 10 calendar days after capture, and shall have the raptor immediately treated by a veterinarian or a permitted California wildlife rehabilitator. Alternately, the injured raptor may be immediately given directly to a veterinarian or a permitted California wildlife rehabilitator. In either case, the licensee is responsible for the costs of care and rehabilitation of the raptor.

(12) Unintentional Capture. A licensee shall immediately release any bird unintentionally captured that the licensee is not authorized to possess.

(13) Public and Private Lands. A licensee is not authorized to capture raptors or practice falconry on public lands where it is prohibited, on private property without written permission from the landowner or tenant, or on tribal government lands without written permission. The licensee shall carry the original signed written permission while practicing falconry.

(h) Possession, Transfer, and Disposition of Raptors.

(1) Permanent Transfer of Raptor. A licensee may acquire a raptor through a transfer and shall report the transfer by entering the required information on the department's online reporting system within 10 calendar days of the transfer. The number of raptors acquired through a transfer is not restricted, as long as the licensee abides by the requirements of the licensee's class, and does not exceed the licensee's possession limit.

(A) If a licensee transfers a raptor removed from the wild to another licensee in the same year in which it is captured, the raptor will count as one of the raptors the licensee is allowed to capture from the wild that year. It will not count as a capture by the recipient.

(B) A surviving spouse, executor, administrator, or other legal representative of a deceased licensee may transfer any bird held by the licensee to another authorized licensee within 90 calendar days of the death of the licensee. After 90 calendar days, disposition of a raptor held under the license shall be at the discretion of the department.

(2) Temporary Transfer or Care of Raptor. Any licensee who temporarily transfers possession of the licensee's raptor to another licensee, or allows an unlicensed person to temporarily care for a raptor, shall provide written notification of such transfer to the department's License and Revenue Branch within 10 calendar days after the bird is transferred. The notification shall include contact information including name, address, phone number, and email address of the temporary caregiver.

(A) Temporary possession of a raptor by a licensee shall not exceed 120 calendar days. Temporary possession may exceed 120 calendar days only if a request is made to the department's License and Revenue Branch and written authorization is given. Temporary care of a raptor by an unlicensed person shall not exceed 45 calendar days. A raptor cared for by an unlicensed person shall remain housed at the licensee's facility. The unlicensed person is not authorized to fly the raptor. A licensed falconer in temporary possession of a raptor may fly the raptor if the falconer possesses the appropriate class license.

(3) Assisting In Raptor Rehabilitation. A General or Master falconer may assist a permitted California wildlife rehabilitator to condition a raptor for its release back into the wild. A rehabilitation raptor in the care of the licensee for this purpose shall not be added to the licensee's falconry license, but shall remain under the permit of the rehabilitator.

(A) The rehabilitator shall provide the licensee with a letter of temporary transfer that identifies the raptor and explains that the falconer is assisting in its rehabilitation. The terms of the temporary transfer are at the discretion of the rehabilitator to assure the necessary care of the raptor. The licensee shall have in possession the letter or legible copies while assisting in the rehabilitation of the raptor.

(B) The licensee shall return any such raptor that cannot be released to the wild to the rehabilitator within 180 calendar days unless otherwise authorized by the department's License and Revenue Branch. The department's Wildlife Branch will make the possession determination.

(4) Importation of Raptors by Nonresidents or Non-U.S. Citizens. A nonresident or non-U.S. citizen may temporarily import lawfully possessed raptors into California for up to 120 calendar days. The department's License and Revenue Branch shall be notified within 10 calendar days prior to importing the raptor. A nonresident or non-U.S. citizen shall submit to the department's License and Revenue Branch official written authority to export raptors from the originating state or country, along with a health certificate for the raptor, prior to importing a raptor. A non-U.S. citizen may import a falconry raptor that the licensee possesses legally, provided that importation of that species into the United States is not prohibited, and the licensee has met all permitting requirements of the licensee's country of residence. Import of raptors, including exotic

raptors, may be subject to other state and federal laws and may require additional federal permits.

(5) Release of Raptors. A licensee may release a native, wild caught raptor to the wild in California only to a location near the site that raptor was originally captured, and in appropriate habitat for that species of raptor. If the licensee cannot access the site of original capture, then licensee shall release it in appropriate habitat for that species of raptor.

(A) Prior to release, the licensee shall ensure the immediate area around the release site is free from other raptors.

(B) The licensee shall remove any falconry band on the raptor being released; however seamless metal bands shall remain attached.

(C) A licensee may not intentionally and permanently release a non-native raptor, hybrid, or native captive-bred raptor to the wild in California.

(D) A licensee shall not release any barred owl to the wild in California. A licensee shall contact the department's License and Revenue Branch to determine disposition of a barred owl in possession. The department's Wildlife Branch will determine disposition.

(6) Hacking. A wild raptor may be hacked for conditioning or as a method for release back into the wild. Any hybrid, captive-bred, or exotic raptor a licensee has in possession may be hacked for conditioning, and shall have two attached functioning radio transmitters during hacking except native captive bred raptors shall have a minimum of one functioning transmitter. A licensee may not hack any raptor near a known nesting area of a state or federally threatened or endangered, or fully protected animal species or in any other location where a raptor may take or harm a state or federally listed threatened or endangered, or fully protected animal species. Only a General or Master falconer may hack falconry raptors.

(7) Death, Escape or Theft. A licensee whose raptor dies, escapes, or is stolen shall report the loss of the raptor by entering the required information on the department's online reporting system within 10 calendar days of the loss. A licensee may attempt to recover a raptor lost to the wild for up to 30 calendar days before reporting the loss. The licensee shall also report a theft of a raptor to an appropriate local law enforcement agency within 10 calendar days of the loss.

(8) Disposition of Raptor Carcass. If a raptor dies and was banded or had an implanted microchip, the band or microchip shall be left in place. If a licensee keeps the carcass or parts thereof, the licensee shall retain all records of the raptor. A licensee must send the entire body of a golden eagle carcass held for falconry, including all feathers, talons, and other parts, to the National Eagle Repository. Within 10 calendar days the carcass of any other raptor species shall be either:

(A) Delivered to the department if the licensee obtains authorization from the department's License and Revenue Branch prior to delivery. The department's Wildlife Branch will make the determination where the carcass will go. A carcass may only be delivered to the department if the carcass is frozen; or

(B) Donated to any person authorized to possess the raptor or parts thereof; or

(C) Kept by the licensee for use in imping; or

(D) Burned, buried, or otherwise destroyed; or

(E) Delivered to a taxidermist for mounting and possession by the licensed falconer only.

1. Within 30 days of the expiration of a license, the licensee shall return the mounted raptor to the department.

2. Within 30 days of the death of the licensee, the estate shall return the mounted raptor to the department.

3. In either event, the licensee or the estate shall contact the department's License and Revenue Branch. The department's Wildlife Branch will determine the disposition of the mounted raptor.

(9) Recapture. A licensee may recapture a raptor wearing falconry equipment or a captive-bred or exotic raptor at any time, whether or not the licensee is authorized to possess the species. A recaptured raptor will not count against the possession limit of the licensee, nor will its capture from the wild count against the licensee's limit on number of raptors captured from the wild. The licensee shall report recaptured raptors by submitting a complete Resident Falconer Raptor Capture, Recapture and Release Report to the department's online reporting system within five calendar days.

(A) A recaptured falconry raptor shall be returned to the person who lawfully possessed it. If that person cannot possess the raptor or does not wish to possess it, the licensee who recaptured the raptor may keep it if that species is allowed under the licensee's existing license. If kept, the raptor will count towards the licensee's possession limit.

1. A licensee who retains a recaptured raptor shall report the acquisition to the department's online reporting system within five calendar days.

2. If neither party wishes to keep the raptor, disposition of the raptor will be at the discretion of the department. The licensee in possession shall contact the department's License and Revenue Branch. The department's Wildlife Branch will determine the disposition of the recaptured raptor.

(10) Use of Feathers. A licensee may possess feathers of each species of raptor authorized to be possessed for as long as the licensee has a valid falconry license. For eagle feathers, a licensee must follow federal standards as noted in 50 CFR 21. A licensee may receive raptor feathers from another person in the United States as long as that person is authorized to possess the feathers. Feathers from a falconry raptor may be donated to any person with a valid permit to possess them, or to anyone exempt from a permit requirement for feather possession. Any feathers of falconry raptors possessed by a falconer whose license has expired or been suspended or revoked shall be donated to any person exempt from the permit requirement or authorized by permit to acquire and possess the feathers within 30 calendar days of the license expiration, suspension or revocation. If the feathers are not donated, they shall be burned, buried, or otherwise destroyed.

(11) Purchase, Buy, Sell, Trade, or Barter. No person shall purchase, buy, sell, trade or barter wild raptors or any parts thereof including, but not limited to, feathers. A licensee may purchase, buy, sell, trade or barter captive-bred, hybrid or exotic raptors marked with seamless metal bands to other persons or entities who are authorized to possess them.

(12) Use of Hybrid, Non-native, and Exotic Raptors. When flown free, hybrid, non-native, or exotic raptors shall have attached at least two functioning radio transmitters to allow the raptor to be located.

(13) Other Uses of Falconry Raptors. A licensee may use falconry raptors for education, exhibiting, propagation, or abatement. A licensee may transfer a wild-caught raptor to a raptor propagation permit, but the raptor shall have been used in falconry for at least two years, or at least one year for a sharp-shinned hawk, merlin, Cooper's hawk or American kestrel. A wild caught raptor may be transferred to another permit type other than falconry only if it has been injured and can no longer be used in falconry. In this case, the licensee shall provide a copy of a certification from a veterinarian to the department's License and Revenue Branch stating that the raptor is not useable in falconry.

(A) Education and Exhibiting. A licensee may use raptors in his or her possession for training purposes, education, field meets, and media (filming, photography, advertisements, etc.), as noted in 50 CFR 21, if the licensee possesses the appropriate valid federal permits, ~~as long as the raptor is primarily used for falconry and the activity is related to the practice of falconry or biology, ecology or conservation of raptors and other migratory birds. Any fees charged, compensation, or pay received during the use of falconry raptors for these purposes may not exceed the amount required to recover costs.~~ An Apprentice falconer may use the licensee's falconry raptor for education purposes only under the supervision of a General or Master falconer.

(B) Propagation. A licensee may conduct propagation activities with raptors possessed under a falconry permit if the licensee possesses a valid federal Raptor Propagation Permit and the person overseeing propagation has any other necessary state and federal authorization or permits. The raptor shall be transferred from a falconry license to a federal Raptor Propagation Permit if it is used in captive propagation for eight months or more in a license year. The transfer shall be reported by submitting a complete Resident Falconer Raptor Capture, Recapture and Release Report to the department's online reporting system. Transfer of a raptor from a falconry license to a federal Raptor Propagation Permit is not required if the raptor is used for propagation purposes fewer than eight months in a license year.

(C) Abatement. A Master falconer may conduct abatement activities with raptors possessed under a falconry license and receive payment if the licensee possesses a valid federal Special Purpose Abatement Permit. A General falconer may conduct abatement activities only as a sub-permittee of the holder of a valid federal Special Purpose Abatement Permit.

(i) Banding and Tagging.

(1) A goshawk captured from the wild or acquired from another licensee shall be banded with a permanent, nonreusable, numbered USFWS leg band if the raptor is not already banded. A peregrine, gyrfalcon or Harris's hawk legally acquired from another state, or from another licensee, shall be banded with a permanent, nonreusable, numbered USFWS leg band if the raptor is not already banded.

(A) A licensee shall obtain a permanent, nonreusable, numbered USFWS leg band from the department's License and Revenue Branch. The License and Revenue Branch shall report banding data to the USFWS.

(B) A licensee may purchase and implant an ISO (International Organization for Standardization)-compliant (134.2 kHz) microchip in addition to the band. The licensee shall report the band number or the microchip information to the department's online reporting system when reporting acquisition of the bird.

(2) Captive bred raptors that are listed under the MBTA shall be banded with seamless metal bands.

(3) If a band is lost or must be removed from a raptor in a licensee's possession, the licensee shall report the loss of the band to the department's online reporting system within five (5) days, and the licensee shall request a replacement permanent, nonreusable, numbered USFWS leg band from the department's License and Revenue Branch.

(4) After receiving a replacement band from the department's License and Revenue Branch, the licensee shall reband a raptor if the original band is lost or removed. The License and Revenue Branch shall report rebanding data to the USFWS.

(5) The alteration, counterfeiting or defacing of a band is prohibited except that licensees may remove the rear tab or may smooth any imperfect surface provided the integrity of the band and numbering are not affected.

(6) The department may approve an exemption from the banding requirement if a licensee provides documentation that health or injury problems to a raptor are caused by a band. If an exemption is approved, the licensee shall keep the written exemption and shall carry a copy when transporting or flying the raptor. If a wild Northern goshawk is exempted from the banding requirement, an ISO-compliant microchip supplied by the USFWS shall be used instead.

(j) Facilities, Equipment, and Inspections.

(1) Housing Standards and Specifications. Raptor housing facilities shall meet the standards in 50 CFR 21 at all times. Raptor housing facilities shall be inspected and certified by the department prior to issuance of a falconry license. Thereafter, a licensee shall maintain approved permanent facilities for housing raptors.

(A) Raptor housing facilities shall protect raptors housed in them from predators, the environment, domestic animals, and escape, and shall provide a healthy, clean, and safe environment.

(B) Indoor ("mews") or outdoor ("weathering area") raptor facilities may be used to house raptors.

(C) Falconry raptors may be kept outside in the open at any location when in the presence of a licensed falconer and may be temporarily under watch by a person 12 years or older designated by the licensee.

(D) Permanent falconry facilities may be either on property owned by a licensee, on property owned by another person where a licensee resides, or elsewhere with property owner approval.

(E) A licensee shall report to the department's License and Revenue Branch, in writing within five calendar days if the licensee moves the licensee's permanent falconry facilities to another location. The department will conduct a facility inspection, as specified in Section 703, and the licensee shall pay the inspection fees.



(F) It shall be unlawful for a person to locate a permanent raptor housing facility inside a dwelling, except that a licensee in possession of a raptor in an apartment or condominium complex on (effective date of the revised regulation) may house that raptor in a permanent raptor housing facility inside a dwelling for the remainder of its life if the licensee notifies the Department in writing no later than 30 days after (effective date of the revised regulation) of their intent to house that raptor in a permanent raptor housing facility inside a dwelling. A licensee shall send such notification to (Dept. mailing address and email address). Such notification shall include the following information: name of the licensee; species of the raptor that will be possessed inside a dwelling; band number (if available); microchip number (if available); sex (if known); age; whether the raptor was wild caught; date the raptor was acquired; the name of the apartment or condominium complex; and a photo of the outside of the apartment or condominium unit where the bird will be housed. A raptor that is lawfully housed in a permanent raptor housing facility inside a dwelling pursuant to this subsection that is transferred shall thereafter be housed in a permanent raptor housing facility located outside a dwelling.

(2) Equipment. A licensee shall have jesses or other materials and equipment to make them, leash, swivel, bath container, and appropriate scales or balances for weighing raptors the licensee possess.

(3) Inspections. Inspections of indoor or outdoor facilities, equipment, and raptors shall be conducted by the department. Inspections are required for a new license applicant, applicants renewing a license which has been expired more than 5 years, and licensees that move facility housing to a new address. Applicants and licensees shall initiate the inspection by submitting a complete Raptor Facilities and Falconry Equipment Inspection Report and fees, as specified in Section 703. Equipment and facilities that meet the federal standards shall be certified by the department using the Raptor Facilities and Falconry Equipment Inspection Report. Equipment and facilities that do not meet the minimum standards and specifications shall not be certified by the department.

(A) The department may conduct unannounced visits to inspect facilities, equipment, or raptors possessed by the licensee, and may enter the facilities of any licensee when the licensee is present during a reasonable time of the day and on any day of the week. The department may also inspect, audit, or copy any permit, license, book, or other record required to be kept by the licensee under these regulations at any time. The department may deny the issuance of, or immediately suspend, the license of a licensee who refuses to be available to participate in a facility inspection or who refuses to allow inspection of a facility, license, book, or other record required to be kept by the licensee. A refusal to allow inspection may be inferred if, after reasonable attempts by the department, the licensee is unavailable for inspection. The department may reinstate a license suspended pursuant to this subsection if the licensee allows the department to inspect the facility, license, book, or other record, and no violations of these regulations or any license conditions are observed during that inspection.

(B) If a licensee's facilities are not on property owned by the licensee, the licensee shall submit to the department's License and Revenue Branch a signed and dated statement with original signature from the property owner indicating the property owner agrees that the falconry facilities and raptors may be inspected by the department without advance notice.

**Credits**

Note: Authority cited: Sections 200, 203, 265, 355, 356, 395, 396, 398, 710.5, 710.7, 713, 1050, 1054, 1530, 1583, 1802, 3007, 3031, 3039, 3503, 3503.5, 3511, 3513, 3800, 3801.6, 3950, 4150 and 10500, Fish and Game Code. Reference: Sections 395, 396, 713, 1050, 3007, 3031, 3503, 3503.5, 3511, 3513 and 3801.6, Fish and Game Code; Section 597, Penal Code; and Title 50, Code of Federal Regulations, Parts 21.29 and 21.30.

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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

PETER STAVRIANOUDAKIS; et al.,

Plaintiffs,

v.

UNITED STATES FISH & WILDLIFE SERVICE;  
et al.,

Defendants.

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

**STIPULATED JUDGMENT AND  
ORDER**

The Court, having reviewed the parties' Stipulation for Compromise Settlement and Release of Claims, and upon the agreement of all parties to this action, therefore, the Court enters the following judgment and order:

1. Defendant U.S. Fish and Wildlife Service has delegated enforcement of falconry regulations in California, including those contained in 50 C.F.R. § 21.82, to the California Department of Fish and Wildlife.
2. Regarding the claims in Plaintiffs' Second Amended Complaint (ECF 64) asserted under the First Amendment of the Constitution, neither the Federal Defendants nor the State Defendant admit that such claims have any merit. This Court has held that Plaintiffs do not

1 have standing to assert their First Amendment claims against the Federal Defendants, and  
2 that Plaintiffs are likely to succeed on the merits of their First Amendment claims against  
3 the State Defendant (ECF 95). Accordingly, the State Defendant consents to the Court's  
4 Judgment and Order enjoining the State Defendant his officers, agents, servants, employees,  
5 and all persons in active concert or participation with him from enforcing the regulations  
6 listed below regarding the regulation of falconry, unless and until such time as the State  
7 Defendant may amend or revise any of such regulations in a manner consistent with the  
8 Court's January 14, 2022, Order:

9 A. This Court has held that the provisions of 50 C.F.R. § 21.82(f)(9)(i), 14  
10 C.C.R. § 670(a)(4), and (h)(13)(A) challenged here likely violate the First Amendment  
11 to the United States Constitution. The State Defendant is enjoined from relying on those  
12 regulations to prohibit licensed falconers from photographing or filming their birds for  
13 "movies, commercials, or in other commercial ventures that are not related to falconry."

14 B. This Court has held that the provisions of 50 C.F.R. § 21.82(f)(9)(ii) and 14  
15 C.C.R. § 670(a)(4) and (h)(13)(A) challenged here likely violate the First Amendment  
16 to the United States Constitution. The State Defendant is enjoined from relying on those  
17 regulations to prohibit licensed falconers from photographing or filming their birds for  
18 "commercial entertainment; for advertisements; as a representation of any business,  
19 company, corporation, or other organization; or for promotion or endorsement of any  
20 products, merchandise, goods, services, meetings, or fairs."

21 C. This Court has held that the provisions of 50 C.F.R. § 21.82(f)(8)(v) and 14  
22 C.C.R. § 670(a)(4) and (h)(13)(A) challenged here likely violate the First Amendment  
23 to the United States Constitution. The State Defendant is enjoined from relying on those  
24 regulations to require licensed falconers to discuss "information about the biology,  
25 ecological roles, and conservation needs of raptors and other migratory birds" when  
26 conducting conservation education activities or otherwise dictating the content of these  
27 presentations.

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1           D.       This Court has held that the provisions of 50 C.F.R. § 21.82(f)(8)(iv) and 14  
2           C.C.R. § 670(a)(4) and (h)(13)(A) challenged here likely violate the First Amendment  
3           to the United States Constitution. The State Defendant is enjoined from relying on those  
4           regulations to prohibit licensed falconers from being paid to speak with their birds.

5       3. The California Department of Fish and Wildlife will provide notice to the public on the  
6       Department's website of what regulations will no longer be enforced and shall note that  
7       such changes are required by this judgment and will amend any instruction or compliance  
8       forms the Department issues to falconers to reflect the terms of this judgment. The  
9       Department shall maintain said notice on its website until the regulatory provisions not to  
10      be enforced are either repealed or amended, by the State Defendants, after which time the  
11      Department may remove the notice from its website.

12     4. This stipulated judgment addresses the Plaintiffs' First Amendment challenges to the  
13      regulations referenced in paragraph 2 without adjudicating the constitutionality under the  
14      First Amendment to the United States Constitution of those specific regulations challenged  
15      in Plaintiffs' Second Amended Complaint and does not address or impact the  
16      constitutionality of any other statute or regulation.

17     5. This Court's previous Order, (ECF 95) dismissed without leave to amend Counts I–III of  
18      the Second Amended Complaint against all Defendants; Counts IV–VII as to the Federal  
19      Defendants; Count IX as to the State Defendant; and Count IX as to the Federal Defendants  
20      with respect to the unannounced inspection provisions of the challenged regulations, but  
21      not the challenged speech regulations.

22     6. Count IX against the Federal Defendants and Counts IV–VIII against the State Defendant  
23      are resolved by this stipulated judgment and order. Count VIII was based on California state  
24      regulations and was not asserted against the Federal Defendants. See ECF 64 at 27–28.

25     7. Count IX against the Federal Defendants is dismissed without prejudice in its entirety.

26     8. This Order resolves all claims in this case and there is no just reason for delay. The Court  
27      directs entry of final judgment pursuant to the terms of this stipulated judgment and order.  
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IT IS SO ORDERED.

Dated: November 10, 2022

  
UNITED STATES DISTRICT JUDGE

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

PETER STAVRIANOUDAKIS;  
KATHERINE  
STAVRIANOUDAKIS; SCOTT  
TIMMONS; ERIC ARIYOSHI;  
AMERICAN FALCONRY  
CONSERVANCY,

*Plaintiffs-Appellants,*

v.

UNITED STATES FISH AND  
WILDLIFE SERVICE; CHARLTON  
H. BONHAM, in his official capacity  
as Director of California Department  
of Fish and Wildlife; JIM KURTH, in  
his official capacity as Deputy  
Director Exercising the Authority of  
the Director of California Department  
of Fish and Wildlife; MARTHA  
WILLIAMS,

*Defendants-Appellees.*

No. 22-16788

D.C. No.  
1:18-cv-01505-  
JLT-BAM

OPINION

Appeal from the United States District Court  
for the Eastern District of California  
Jennifer L. Thurston, District Judge, Presiding

Argued and Submitted November 13, 2023  
San Francisco, California

Filed July 24, 2024

Before: Sidney R. Thomas, Danielle J. Forrest, and  
Salvador Mendoza, Jr., Circuit Judges.

Opinion by Judge Forrest;  
Partial Concurrence and Partial Dissent by Judge S.R.  
Thomas

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## SUMMARY\*

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### **Article III Standing**

In an action brought by individual falconers and the American Falcon Conservancy alleging that state and federal regulations impose unconstitutional conditions on their right to obtain a falconry license and that the unannounced, warrantless inspections that they must consent to violate the Fourth Amendment and the Administrative Procedures Act, the panel: (1) reversed the district court's dismissal for lack of standing of plaintiffs' unconstitutional-conditions claim against the California Department of Fish and Wildlife (CDFW); and (2) affirmed the district court's dismissal for lack of standing of their remaining claims against CDFW and the U.S. Fish and Wildlife Service (FWS).

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\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.



The falconers challenged the requirement, included in both the state and federal regulations, that they submit to unannounced, warrantless inspections as a condition of obtaining a falconry license. As to their standing on their claim against the CDFW, the panel noted that under the well-settled doctrine of “unconstitutional conditions,” the government may not require a person to give up a constitutional right in exchange for a discretionary benefit. California conditions falconry licenses on applicants’ annual certification that they agree to unannounced warrantless inspections. The panel held that simply agreeing to submit to those inspections, in the absence of an actual inspection, amounted to the relinquishment of Fourth Amendment rights. Therefore, the falconers’ alleged injury in fact is the forced choice. In addition to injury, the two remaining standing requirements were also satisfied. The panel further held that because the falconers sufficiently alleged an injury in fact, constitutional ripeness was also satisfied. Accordingly, the panel reversed the district court’s dismissal of the Falconers’ unconstitutional-conditions claim against CDFW for lack of standing.

The panel held that the falconers’ unconstitutional-conditions claim asserted against FWS was unripe. Because FWS has delegated falconry licensing authority to California, a lengthy chain of events would have to take place before the falconers could show a remediable impact traceable to FWS. The panel concluded that the connection between the falconers’ asserted injury and FWS is too attenuated and hypothetical at this point to support federal question jurisdiction over the falconers’ unconstitutional-conditions claim against FWS.

The falconers also contended that the federal and California authorization of unannounced inspections

violates the Fourth Amendment both facially and as-applied because they authorize unreasonable warrantless searches of the falconers' private home, curtilage, and other property. The panel held that the falconers' direct challenge failed because they have not alleged that they were subjected to warrantless inspection under the challenged regulations. Because the falconers sought declaratory and injunctive relief, the panel considered whether they had Article III standing to seek prospective relief. The panel held that the falconers failed to allege any facts about the frequency or volume of unannounced inspections that California regulators undertake, but relied primarily on the existence of the regulation authorizing unannounced inspections. The panel concluded that the falconers had not sufficiently demonstrated injury in fact as to the unannounced-inspection claim. Because the falconers lacked standing to directly challenge the authorization of unannounced inspections, they also lacked standing to challenge this authorization under the Administrative Procedures Act.

The American Falcon Conservancy also asserted an unconstitutional-conditions claim and an unannounced-inspection claim on behalf of their members. Like the individual plaintiffs, the panel concluded that the American Falcon Conservancy met the associational standing requirements for its unconstitutional-conditions claim but not for its unannounced-inspection claim.

Concurring in part and dissenting in part, Judge S.R. Thomas agreed that the district court properly dismissed the falconers' claim that the regulations violated the Fourth Amendment because they had not been subjected to an inspection under the current regulations and could not establish that a future inspection was imminent. He disagreed that the falconers had standing to challenge the

state regulations under the unconstitutional-conditions doctrine, and would affirm the district court's dismissal of all of the falconers' remaining claims.

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### **COUNSEL**

Daniel T. Woislaw (argued), Pacific Legal Foundation, Arlington, Virginia; James M. Manley, Pacific Legal Foundation, Phoenix, Arizona; Lawrence G. Salzman, Pacific Legal Foundation, Sacramento, California; for Plaintiffs-Appellants.

John D. Butterfield (argued), Deputy Assistant Attorney General; Nhu Q. Nguyen and Courtney S. Covington, Deputy Attorneys General; Russell B. Hildreth, Supervising Deputy Attorney General; Robert W. Byrne, Senior Assistant Attorney General; Rob Bonta, Attorney General of California; Office of the California Attorney General, Sacramento, California; Michael T. Gray (argued) and Daniel Halainen, United States Department of Justice, Environment & Natural Resources Division, Todd Kim Assistant Attorney General; United States Department of Justice, Washington, D.C.; Philip Kline, United States Department of the Interior, Washington, D.C.; Brodie M. Butland, Assistant United States Attorney, Office of the United States Attorney, Fresno, California; for Defendants-Appellees.

## OPINION

FORREST, Circuit Judge:

The question presented is whether individual falconers and the American Falcon Conservancy (AFC) have standing to challenge the constitutionality of the California Department of Fish and Wildlife’s (CDFW) and United States Fish and Wildlife Service’s (FWS) regulations authorizing unannounced, warrantless inspections of falconers’ property and records and requiring falconers to agree to such inspections as a condition of obtaining a falconry license.

Plaintiffs assert that the challenged state and federal regulations impose unconstitutional conditions on their right to obtain a falconry license and that the unannounced, warrantless inspections that they must consent to violate the Fourth Amendment and the Administrative Procedures Act (APA). The district court dismissed Plaintiffs’ Fourth Amendment-based claims for lack of Article III standing, concluding that Plaintiffs failed to demonstrate injury in fact because they have not been subjected to a warrantless inspection under the challenged regulations and have not shown that future warrantless inspections are certainly impending. We reverse the district court’s dismissal of Plaintiffs’ unconstitutional-conditions claims brought against CDFW and affirm as to the dismissal of their remaining claims.

### I. BACKGROUND

#### A. Falconry Regulation

“Falconry is caring for and training raptors for pursuit of wild game, and hunting wild game with raptors.” 50 C.F.R.

§ 21.6. Falconry is governed by the federal Migratory Bird Treaty Act and its implementing regulations, which impose a detailed regulatory scheme that governs the possession and trade of certain birds of prey. 16 U.S.C. § 704(a); 50 C.F.R. § 10.13 (listing regulated species); 50 C.F.R. § 21.82(a)–(f). Under this scheme, falconers must obtain a permit to lawfully engage in falconry. 50 C.F.R. § 21.82(c).

Two provisions of the federal regulatory scheme are at issue here. The first authorizes regulators to conduct unannounced inspections of “[f]alconry equipment and records . . . in the presence of the permittee during business hours on any day of the week by State, tribal, or territorial officials.” *Id.* § 21.82(d)(9). The second requires falconry permit applicants to submit “a signed and dated statement showing that [they] agree that the falconry facilities and raptors may be inspected without advance notice by State, tribal (if applicable), or territorial authorities at any reasonable time of day” so long as the permittee is present. *Id.* § 21.82(d)(2)(ii).

Originally, there were parallel federal and state permitting systems. States could either elect to prohibit falconry or to allow it under regulations that met minimum federal standards. *Id.* § 21.82(b)(1). Once the federal government certified that a state’s regulatory scheme satisfied federal standards, it “terminate[d] Federal falconry permitting” in that state. *Id.* § 21.82(b)(3). In 2008, FWS abandoned the parallel permitting system. Recognizing that “[e]very State government except that of Hawaii has now implemented regulations governing falconry,” FWS discontinued federal permitting starting in 2014. Migratory Bird Permits, 73 Fed. Reg. 59,448, 59,448 (Oct. 8, 2008). Since 2014, “a State, tribal, or territorial falconry permit” is all that is required to lawfully practice falconry. *Id.*; *see also*

Migratory Bird Permits; Delegating Falconry Permitting Authority to 17 States, 78 Fed. Reg. 72,830, 72,830–33 (Dec. 4, 2013) (delegating falconry permitting to California).

Also at issue in this case are California’s falconry regulations. California has adopted a licensing scheme that requires falconers to renew their licenses annually. Cal. Code Regs. tit. 14, § 670(a)(1). Consistent with federal requirements, California authorizes unannounced inspections: CDFW “may conduct unannounced visits to inspect facilities, equipment, or raptors possessed by the licensee, and may enter the facilities of any licensee when the licensee is present during a reasonable time of the day and on any day of the week” and “may also inspect, audit, or copy any permit, license, book, or other record required to be kept by the licensee under these regulations at any time.” Cal. Code Regs. tit. 14, § 670(j)(3)(A). To obtain a California falconry license, the applicant must certify in writing:

I understand that my facilities, equipment, or raptors are subject to unannounced inspection pursuant to subsection 670(j), Title 14, of the California Code of Regulations. I certify that I have read, understand, and agree to abide by, all conditions of this license, the applicable provisions of the Fish and Game Code, and the regulations promulgated thereto.

*Id.* § 670(e)(2)(D). The California regulations provide that CDFW “shall deny the issuance of a license or renewal of an existing license if the applicant or licensee fails to submit all

required items.” *Id.* § 670(e)(8)(D); *see also id.* § 679(e)(8)(B).

### **B. Plaintiffs’ Falconry Activities**

Individual Plaintiffs Eric Ariyoshi, Scott Timmons, and Peter Stavrianoudakis (collectively, the Falconers) are California residents who have been licensed falconers for decades. Plaintiff Katherine Stavrianoudakis is not a falconer, but she is married to and lives with Peter Stavrianoudakis.

Ariyoshi’s falcon lives in an unrestricted mews<sup>1</sup> 30 feet from his home. Timmons’s three birds live in mews and other structures directly adjacent to his home. Peter Stavrianoudakis’s falcon lives primarily in his and his wife’s bedroom, although the bird occasionally is weathered in a protective enclosure approximately 20 feet from the home. The Falconers all comply with California’s falconry regulations and renew their licenses annually.

AFC is an organization “dedicated to protecting and preserving the practice of falconry, and protecting falconers’ rights.” AFC has approximately 100 members nationwide, all of whom are subject to federal and state falconry regulations. The Falconers are AFC members.

In their joint complaint, the individual Plaintiffs and AFC describe six unannounced inspections that state and federal law enforcement agents have conducted. Timmons alleges that in 1992, when he was in college, CDFW officers approached him at his mother’s property in Thousand Oaks, California to ask whether he possessed a particular red-tailed

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<sup>1</sup> A “mews” is an “indoor” facility for housing raptors. Cal. Code Regs. tit. 14, § 670(j)(1)(B).

hawk. Timmons told them the hawk had flown away, which the officers already knew because they had the hawk in their possession. Peter Stavrianoudakis alleges that sometime around 1983, his home was searched, and he was arrested, all without a warrant, “by armed members of [CDFW] related to his lawful activities as a non-resident falconer in Nevada.”

AFC alleges that armed FWS agents conducted warrantless searches of the homes and property of two of its Washington-state members—Stephen Layman and Lydia Ash (Washington members)—in 2004 and 2009, respectively. AFC also alleges that armed CDFW agents conducted warrantless searches of the homes and property of two of its California members—Fred Seaman and Leonardo Velazquez (California members)—in 2016 and 2017, respectively.

### **C. District Court Proceedings**

Plaintiffs’ first amended complaint alleged that federal and state falconry regulations violate the First, Fourth, and Fourteenth Amendments of the United States Constitution, as well as the APA. The district court dismissed with leave to amend the Fourth Amendment claims, and partially dismissed the APA claim, all for lack of standing.

Plaintiffs filed a second amended complaint, asserting four claims based on the Fourth Amendment. Count I alleges that California’s requirement that license applicants agree to unannounced inspections is a facial and as-applied violation of the Fourth Amendment (unconstitutional-conditions claim). Count II alleges that California’s regulation allowing unannounced inspections is a facial and as-applied violation of the Fourth Amendment because it authorizes warrantless searches of licensees’ homes, curtilage, papers, and effects



(unannounced-inspections claim). In Count III, Katherine Stavrianoudakis alleges that the unannounced-inspection regulations violate her Fourth Amendment rights as a co-habitant of a falconer. Finally, Count IX alleges that the federal unannounced-inspection regulations violate the APA.

The district court dismissed all the Fourth Amendment-based claims without leave to amend. The district court concluded that the individual Plaintiffs' alleged injury related to future inspections was too speculative because they "have never been subjected to the unannounced inspections pursuant to the challenged regulations." Likewise, the district court found that AFC lacked associational standing because it did not allege that its members face immediate or threatened injury from unannounced, warrantless inspections. The district court dismissed the Fourth Amendment allegation in the APA claim because, without standing to bring their substantive claims, Plaintiffs lack standing to bring an APA-based challenge to the same regulations. A stipulated judgment was entered as to the remaining claims, and this appeal followed.

## II. DISCUSSION

"We review de novo an order granting a motion to dismiss for lack of standing under Federal Rule of Civil Procedure 12(b)(1) and construe all material allegations of fact in the complaint in favor of the plaintiff." *Southcentral Found. v. Alaska Native Tribal Health Consortium*, 983 F.3d 411, 416–17 (9th Cir. 2020). "The party invoking federal jurisdiction bears the burden of establishing" the elements of standing, and "each element must be supported in the same way as any other matter on which the plaintiff bears the

burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

### **A. Unconstitutional-Conditions Claim**

The Falconers challenge the requirement, included in both the state and federal regulations, that they submit to unannounced, warrantless inspections as a condition of obtaining a falconry license. They claim that this requirement unconstitutionally conditions falconry licenses on waiver of “their Fourth Amendment rights to be free from unreasonable warrantless searches of their private homes, protected curtilage, and protected effects.” The district court dismissed this claim, concluding that the Falconers lack standing and the claim is unripe because the Falconers failed to allege that they had been subjected to or imminently faced an unannounced inspection. We reverse as to the Falconers’ claim against CDFW and affirm as to their claim against FWS.

#### 1. CDFW

##### a. Standing

The Falconers must establish the three “irreducible” elements of Article III standing. *Lujan*, 504 U.S. at 560. First, that they “suffered an injury in fact that is concrete, particularized, and actual or imminent.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Second, that their “injury was likely caused by the defendant[s].” *Id.* And third, that their “injury would likely be redressed by judicial relief.” *Id.*

We begin with injury. “Under the well-settled doctrine of ‘unconstitutional conditions,’ the government may not require a person to give up a constitutional right . . . in

exchange for a discretionary benefit . . . .” *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994). As the Supreme Court noted a century ago, the state may condition the benefits it bestows, but “the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights.” *Frost v. Railroad Commission*, 271 U.S. 583, 593–94 (1925). This is so because “[i]f the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all.” *Id.*

We have recognized that the unconstitutional-conditions “doctrine is especially important in the Fourth Amendment context” because, “[u]nder modern Fourth Amendment jurisprudence, whether a search has occurred depends on whether a reasonable expectation of privacy has been violated.” *United States v. Scott*, 450 F.3d 863, 867 (9th Cir. 2006) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)). “Pervasively imposing an intrusive search regime as the price of [a discretionary government benefit], just like imposing such a regime outright, can contribute to the downward ratchet of privacy expectations.” *Id.* Accordingly, the doctrine applies when the government attempts to “exact waivers of rights as a condition of benefits, even when those benefits are fully discretionary.” *Id.* at 866–67.<sup>2</sup>

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<sup>2</sup> At issue in *Scott* was whether a pretrial detainee can be induced to categorically give up his Fourth Amendment right against unreasonable search and seizure as a condition of release. We answered no. Even if a detainee signs a release agreement conditioned on submitting to warrantless search, the Fourth Amendment is satisfied only if “the search in question (taking the fact of consent into account) was reasonable.” *Id.* at 868.

A plaintiff suffers a “constitutionally cognizable injury” whenever the government succeeds in pressuring the plaintiff into forfeiting a constitutional right in exchange for a benefit or the government withholds a benefit based on the plaintiff’s refusal to surrender a constitutional right. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606–07 (2013); *id.* at 607 (holding that the plaintiff suffered a “constitutionally cognizable injury” where he refused to waive his constitutional rights and was therefore denied a discretionary benefit); *cf. Dolan*, 512 U.S. at 379 (reversing lower court’s rejection of an unconstitutional-conditions claim where the “government had granted [the] petitioner’s permit application subject to conditions” requiring the petitioner to waive her Fifth Amendment rights). That is, “regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.” *Koontz*, 570 U.S. at 606.

Here, California conditions falconry licenses on applicants’ annual certification that they “understand, and agree to abide by, all conditions of this license, the applicable provisions of the Fish and Game Code, and the regulations promulgated thereto,” including unannounced, warrantless inspections. Cal. Code Regs. tit. 14, § 670(e)(2)(D); *id.* § 670(e)(4)(A). At face value, having to agree to such inspections of their “facilities, equipment, or raptors”—which include their homes, curtilage, and papers—as a condition of obtaining a falconry license constitutes a surrender of their Fourth Amendment right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const.

amend. IV; *see also* *Carpenter v. United States*, 585 U.S. 296, 304 (2018) (explaining that, although “[f]or much of our history, Fourth Amendment search doctrine was ‘tied to common-law trespass’ and focused on whether the Government ‘obtains information by physically intruding on a constitutionally protected area,’” it has also been “expanded . . . to protect certain expectations of privacy as well” (citations omitted)).<sup>3</sup>

The question presented here is whether simply agreeing to submit to those inspections, in the absence of an actual inspection—*see* Part II.B—amounts to the relinquishment of Fourth Amendment rights. We conclude that it does. By successfully applying for a falconry license, the Falconers certify that they will forego a claim to Fourth Amendment protections. An inspection may not occur or, if it does, it may not violate the Fourth Amendment because it is reasonable. But the idea that the Falconers surrender nothing unless and until an unlawful inspection occurs—that California extracts a blanket waiver that is, in fact, entirely superfluous—defies logic. Rather, we take the regulation to mean what it says, and agreeing to unannounced, warrantless inspections without any consideration of the reasonableness of such inspections implicates Fourth Amendment rights. *See*

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<sup>3</sup> The dissent’s citation to Judge Bennett’s concurrence in *Hotop v. City of San Jose*, 982 F.3d 710, 723 (9th Cir. 2020), for the proposition that allowing the Falconers’ claim to proceed “with no allegation of an actual impending search” will subject the government to “inappropriate judicial scrutiny” is puzzling. Dissent at 36. Judge Bennett’s point in *Hotop* was that the conduct at issue—requiring a regulated party to submit information to a government regulator on a required form—was not a search. *Hotop*, 982 F.3d at 720–21. Here, it cannot reasonably be disputed that CDFW entering the Falconers’ property to inspect their falconry facilities and records would be a search as traditionally understood. *See United States v. Jones*, 565 U.S. 400, 408 n.5 (2012).

*Johnson v. Smith*, No. 23-3091, 2024 U.S. App. LEXIS 14019, at \*8–33 (10th Cir. June 10, 2024) (outlining Fourth Amendment precedent concerning regulatory inspections).

Therefore, the Falconers’ alleged injury in fact is the forced choice: retention of their Fourth Amendment rights or receipt of a falconry license, which is required to lawfully practice falconry. Cal. Code Regs. tit. 14, § 670(a)(1); *see Blackburn v. Snow*, 771 F.3d 556, 568 (1st Cir. 1985) (rejecting prison regulation requiring visitors to choose between submitting to a strip search or forgoing entry because “*it is the very choice to which the [plaintiff] was put that is constitutionally intolerable—and it was as intolerable the second and third times as the first*”). And the Falconers suffer this injury every time they renew their licenses, whether or not they are actually subjected to any unlawful inspections. *Koontz*, 570 U.S. at 606. The separate question of whether an unannounced, warrantless inspection by CDFW would violate the Fourth Amendment is not before us. *See Benjamin v. Stemple*, 915 F.3d 1066, 1068 (6th Cir. 2019) (“[The unconstitutional conditions] argument works, or at least begins to work, only if the required consent surrenders cognizable Fourth Amendment rights.”). Although undoubtedly the “government may sometimes condition benefits on waiver of Fourth Amendment rights,” whether the conditions imposed in this case offend the Fourth Amendment goes to the merits of the Falconers’ claim, not to whether they have sufficiently alleged injury for standing purposes. *Scott*, 450 F.3d at 867.

In addition to injury, the two remaining standing elements are also satisfied, which the parties seemingly concede. CDFW enforces California’s falconry-license requirements, Cal. Code Regs. tit. 14, § 670, and the declaratory and injunctive relief that Falconers seek—

preventing enforcement of the challenged condition—would redress their claimed injuries, *see Epona, Ltd. Liab. Co. v. County of Ventura*, 876 F.3d 1214, 1220 (9th Cir. 2017).

b. Ripeness

Article III also requires that a plaintiff’s claim be ripe for adjudication. *See Ass’n of Irrigated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021) (“The ripeness doctrine, which aims to avoid premature and potentially unnecessary adjudication, ‘is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.’” (quoting *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 808 (2003))). There are two ripeness considerations: constitutional and prudential.

Constitutional ripeness overlaps with the injury-in-fact element of Article III standing, and “therefore the inquiry is largely the same: whether the issues presented are definite and concrete, not hypothetical or abstract.” *Id.* (internal quotation marks and citation omitted). Because the Falconers sufficiently allege an injury in fact, constitutional ripeness is satisfied.

Prudential ripeness concerns “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Id.* (quoting *Abbott Lab’ys v. Gardner*, 387 U.S. 136, 149 (1967)). “A claim is fit for decision if the issues raised are primarily legal, do not require further factual development, and the challenged action is final.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir. 2009) (quoting *US W. Commc’ns v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1118 (9th Cir. 1999)). In cases against a government agency, relevant considerations include “whether the administrative action is a definitive statement of an agency’s position; whether the action has a

direct and immediate effect on the complaining parties; whether the action has the status of law; and whether the action requires immediate compliance with its terms.” *Id.* (quoting *Ass’n of Am. Med. Colls. v. United States*, 217 F.3d 770, 780 (9th Cir. 2000)).

Here, the challenged licensure condition is final and is imposed annually. While the record is “admittedly sparse,” as in *Stormans*, the challenged circumstances “are not hypothetical”—when the Falconers apply for a license renewal, they must include the certification that they agree to submit to warrantless, unannounced inspections. *Id.* Whether that condition violates the Fourth Amendment is a “primarily legal” inquiry. *Id.* Accordingly, this issue is fit for judicial review.

As to hardship, “a litigant must show that withholding review would result in direct and immediate hardship and would entail more than possible financial loss.” *Id.* (quoting *US W. Commc’ns*, 193 F.3d at 1118). Relevant considerations include “whether the ‘regulation requires an immediate and significant change in the plaintiffs’ conduct of their affairs with serious penalties attached to noncompliance.’” *Id.* (quoting *Ass’n of Am. Med. Colls.*, 217 F.3d at 783). The Falconers have shown hardship because, “unless [they] prevail in this litigation, they will suffer the very injury they assert”—waiving their Fourth Amendment rights as a condition of lawfully practicing falconry. *Id.*

For all these reasons, we reverse the district court’s dismissal of the Falconers’ unconstitutional-conditions claims against CDFW for lack of standing.



## 2. FWS

The Falconers' unconstitutional-conditions claim asserted against FWS is unripe. As just discussed, “[f]or a case to be ripe, it must present issues that are definite and concrete, not hypothetical or abstract.” *Clark v. City of Seattle*, 899 F.3d 802, 809 (9th Cir. 2018) (citation omitted); see also *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc) (explaining that when “measuring whether the litigant has asserted an injury that is real and concrete rather than speculative and hypothetical, the ripeness inquiry merges almost completely with standing” (citation omitted)).

Here, because FWS has delegated falconry licensing authority to California, a lengthy chain of events would have to take place before the Falconers could show a remediable impact traceable to FWS. First, on remand, the district court would have to enjoin the challenged aspects of California’s licensing scheme as violative of the Falconers’ Fourth Amendment rights. Second, the injunction would have to trigger a federal review and, ultimately, revocation of California’s licensing scheme. See 50 C.F.R. § 21.82(b)(4)(vi), (5)(i) (authorizing FWS to review an approved State’s program to determine whether the laws meet the minimum federal requirements and to “suspend[] the approval of a State . . . falconry program” that it determines “has deficiencies”). Third, FWS would have to reintroduce a federal licensing scheme with the same unconstitutional conditions, notwithstanding the district court’s order that such conditions (as embodied in the

California scheme) are unconstitutional.<sup>4</sup> Finally, the Falconers would have to apply for a federal falconry license, at which time they would once again be forced to choose between a license and their Fourth Amendment rights.

The Falconers suggest that because California's challenged licensure requirement is imposed at the direction of a federal regulation, 50 C.F.R. § 21.82(d)(2)(ii), the responsibility for the unconstitutional conditional essentially passes through to FWS. While this reasoning has some intuitive appeal, it fails to account for the fact that FWS ceded its parallel licensing authority and delegated full falconry licensing authority within California to California. *See* Migratory Bird Permits, 73 Fed. Reg. 59,448, 59,448 (Oct. 8, 2008) (“[A] State, tribal, or territorial falconry permit” is all that is required to lawfully practice falconry.); *Migratory Bird Permits; Delegating Falconry Permitting*

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<sup>4</sup> This step is particularly unlikely. Federal regulations provide that if FWS suspends a state's program, it “will honor all falconry permits in that jurisdiction for 2 years from the date of our final notification of suspension of certification.” 50 C.F.R. § 21.82(b)(5)(v). After two years, all raptors held under permits from the suspended state must be transferred into “other States or territories, or to Federal raptor propagation or education permittees, institutions exempt from the Federal permit requirements, or permanently released to the wild (if it is allowed by the State, tribe, or territory and by this section), or euthanized.” *Id.* It seems unlikely that FWS would deviate from this approach because during the rulemaking process ending parallel permitting, FWS received a comment requesting that FWS take over a suspended state program, rather than follow the process outlined above. In response, FWS said “[t]he elimination of the Federal permit was considered at the request of the States. We cannot afford to support permitting positions just for States that fail in their permitting programs.” *Migratory Bird Permits, Changes in the Regulations Governing Falconry*, 73 Fed. Reg. 59,448, 59,452 (Oct. 8, 2008).

Authority to 17 States, 78 Fed. Reg. 72,830, 72,830–33 (Dec. 4, 2013) (delegating falconry permitting to California).

It may be that if California falls out of full compliance with federal regulations by not requiring license applicants to “agree that the[ir] falconry facilities and raptors may be inspected without advance notice,” 50 C.F.R. § 21.82(d)(2)(ii), federal review would be triggered that could lead to revocation of California’s licensing authority, 50 C.F.R. § 21.82(b)(4)(vi), (5)(i). But it is not certain this is what would happen in the face of an adverse judicial decision and injunction. FWS may respond differently to a state that simply stops enforcing a federal requirement of its own volition compared to a state that has been enjoined by a federal court from enforcing a regulation as a constitutional matter.<sup>5</sup>

We conclude that the connection between the Falconers’ asserted injury and FWS is too attenuated and hypothetical at this point to support federal jurisdiction over Falconers’ unconstitutional-conditions claim asserted against FWS.

### **B. Unannounced-Inspections Claim**

The Falconers also directly contend that the federal and California authorization of unannounced-inspections, 50 C.F.R. § 21.82(d)(9); Cal. Code Regs. tit. 14, § 670(j)(3)(A), violate the Fourth Amendment both facially and as-applied

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<sup>5</sup> See generally Aditya Bamzai, *The Path of Administrative Law Remedies*, 98 Notre Dame L. Rev. 2037, 2062–64 (2023) (discussing agencies’ acquiescence to non-binding court decisions); Nicholas Parillo, *The Endgame of Administrative Law and the Judicial Contempt Power*, 131 Harv. L. Rev. 685, 691 n.15 (2018) (same); see also generally Benjamin M. Barczewski, *Cong. Rsch. Serv.*, R47882, *Agency Nonacquiescence: An Overview of Constitutional and Practical Considerations* (2023).

because they authorize “unreasonable warrantless searches of Falconers’ private homes, protected curtilage, and other property.” Again, the Falconers seek declaratory and injunctive relief. The district court also dismissed this claim on the basis that the Falconers failed to show sufficient injury to satisfy Article III standing. We agree.

The Falconers’ direct challenge fails because they have not alleged that they were subjected to warrantless inspection under the challenged regulations. *See Hotop v. City of San Jose*, 982 F.3d 710, 716 n.4 (9th Cir. 2020) (concluding that plaintiffs’ allegations “support[ed] only a facial challenge to the regulations” because the complaint did not allege that the regulations had been unlawfully applied to the plaintiffs in the past); *cf. Potter v. City of Lacey*, 46 F.4th 787, 801 (9th Cir. 2022) (Bennett, J., dissenting) (“Potter also argues that the RV Parking Ordinance violates the Fourth Amendment. Because police never seized Potter’s RV, he can raise only a facial Fourth Amendment challenge to the ordinance.”). At best, Timmons and Peter Stavrianoudakis alleged that they were subjected to warrantless inspections decades ago under a different regulatory scheme.<sup>6</sup> Thus, we address only the Falconers’ facial challenge. *See City of Los Angeles v. Patel*, 576 U.S.

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<sup>6</sup> Timmons and Peter Stavrianoudakis allege that they were unconstitutionally searched by CDFW agents in 1992 and 1983, respectively. Those searches occurred many years before the federal government issued the current regulations, Migratory Bird Permits, Changes in the Regulations Governing Falconry, 73 Fed. Reg. 59,448, 59,448 (Oct. 8, 2008), and delegated falconry permitting to California, Migratory Bird Permits; Delegating Falconry Permitting Authority to 17 States, 78 Fed. Reg. 72,830, 72,830–33 (Dec. 4, 2013). Accordingly, to the extent these Plaintiffs bring an as-applied challenge based on searches that occurred under an outdated regulatory scheme, those searches have no bearing on the standing analysis.

409, 415 (2015) (holding that “facial challenges under the Fourth Amendment are not categorically barred or especially disfavored”).

The Falconers rely on *Meland v. Weber*, which held that when a party “is the actual object of the government’s regulation, then ‘there is ordinarily little question that the action or inaction has caused him injury.’” 2 F.4th 838, 845 (9th Cir. 2021) (quoting *Lujan*, 504 U.S. at 561–62); *see also Illinois v. Krull*, 480 U.S. 340, 354 (1987). They contend that because the unannounced-inspection requirement applies only to licensed falconers, they are the objects of this regulation. But plaintiffs have standing “as the objects of regulation” only when the challenged regulation imposes a “clear burden” on them. *Cal. Sea Urchin Comm’n v. Bean*, 883 F.3d 1173, 1181 (9th Cir. 2018), *as amended* (Apr. 18, 2018). A clear burden is established when, for example, the challenged regulation “is directed at [plaintiffs] in particular” and “requires them to make significant changes in their everyday business practices,” *Abbott Lab’ys*, 387 U.S. at 154, or when a law creates a “coercive effect” that “require[s] (or at least encourage[s])” plaintiffs to act in a manner that could amount to unconstitutional discrimination, *Meland*, 2 F.4th at 846–47.

Here, the Falconers failed to identify any comparable, concrete effects—such as self-censorship or any kind of behavioral change—prompted by the unannounced-inspections provisions that would amount to a clear burden. Rather, they essentially claim that they feel threatened by the possibility of a future inspection. No authority establishes that mere discomfort constitutes constitutional injury.

We also are not persuaded that the object-of-regulation analysis is the correct paradigm. Instead, because the

Falconers seek declaratory and injunctive relief, we consider whether they have “Article III standing to seek prospective relief.” *Villa v. Maricopa County*, 865 F.3d 1224, 1229 (9th Cir. 2017). In this context, a plaintiff “must allege either continuing, present adverse effects due to . . . exposure to Defendants’ past illegal conduct, or a sufficient likelihood that [plaintiff] will again be wronged in a similar way.” *Id.* (internal quotation marks and citations omitted). The Falconers’ allegations do not address the present-adverse-effect criterion in any way. Standing therefore depends on whether they have alleged a “sufficient likelihood” of a future wrong.

The Falconers acknowledge that they have not been inspected (at least not in several decades), but they contend that the “pattern or practice of unreasonable warrantless searches” authorized by the unannounced-inspection provisions create a likelihood of future individualized injury. This is insufficient to “show that the threat of future injury is ‘actual and imminent, not conjectural or hypothetical.’” *Bolden-Hardge v. Off. of the Cal. State Controller*, 63 F.4th 1215, 1220 (9th Cir. 2023) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009)).

The Falconers argue that it is impossible for them to identify with any certainty when *unannounced* inspections will occur. That may be, but the Falconers failed to allege *any* facts about the frequency or volume of unannounced inspections that California regulators undertake, which would inform the “likelihood” that the Falconers face a risk of such inspection. *Cf. Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164–65 (2014) (holding that injury was imminent because plaintiffs demonstrated that enforcement actions took place 20 to 80 times each year and thus “are not a rare occurrence”). Rather, the Falconers rely primarily on

the existence of the regulation authorizing unannounced inspections. While the regulation is of course material, mere speculation that regulators will exercise their inspection authority is insufficient to establish standing for a claim seeking prospective relief. *See, e.g., Cal. Tow Truck Ass'n v. City & County of San Francisco*, 693 F.3d 847, 866 (9th Cir. 2012) (“[T]he mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a case or controversy within the meaning of Article III.” (quoting *San Diego County Gun Rights Comm. v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996))).

In sum, the Falconers have not sufficiently demonstrated injury in fact as to their unannounced-inspection claim.<sup>7</sup> Based on the allegations presented, “[n]o violation of the laws is on the horizon and no enforcement action or prosecution is either threatened or imminent. . . . [A]t this stage the dispute is purely hypothetical and the injury is speculative. Whether viewed through the lens of standing or ripeness, resolution of the [Fourth] Amendment issues is premature.” *Thomas*, 220 F.3d at 1137. Because the Falconers lack standing to directly challenge the authorization of unannounced inspections, they also lack standing to challenge this authorization under the APA.

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<sup>7</sup> Katherine Stavrianoudakis is positioned differently than the other individual Plaintiffs because she is not a falconer. She alleges that the unannounced-inspection provisions violate her Fourth Amendment rights because she shares a home with a licensed falconer. The district court dismissed her claim because she did not show that she was subjected to an unannounced inspection. On appeal, the parties did not specifically address her standing arguments. We conclude that Katherine Stavrianoudakis does not have standing for the same reasons that the Falconers do not have standing.

### C. AFC's Claims

AFC also asserts an unconstitutional-conditions claim and an unannounced-inspection claim on behalf of its members. AFC alleges that the inspection regulations injure its members, not the organization itself. *See Columbia Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791, 798 (9th Cir. 2001) (“[A]n organization may have standing to assert the claims of its members even where it has suffered no direct injury from a challenged activity.”). To establish associational standing and bring suit on behalf of its members, AFC must establish that: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Cent. Sierra Env’t Res. Ctr. v. Stanislaus Nat’l Forest*, 30 F.4th 929, 937 (9th Cir. 2022) (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). Like the individual Plaintiffs, we conclude that AFC has met these requirements for its unconstitutional-conditions claim but not for its unannounced-inspection claim.

Regarding the unconstitutional-conditions claim asserted against CDFW, the first requirement is satisfied because the Falconers are AFC members and they have individual standing to bring the unconstitutional-conditions claim. The second requirement is also met because AFC’s interest in ensuring that its members are not subject to unconstitutional conditions in obtaining falconry licenses is germane to AFC’s purpose of promoting “the broadest liberties possible” for falconers. And the third requirement is fulfilled because AFC requests only declaratory and



injunctive relief, which “do not require individualized proof.” *Columbia Basin Apartment Ass’n*, 268 F.3d at 799.

But as with the Falconers’ claims, we affirm the district court’s dismissal of AFC’s unconstitutional-conditions claim as asserted against FWS and its unannounced-inspection claim. For the reasons discussed regarding the Falconers, AFC’s unconstitutional-conditions claim against FWS is not ripe. As to AFC’s unannounced-inspection claim, the first requirement of organizational standing is not met. The Falconers failed to establish sufficient injury to have standing to bring this claim. AFC points to four of its members who are not parties here and who have experienced unannounced inspections. Specifically, AFC alleges that FWS conducted warrantless inspections of the homes and property of the Washington members in 2004 and 2009, and that CDFW conducted warrantless inspections of the homes and property of the California members in 2016 and 2017. The question is whether these inspections caused an injury that establishes standing for those members and, in turn, AFC. They did not.

Even assuming that the alleged prior warrantless inspections demonstrate that AFC’s non-party members suffered injury, such injury supports only a damages claim to remedy a past violation. *Bolden-Hardge*, 63 F.4th at 1221. Because AFC seeks prospective relief—and “at least one member” of an organization must have “standing to present, in his or her own right, *the claim (or the type of claim)* pleaded by the association”—more must be shown as relates to the California and Washington members. *United Food & Com. Workers Union Loc. 751 v. Brown Grp.*, 517 U.S. 544, 555 (1996) (emphasis added).

As previously discussed, “standing to seek prospective relief” exists where plaintiffs are suffering either “continuing, present adverse effects” from the defendants’ past illegal conduct or “a sufficient likelihood” that they will be similarly wronged again in the future. *Villa*, 865 F.3d at 1229 (citations omitted). Just like the Falconers, AFC’s allegations do not address the first criterion in any way. And as to the second criterion, the operative complaint merely sets out the general allegation that “[w]arrantless searches of American Falconry Conservancy members’ private homes and other property by Defendants is widespread and ongoing,” without any specificity about the likelihood that the Washington and California AFC members will be inspected without a warrant again. It is also worth noting that each AFC member identified was subjected only to one past inspection that occurred several years ago. These allegations do not establish “that the threat of future injury is ‘actual and imminent,’” as opposed to “‘conjectural or hypothetical.’” *Bolden-Hardge*, 63 F.4th at 1220 (quoting *Summers*, 555 U.S. at 493). AFC therefore lacks standing to bring its unannounced-inspection claim based on its identified Washington and California members because, although “[p]ast wrongs may serve as evidence of a ‘real and immediate threat of repeated injury,’ . . . they are insufficient on their own to support standing for prospective relief.” *Id.* (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102–03 (1983)).

**AFFIRMED IN PART; REVERSED IN PART;  
REMANDED.<sup>8</sup>**

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<sup>8</sup> Each party shall bear its own costs.

S.R. THOMAS, Circuit Judge, concurring in part and dissenting in part:

The question in this case is whether Plaintiff-Falconers have standing to challenge state and federal falconry regulations as violative of their Fourth Amendment rights. I agree that the district court properly dismissed Falconers' claim that the regulations violate the Fourth Amendment because they have not been subjected to an inspection under the current regulations and cannot establish that a future inspection is imminent. I respectfully disagree that Falconers have standing to challenge the state regulations under the unconstitutional-conditions doctrine instead. Because I would affirm the district court's dismissal of all of Falconers' remaining claims, I respectfully dissent in part.

#### I

The Fourth Amendment guarantees “the right of the people . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. “[R]easonableness” is the “ultimate measure of . . . constitutionality” and is judged by balancing the intrusion on the individual’s reasonable expectation of privacy against the “promotion of legitimate government interests.” *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652 (1995). In assessing whether a search was “reasonable,” the fact that an individual consented to the search, and the conditions under which such consent was obtained, may be relevant. *See United States v. Scott*, 450 F.3d 863, 867–68 (9th Cir. 2006); *Schneekloth v. Bustamonte*, 412 U.S. 218, 228 (1973) (“the Fourth [ ] Amendment[ ] require[s] that consent not be coerced”). However, the fact that an individual has consented to a search as a condition of obtaining some benefit “does not by itself make an otherwise unreasonable search reasonable.” *Scott*, 450 F.3d at 871.

While most Fourth Amendment challenges concern the reasonableness of a particular search, the Supreme Court has clarified “facial challenges under the Fourth Amendment are not categorically barred.” *City of L.A., Calif. v. Patel*, 576 U.S. 409, 415 (2015). To mount a facial challenge, however, a plaintiff must still satisfy the requirements for Article III standing by pleading a concrete injury-in-fact in the same manner required for an as-applied challenge. *See Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409–14 (2013). Where the plaintiff has already been subjected to a search or seizure, the past intrusion can satisfy the constitutional injury requirement. *See, e.g., Patel*, 576 U.S. at 413–14; *Garcia v. City of L.A.*, 11 F.4th 1113, 1117 (9th Cir. 2021). Where no search or seizure has yet occurred, a plaintiff only has standing if they can establish that one is “certainly impending.” *Clapper*, 568 U.S. at 409; *see also Columbia Basin Apartment Ass’n. v. City of Pasco*, 268 F.3d 791, 797 (9th Cir. 2021).

Like all justiciability doctrines, the injury-in-fact requirement is designed to ensure that we “adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III.” *Thomas v. Anchorage Equal Rights Com’n.*, 220 F.3d 1134, 1138 (9th Cir. 2000). “By requiring the plaintiff to show an injury in fact, Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action.” *Food & Drug Admin. v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 381 (2024).

As the majority opinion recounts, Falconers’ operative complaint advances two alternative theories of Fourth Amendment injury. First, Falconers allege they are injured by the “ongoing threat” of future unreasonable searches. The majority properly affirmed dismissal of claims based on

this theory because Falconers cannot demonstrate a “sufficient likelihood” that they will be subjected to a future search. *City of L.A. v. Lyons*, 461 U.S. 95, 111 (1983). Alternatively, Falconers allege they are injured by the act of giving consent to future inspection because they are forced to “waive” their the Fourth Amendment rights as a condition of licensure. In my view, this alternative “unconstitutional-conditions” theory fares no better because the act of giving consent, without more, is not a cognizable injury under our precedents.

## II

The unconstitutional-conditions doctrine prohibits “the government from coercing people into giving [] up [constitutional rights]” by withholding benefits “from those who exercise them.” *Koontz v. Johns Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). The doctrine originates in the *Lochner* Era, where it was used to strike down restrictions on commercial activity imposed as a “condition” of doing business. See, e.g. *Frost & Frost Trucking Co. v. RR Comm’n*, 271 U.S. 583, 591–92 (1926); *W. Union Telegraph Co. v. State of Kansas ex rel. Coleman*, 216 U.S. 1, 35 (1910); see also *Kathleen M. Sullivan*, *Unconstitutional Conditions*, 102 Harv. L. Rev. 1413, 1416 (1989). The conflict in those cases arose after the government brought an enforcement against a business entity for failing to abide by the restriction. *Frost*, 271 U.S. at 590; *W. Union Telegraph*, 216 U.S. at 7. Later, the unconstitutional-conditions doctrine was extended to government policies requiring individuals to forgo—or retaliating against individuals for engaging in—protected expression as a condition of receiving some benefit. See, e.g., *Bd. of Cnty. Com’rs, Wabunsee Cnty., Kan. v. Umbehr*, 518 U.S. 668, 674–75 (1996); *Speiser v. Randall*, 357 U.S. 513, 529 (1958). The

plaintiffs in those cases were injured by the government's termination of employment or denial of some benefit based on the plaintiffs' "engaging in [protected] speech." *Speiser*, 357 U.S. at 518; *see also Umbehr*, 518 at 617.

Today, the unconstitutional-conditions doctrine is most often litigated in the in the land use context, where it restricts local governments from "forc[ing]" a landowner to forego "her right under the Fifth Amendment to just compensation" in exchange for a land use permit. *Dolan v. City of Tigard*, 512 U.S. 374, 385–86 (1994). In land use cases, the injury that gives rise to constitutional standing is either the uncompensated appropriation of property rights, *Nollan v. California Coastal Com'n*, 483 U.S. 825, 831 (1987), or the "impermissible denial" of authorization to fully develop the landowner's property. *Koontz*, 570 at 607. These injuries occur at the time of the permitting decision, which effects a concrete change in the scope of the owner's property right.

In the Fourth Amendment context, we have recognized that the unconstitutional-conditions doctrine may be relevant in assessing whether a warrantless search or seizure was "reasonable." In *Scott*, for example, we considered whether defendant Scott's consent to the warrantless search of his home "as a condition to [pre-trial] release" made the state's subsequent search of his home reasonable. 459 F.3d at 865. We explained that the unconstitutional-conditions doctrine prevents the government from making "end-runs" around constitutional protections by "attaching strings" to "conditional benefits." *Id.* at 866. We concluded that "Scott's assent to his release conditions does not by itself make an otherwise unreasonable search reasonable" and affirmed the district court's order granting Scott's motion to suppress the fruits of the search. *Id.* at 871, 875. *Scott* did

*not* address the validity of Nevada’s pretrial release regime under which Scott’s consent was obtained in the first place.

The application of the unconstitutional-conditions doctrine to cases like this, where no search has occurred and the only alleged injury is the signing of a form, is far from “settled.” Indeed no federal court has held that the act of giving consent itself constitutes injury absent an actual or imminently impending search. The majority’s assertion that Falconers are injured “every time they renew their licenses,” is unsupported by precedent.

The recognition of this new type of injury has the unfortunate effect of opening a loophole in our standing jurisprudence. By allowing Falconers to mount an “unconstitutional-conditions” challenge to a law that they do not have standing to challenge directly, the majority opinion undercuts the restriction of prospective relief to those cases where the plaintiff “has suffered or is threatened with a concrete and particularized legal harm[.]” *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 680 (9th Cir. 2023) (en banc).

### III

Even if the imposition of an inspection requirement could by itself violate the unconstitutional-conditions doctrine, Falconers have not demonstrated that CDFW’s regime actually burdens a protected right. That is because the Fourth Amendment protects only individual’s right to be free from “*unreasonable* searches and seizures”—not the absolute right to deny all access to one’s home. U.S. Const. amend. IV (emphasis added). Because Falconers have not pleaded any facts to demonstrate that they will be forced to endure “unreasonable” inspections, they have not

demonstrated that they had to “give up” any constitutional right. *Dolan*, 512 U.S. at 385.

Where the unconstitutional conditions doctrine applies, it bars the forced surrender of rights protected of the Constitution. *Koontz*, 570 U.S. at 606. Neither Falconers nor the majority explain precisely which constitutional protections Falconers have been forced to forgo. Falconers’ brief, for example, refers to the “right to demand a warrant,” but that is not an accurate description of what the Fourth Amendment protects. See *United States v. Kincade*, 379 F.3d 813, 822–24 (9th Cir. 2004) (discussing exceptions to the warrant requirement). Falconers do not, for instance, have the right to demand a warrant prior to a valid administrative search, or a search justified by non-law enforcement “special needs.” *Id.* at 823. Further, our precedent clearly establishes that the act of giving consent does *not* constitute a waiver of an individual’s right to invoke the Fourth Amendment in the future. See *Scott*, 450 F.3d at 868 (discussing and rejecting “the waiver theory” of “Fourth Amendment rights”).

The majority asserts that the substance of Fourth Amendment law is not relevant to standing because it goes to “the merits” of Falconers’ claim. This statement reflects the familiar principle that “jurisdictional inquiry” is different from “merits inquiry.” *Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 825, 834 (9th Cir. 2021); see also *Rakas v. Illinois*, 439 U.S. 128, 138 (1978) (distinguishing between “standing to invoke the exclusionary rule” and the “substantive question” of whether the exclusionary rule applies.). However, this principle does not render the substance of Fourth Amendment law *irrelevant* to our standing analysis, especially in the context of the an unconstitutional-conditions claim, where the specification of



a burdened right is an essential element Falconer’s theory of Article III injury. If the signing of a form without more never amounts to a violation of the Fourth Amendment, that legal conclusion is certainly relevant to the jurisdictional inquiry. We should not credit Falconer’s assertion that they “forego a claim to Fourth Amendment protections” by virtue of agreeing to future inspections when our Fourth Amendment case law clearly holds otherwise. *See Scott*, 450 F.3d at 868.

Finally, in addition to the legal infirmities addressed above, there are prudential reasons to doubt Falconer’s demand for “robust constitutional scrutiny” of “warrantless search conditions . . . on government benefits, licenses, and privileges.” By delinking Article III injury analysis from the substance of Fourth Amendment law, Falconer’s unconstitutional conditions theory effectively softens the standing requirements that guard against meritless challenges to manifold reasonable regulations.

The government regularly requires citizens to consent to search and seizure as a condition of receiving some benefit or participating in some activity. We have repeatedly confirmed the reasonableness of various types of routine “suspicionless search[]” under longstanding exceptions to the warrant requirement. *Kincade*, 379 F.3d at 823. Familiar examples of include physical pat-downs conducted by TSA agents as a condition of flying, *see e.g., Gilmore v. Gonzales*, 435 F.3d 1125, 1138 (9th Cir. 2006); *United States v. Marquez*, 410 F.3d 612, 616 (9th Cir. 2005); sobriety tests conducted by police officers as a condition of driving on public roads, *see, e.g., Demarest v. City of Vallejo, Cal.*, 44 F.4th 1209, 1212–20 (9th Cir. 2022); *Birchfield v. North Dakota*, 579 U.S. 438, 478 (2016); building inspections conducted by city officials as a condition of receiving a

rental or business license, *see, e.g., Killgore v. City of S. El Monte*, 3 F.4th 1186, 1190 (9th Cir. 2021); *Rush v. Obledo*, 756 F.2d 713, 720 (9th Cir. 1985); and searches conducted by probation and parole officers as a condition of supervised release, *see e.g., United States v. Betts*, 511 F.3d 872, 877 (9th Cir. 2007).

Under the majority’s logic, a plaintiff would have standing to challenge the laws and regulations authorizing all of these practices at the moment they agree to the condition, either expressly by signing a form, or impliedly by participating in the regulated activity. This expansion in constitutional standing under the Fourth Amendment will lead to dramatic expansion in meritless facial challenges to all kinds of regulations adopted to protect public health, welfare, and safety. Allowing these kinds of Fourth Amendment claims to proceed with no allegation of an actual impending search “will subject government at every level to inappropriate judicial scrutiny of its actions . . . .” *Hotop v. City of San Jose*, 982 F.3d 710, 723 (9th Cir. 2020) (Bennett, J., concurring).

In sum, Falconers’ unconstitutional-conditions theory reflects an impermissible attempt to circumvent the Article III injury requirement in the context of the Fourth Amendment. I would affirm the district court dismissal of the Plaintiffs’ claims in their entirety. Thus, I respectfully dissent, in part.