



To: Todd Kim, Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

From: Laura Hazelett, President
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POB 230338
Las Vegas, Nevada 89105-0338

Re: Abuse of authority and police misconduct by Captain Rusty Boles, in his capacity as Captive Wildlife Coordinator and Head of Licensing and Permitting for the Tennessee Wildlife Resources Agency (TWRA).

American Falconry Conservancy <https://www.falconryconservancy.org/> (AFC) is a national organization dedicated to falconry (the art of hunting with trained raptors), and the rights of falconers to practice this activity with fair and just regulation based on biology in contrast to prejudice, which has plagued our community for decades. Wildlife managers frequently are biased against citizens' use of live animals derived from the wild. They are more comfortable with hunting, which results in dead wildlife in the possession of citizens.

We are seeking redress to a situation that we believe should be handled by the Dept. of Justice given the ramifications for all falconers across the country. Being a national falconry organization versus a State (Tennessee in this case) falconry organization, it is our intention to ensure that all falconers, regardless of their State residency, are treated as American citizens with all the inherent rights associated with citizenry of this country.

A member of AFC, Mary Holladay Lamar, is a victim of Capt. Boles' prejudices against those who make a living off of captive bred raptors. This is an opinion he has shared with some TN falconers and with AFC President, Laura Hazelett. His intention was to make an example of some TN falconer to send his message of intimidation to the falconry community. Miss Lamar made it easy for him to target her when she lodged a complaint against him for not helping her determine if she needed State permits, along with her associated Federal permits, for certain raptor business activities.

Ms. Lamar is relatively new to TN. In her correspondence with Capt. Boles' predecessor, Capt. Walter Cook (starting in Feb. 2021), Ms. Lamar was having very cordial communications in her effort to make sure she was in compliance with any regulations TN might have related to her raptor activities. However, when Capt. Boles replaced Capt. Cook, Capt. Boles would share limited or no information with Ms. Lamar regardless of the number of times she reached out to him – which were numerous. Days after she lodged a complaint against Capt. Boles for not providing the information she had been consistently requesting, Capt. Boles instructed TWRA Officer Matt Norman to acquire a search warrant and confiscate her birds and other private property related to her raptor practices.

It is hard to understand the justification for these agency actions since Ms. Lamar possessed 4 current raptor related permits: three Federal (the permits she was attempting to determine if TN required associated or additional permits) and one State.

1. Raptor Abatement permit <https://www.fws.gov/service/3-200-79-special-purpose-abatement> – Federal
2. Raptor Propagation permit <https://www.fws.gov/service/3-200-12-migratory-bird-raptor-propagation> – Federal
3. Falconry School Education permit – Federal
4. Master Falconry permit <https://casetext.com/regulation/tennessee-administrative-code/title-1660-tennessee-wildlife-resource-agency/subtitle-1660-01-wildlife-resources/chapter-1660-01-02-rules-and-regulations-governing-birds/section-1660-01-02-03-falconry> – State (Tenn. Rule and Reg. 1660-01-02)

Tenn. Rule and Reg. 1660-01-02 authorizes TWRA to regulate raptors *native* to TN **only**; of which, Ms. Lamar possessed only 4 native raptors. All others, being non-native, excluded TWRA authority, which Capt. Boles' predecessor, Capt. Cook, admitted in an email to a USFWS official. (*See Raybin, Exhibit 1*, p.3). In addition, TN falconry regs were modified after the search warrant was issued in order to encompass all Ms. Lamar's raptors when only two fell under TN raptor definitions and regulations when the search and seizure took place. (*See Raybin, modified*, p. 13)

Ms. Lamar painfully learned that TN does not provide corresponding State permits for the three Federal permits listed above, but only after she had been arrested and her birds and other property seized. She discovered that TN accepts the Federal permits as legitimate licensing within the State with one more requirement: For abatement, she would need to apply for a State Animal Damage Control permit, which is not a raptor specific permit, but only if she pursued nuisance wildlife and was paid for it, which she had not yet started doing since she was unsure of the State's requirements.

The three Federal permits have no numerical possession limits for captive bred raptors. However, TN has a 5-bird possession limit for raptors used in falconry. Though this may seem immaterial, there is no

justification in limiting the number of raptors a falconer may own since it is a low impact hunting activity and is benign in its effect on society. The 5-bird limit is random and subjective, and reveals one facet of wildlife managers' bias against falconry.

TN falconry regulatory language is very plain to all who have been involved in these various activities for decades. However, Capt. Boles infected the TN falconry program with his prejudices and decided to extend the 5-bird State limit to the Federal permits as well – but with no statutory or regulatory authority to do so. However, though there are others in TN who have these various permits, and possess more than 5 raptors, he only pursued Ms. Lamar with his contrived violation of possessing more raptors than her permits allow, i.e., *differential punishment*.

In addition, Capt. Boles accused Ms. Lamar of possessing an owl under the Federal Abatement permit but without possession of a TN Animal Damage Control permit. However, Ms. Lamar was not actually using the owl for this purpose yet, since, prior to her arrest, she had been asking Capt. Boles what permits she needed to come into compliance with whatever TN required. So, she did not violate any regulatory provision with her owl. (*See Lister*, p. 3, 2022)

Also, Capt. Boles charged Ms. Lamar of paperwork reporting violations of the various raptors she owned, but Ms. Lamar was able to demonstrate that she had complied when she produced her completed Federal Migratory Bird Acquisition and Disposition Reports, <https://www.fws.gov/sites/default/files/documents/3-186a.pdf> form 3-186A, that raptor owners are required to submit to their respective States.

Capt. Boles had officer Norman acquire a warrant to search Ms. Lamar's property and to confiscate all the raptors she owned – effectively putting her out of business in one fell swoop, which was his intention regardless of the law – and to arrest her for being “over the possession limit of raptors allowed for a Master Class permittee.”¹

A number of TN falconers contacted Capt. Boles to inform him that Ms. Lamar was not over the 5-bird limit for her falconry permit, since she only had 5 birds on her falconry permit and all the other raptors she owned were under her various Federal raptor permits. The President of AFC, Laura Hazelett, even called Capt. Boles to explain that he was misinterpreting the regs. In his Amended Motion to Suppress Product of Search Warrant and for Return of Property, Ms. Lamar's attorney, Ben Raybin (*Amended*, p. 5), stated

¹ State of TN County of Davidson, Affidavit, Fish & Wildlife Comm Rule/Reg Violation, 70-4-102, Complaint Number: 2022-0577509, Warrant Number: SU26762, Nov. 15, 2022. Prosecutor: Matthew Norman.

The primary focus of the affidavit is an allegation that Ms. Lamar possessed more than the number of “raptors” she was permitted by law. However, the Officer blatantly misstated the law. The applicable laws and regulations simply provide no absolute limit on the number of raptors a person may possess. Rather, there is only a limit on how many raptors a person may possess for the purpose of “falconry.”

Capt. Boles ignored all the facts presented to him and took it to trial anyway where the judge, Hon. Lynda Jones, stated: “As a result of the evidence and arguments presented at that hearing, the Court finds that search and seizure were made illegally with an invalid search warrant, and in violation of the constitutional protection against unreasonable searches and seizures. The Court therefor ORDERS that the Defendant’s motion be granted, that all resulting evidence be suppressed, and that the State shall return all seized property by the end of the day.”² In addition Wadhvani (Feb. 2023) cites Judge Jones who

issued a blistering commentary from the bench: “I feel that the defendant’s Constitutional rights have been violated in (an) egregious manner. For the state to come in in August after a complaint has been rendered about an employee and ask for a search warrant is an overreach of the government. Going in and taking someone’s property that’s not justified and then holding it for two months and bringing criminal charges later is an abuse of the law. The state is further concerned about potential for malicious prosecution.

Further, **Wadhvani** quoted Ms. Lamar’s attorney who said TWRA’s seizure of Ms. Lamar’s birds and the criminal charges brought against her “never should have happened.” The search warrants had nothing to do with the wellbeing of the birds in Lamar’s care, instead alleging “mere regulatory violations.” In addition, the search warrant failed to allege a crime. “Under Tenn. R. Crim. P. 41(b), search warrant warrants are authorized to seize only the following categories of property: “(1) evidence of a crime; (2) contraband, the fruits of crime, or items otherwise criminally possessed; [and] (3) property designed or intended for use, or that has been used in a crime. . . .” (**Raybin, Amended**, pp. 4-5) Further, **Raybin** (p. 16) points out that “a search warrant affidavit is impeached on its face where the officer makes a false statement with intent to deceive the court, or with recklessness if the statement is essential to probable cause. . . . Based on the contradictory assertion in the arrest warrant affidavit, the search warrant affidavit is defective under either standard.”

Of the 13 birds confiscated from Ms. Lamar, one was not returned. One of her peregrine falcons (the poster child that launched the 1973 Endangered Species Act) died while in custody. This raises questions of the TWRA’s understanding and abilities to manage wildlife.

² General Sessions Court of Davidson County, TN, Case No. SU26749-78, State of TN v. Mary Holladay Lamar, Jan. 9, 2023.

Something AFC has difficulty understanding: Since Ms. Lamar was doing everything she could to comply with any and all TN raptor regulations, why did Capt. Boles choose to pursue legal recourse rather than assisting a citizen to become compliant with regulatory provisions if he believed there was a problem? After all, no wildlife was being harmed. Again, the falconry community has a long history of abuse emanating from certain wildlife managers who would favor the elimination of the use of raptors for private purposes. They see falconers as stepping on their turf, in that, only wildlife managers should be allowed to touch living wildlife.

It is our opinion, under 18 U.S.C. § 242 Capt. Boles should be prosecuted for abuse of power and police misconduct. Three elements are required for Section 242 to apply³:

1. Capt. Boles – through Officer Norman – acted *under color of law* when he provided false statements and deceived the magistrate to acquire a warrant; and intentionally misapplied TN falconry regs and projected TN possession limitations onto Federal limitations, where none existed, in order to assert his malicious and illegal actions against Ms. Lamar. (*See Raybin, Amended*, p. 12)
2. Capt. Boles *acted willfully*: In spite of the plain language of possession limitations in the TN falconry regs, and no limitations in the Federal raptor regs, Capt. Boles intentionally and willfully ignored the facts and maliciously moved forward with arrest and prosecution to put Ms. Lamar out of business and to intimidate the TN falconry community into obedience of his will. Further, he willfully deprived Ms. Lamar of her Federal right to practice the three activities her Federal permits authorized. Capt. Boles was stepping on the Federal government's turf.
3. Capt. Boles *deprived* Ms. Lamar of her *rights under the Constitution*. As the Court ruled in Ms. Lamar's behalf: "search and seizure were made illegally with an invalid search warrant, and in violation of the constitutional protection against unreasonable searches and seizures." Further, the Court stated: "I feel that the defendant's Constitutional rights have been violated in (an) egregious manner." To put it mildly, Capt. Boles displayed reckless disregard of constitutional guarantees.

In addition to these three elements, Capt. Boles' 242 violations encompass *differential punishment* – under the "punishments, pains, or penalties provision" – when he selectively targeted Ms. Lamar for his prejudices against those who earn a living off of raptors, when there were, and still are, those in TN who have numerous raptors doing the same businesses as Ms. Lamar. It appears, Ms. Lamar was a test case for Capt. Boles' ambitions to eliminate private gain from the use of raptors. (*See attached, Hazelett's notes of her conversation with Capt. Boles*) Capt. Boles attacked Ms. Lamar before any other raptor enthusiast,

³ Federal Police Oversight: Criminal Civil Rights Violations Under 18 U.S.C. § 242
<https://crsreports.congress.gov/product/pdf/LSB/LSB10495> (Congressional Research Service).

which the Court indicated was due to Ms. Lamar's complaint lodged against him. Besides being a test case, it also appears to be a case of retribution.

Capt. Boles' behavior is that which taints the reputations of all police officers and therefore undermines citizens' confidence in the justice system and erodes the trust between police and citizens. In addition, such officers lead to movements such as the "Defund the Police" rebellion, which is utterly destructive of civil society. Police should be held to a higher standard of lawful behavior than the average citizen since citizens look to police as the defenders of their rights and property. There is no greater danger to the public welfare than criminal behavior emanating from public officials who have the police powers behind them which they use to destroy those who they are prejudiced against.

1. Lister, James H., Memorandum: Federal and State Raptor Regulations – Mary Holladay Lamar case, Birch, Horton, Bittner & Cherot, Wash. D.C., Oct. 3, 2022.
2. Hall, Ben, "'Ordeal' over for woman whose birds were seized in TWRA raid", *News Channel 5 Nashville*, Jan. 30, 2023. https://www.newschannel5.com/news/newschannel-5-investigates/ordeal-over-for-woman-whose-birds-were-seized-in-twra-raid?_amp=true
3. Hall, Ben, "Judge calls TWRA raid 'illegal' and demands seized birds returned to owner," *News Channel 5 Nashville*, Jan. 11, 2023. <https://www.newschannel5.com/news/newschannel-5-investigates/judge-calls-twra-raid-illegal-and-demands-seized-birds-be-returned-to-owner>
4. State of TN, County of Davidson, Affidavit, Fish & Wildlife Comm Rule/Reg Violation, 70-4-102, Complaint No.: 2022-0577509, Warrant Number: SU26749 thru 78, Prosecutor: Matthew Norman, 11-15-2022.
5. Raybin, State of TN v. Mary Holladay Lamar, Motion to Suppress Product of Search Warrant and for Return of Property, General Sessions Court of Davidson County, TN, Case No. SU26749-78, Hon. Lynda Jones.
6. Raybin, State of TN v. Mary Holladay Lamar, Amended Motion to Suppress Product of Search Warrant and for Return of Property, General Sessions Court of Davidson County, TN, Case No. SU26749-78, Hon. Lynda Jones.
7. State of TN v. Mary Holladay Lamar, Order Granting Motion to Suppress and to Return Property, General Sessions Court of Davidson County, TN, Case No. SU26749-78, Hon. Lynda Jones.
8. Hazelett's, AFC President, notes of phone conversation with Capt. Boles.
9. Hazelett's Letter of Recommendation for Holly Lamar. Saved as "Holly Lamar."
10. "'Egregious' abuse of power: Tennessee wildlife agency takes falcons and prosecutes their owner," *Tennessee Lookout*, by Anita Wadhvani, Feb. 14, 2023. <https://tennesseelookout.com/2023/02/14/egregious-abuse-of-power-tennessee-wildlife-agency-takes-falcons-and-prosecutes-their-owner/>