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**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

CONSERVATION FORCE, a non-profit  
Corporation, MIGUEL MADERO BLASQUEZ,  
a hunter, COLIN G. CROOK, a hunter;

Plaintiffs,

v.

KEN SALAZAR, United States Secretary  
of Interior, ROWAN GOULD, United States  
Fish & Wildlife Service Acting Director,  
DANIEL G. SHILLITO, Pacific Southwest Region  
Solicitor, and CAROLYN LOWN, Pacific  
Southwest Region Assistant Solicitor;

Defendants.

CASE NO.:

**COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

**ADMINISTRATIVE  
PROCEDURE ACT CASE**

## **I. Introduction**

1. This case challenges the defendant's seizure, petition for remission, and forfeiture practices, particularly forfeiture of uncommonly valuable hunting trophies for any irregularity without giving the importing hunter-owner the benefit of the innocent owner defense, consideration of the proportionality of the penalty of forfeiture, and substantive and procedural due process.
2. The items are hunting trophies, lawfully taken in licensed, regulated hunts as part of foreign nations' wildlife conservation programs. Defendants seize incoming trophies for virtually any technical error in the permitting or tagging and treat the trophies as illegal contraband subject to forfeiture. Because of defendants' misinterpretation of law, the petition for remission process that is held out to provide the trophy owner/hunter constitutional safeguards misleads the importer and fails to provide relief as represented. The petition for remission process is not what it is represented to be. Defendants take the trophies even when no harm has been done, regardless of the fault of the hunter/importer and without genuine consideration of the proportionality of the penalty.

## **II. Jurisdiction and Venue**

3. This Court has subject matter jurisdiction over this action under the Administrative Procedures Act (APA), 5 U.S.C. § 701, 702 (judicial review of final agency action), 28 U.S.C. § 1331 (federal question jurisdiction), Equitable Jurisdiction, and 18 U.S.C. § 983 Civil Assets Forfeiture Act. The Court can grant declaratory relief under 27 U.S.C. § 1361 (mandamus), 28 U.S.C. § 2201, 28 U.S.C. § 2202, and 5 U.S.C. §§ 701-706. Sixty-day notice of suit was on defendant as required by the ESA.

4. Venue is proper in this District as this is where the property was seized *in rem*. The misinterpretation of the laws and decisions in the particular petitions for remission cited herein were made in this District.

5. The judicial review provision of the APA waives the Federal government's sovereign immunity. 5 U.S.C. § 702.

### **III. Parties**

#### **A. Plaintiffs**

6. Conservation Force is a non-profit 501(c)(3) foundation formed for the purpose of wildlife and habitat conservation through projects, programs and advocacy. Its name stands for the fact that the sustainable use of wildlife, most particularly in the form of recreational hunting and fishing, has been the foremost force for wildlife and habitat conservation. Hunters are the founders and funders of the most significant wildlife conservation developments for over 110 years. No sector contributes more than hunters and anglers to the conservation of wildlife and habitat. Conservation Force's mission is to better use hunting as an even greater force to conserve wildlife and wild places.

7. Conservation Force has wildlife conservation projects around the world to conserve, manage and protect game species that are listed on the ESA and CITES. Its leaders and officers have been participants in the ESA and CITES processes since inception.

Conservation Force provides supportive services to over 150 sportsmen's conservation organizations that in turn support it in a concerted effort to propagate and perpetuate all game animals, particularly foreign game species at risk and listed on CITES and/or the ESA. The conservation of those game species that are imported into the U.S. is

dependant upon the revenue and incentives arising from U.S. hunters who bear the price of their hunts, which in turn pay for the conservation infrastructure of the foreign nations and the projects and programs for the hunted species, because of their expectation of importing their trophies.

8. For over two decades Conservation Force and/or its officers and leaders have been assisting hunters, foreign nation wildlife authorities and species conservation stakeholders to import trophies because the revenue and incentives from that hunting are the backbone of the foreign conservation strategies and regimes.

9. Conservation Force's members and supporters have lost millions of dollars of trophies due to the seizure and forfeiture practices complained of in this petition and it is threatening and retarding the many sustainable use, user pay-based programs Conservation Force supports around the world. The illegal practices have and are expected to reduce Conservation Force's operating and project budgets.

10. Conservation Force has hundreds of members who have lost their trophies and thousands of members who are intimidated by defendants' illegal forfeiture practices.

11. Conservation Force represents the interest of its supporting organizations and their tens of thousands of members, including Dallas Safari Club, Dallas Ecological Foundation, Houston Safari Club, African Safari Club of Florida, Shikar Safari Club International, The Wild Sheep Foundation, Grand Slam/OVIS, National Taxidermist Association, International Professional Hunters Association, Professional Hunters Association of South Africa, et al, all of which have had members or clients lose lawfully acquired trophies in the petition for remission process complained of below. The three

leopard trophy seizures and unlawfully denied petitions for remission cited herein are only representative of the deprivations complained of.

12. For the most part, Conservation Force is representing the hunters cited herein and others as a pro bono public service to ensure the protected rights of the individuals, but also because of the negative impact the illegal forfeiture practices are having on foreign nations' programs for listed game species.

13. Plaintiff Patricio Miguel Madero Blasquez, hereafter Miguel Madero, is a Mexican citizen and attorney in Mexico who has a residence in Colorado. Miguel Madero took a leopard on a licensed, regulated hunt as part of the leopard conservation program of Zambia. The export permit for his trophy was lost by the airline while it was in transit and the Assistant Field Solicitor would not accept the replacement export permit, accord him his other rights or allow him to return his trophy from where it came to cure the problem. Upon import into the U.S. for taxidermy and placement in his U.S. residence, his leopard trophy was unlawfully seized and forfeited without benefit of a Recommendation of CITES, the benefit of the innocent owner defense, or without balancing the disproportionality of the penalty with the harm, all as more specifically described below. His trophy has been declared forfeited without providing him a fair hearing or benefit of statutory defenses and constitutional protections. The trophy cost him approximately \$40,000.00 and had an even greater emotional value.

14. Colin G. Crook is a citizen of Oregon whose leopard trophy was seized because of an obvious typographical error in the effective date of his export permit from Namibia. He filed a petition for remission and another supplemental petition with undisputed proof from the CITES Authority of Namibia that the date was an error, but the defendant

Assistant Field Solicitor denied both because she refused to apply the innocent owner defense, excessive punishment/proportionality test or even permit the trophy to be returned to Namibia to cure the typographical error. He was deprived of his trophy because of defendants' unlawful practices described below.

#### **IV. Statutory Framework**

15. Under CITES, the leopard trophies in issue require both an import permit into the U.S. and an export permit and attached tag from the countries of origin. The purpose is to identify the specimen as the lawful item it is purported to be.

16. The defendant USF&WS does not issue an import permit as it did in these instances until it finds that the hunting in the foreign country is not detrimental to the survival of that population of the species and also that it enhances its survival.

17. Zambia and Namibia leopard are also on quotas adopted by the 173 member nations of CITES at a Conference of the Parties. That determination is that the export and import of leopard trophies within the quota is not detrimental to the survival of the species and is to be permitted even though it is an Appendix I species. CITES quotas for trophies are adopted to facilitate the trade that is thought to be beneficial. Moreover, CITES has a special Recommendation exempting trophies from the Appendix I trade prohibition against commercial trade for the same reason. Res. 2.11 (Rev.).

18. The commercial export and import of Appendix I species such as leopard is prohibited, but trophies within the quota taken for personal use by tourist hunters such as plaintiffs are considered favored trade in part because of the revenue and incentives that

are arising from the tourist hunting in the foreign nation's program, under which the hunting is licensed and regulated.

19. 16 USC 1537(b) International Cooperation (b) *Encouragement of foreign programs* provides that "the Secretary...**shall** encourage...foreign countries to provide for the conservation of wildlife...including threatened species listed pursuant to" the ESA.

Congress has made it clear that means facilitating the import of hunting trophies from foreign nations' conservation programs for that species.

20. If an export permit is lost, damaged, stolen or destroyed during the shipping process, the Parties to CITES have adopted a Recommendation providing for the issuance of a replacement permit by the export country's CITES Authority. The USF&WS has adopted regulations implementing that recommendation. 50 C.F.R. § 23.52. Such losses are inevitable.

21. The Recommendation of CITES and the implementing USF&WS regulation places the sole responsibility upon the issuing export authority to satisfy itself that the export permit is truly lost before it issues a replacement, as it is the author of the original permit that is to be replaced. 50 C.F.R. § 23.52 (b)(3).

22. A hunter or his representative must present an export permit for a leopard trophy at time of import. If the original is lost in transit, in due course a duly issued duplicate must be produced.

23. If the USF&WS inspector at the port of entry is not satisfied, he detains the trophy and may issue a notice of seizure that begins the forfeiture process.

24. The notice is supposed to advise and describe the various actions available to the trophy owner to protect his property interest in the item.

25. That includes the administrative remedy of filing a Petition for Remission to be decided by the regional Field Solicitor and a supplemental petition if and when the first is not granted.

26. The relevant initial alternative to the Administrative Petition for Remission stated in the notice is to file a Claim that will mature into litigation in the District Court where the trophy happened to be imported and was seized.

27. Trophies have to be imported through regulatory designated ports which are seldom the residence of the hunter importing the trophy.

28. The seizure notice states that a property owner may need a lawyer in the jurisdiction of the port of entry if a Claim is filed, but not for a Petition for Remission.

29. The Petition for Remission is not in lieu of filing a Claim for court as in many other administrative proceedings. To the contrary, the Notice of Seizure expressly states that the filing of a Petition for Remission suspends the forfeiture while it is pending so a Claim can still be filed.

30. The Notice specifies the date for filing a claim (judicial) as distinguished from a petition for remission (administrative) but also states it is suspended while a Petition for Remission is pending.

31. The notice does not indicate that plaintiff waives any protection afforded by law or regulations by electing to file a Petition for Remission in response to the notice of seizure, such as the innocent owner or proportionality defense or option to return the trophy to the country of origin. To the contrary, the written Notice suggests the Petition for Remission process is the swiftest route to relief at the least cost and inconvenience.



## V. Rights of Owners

### A. Innocent Owner Defense: 18 U.S.C. § 983(d)

32. In 2000, Congress passed the Civil Assets Forfeiture Reform Act of 2000, CAFRA, which explicitly provides an innocent owner defense and a proportionality/excessiveness of penalty defense for owners of seized property.

33. The innocent owner defense provides “(I) An innocent owner’s interest in property **shall** not be forfeited under any civil forfeiture statute.” 18 U.S.C. § 983 (d)(1).

Emphasis added. It is not discretionary.

34. The term innocent owner is defined as either “an owner who—(I) did not know of the conduct giving rise to forfeiture; **or** (II) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.” 18 U.S.C. § 983 (a)(2)(A). Emphasis added.

35. Under CAFRA, if an owner does not receive written notice of a proposed forfeiture, the owner has a statutory right to “file a motion to set aside a declaration of forfeiture.” 18 U.S.C. § 983 (e)(1).

### B. Proportionality: 18 U.S.C. § 983(g)

36. CAFRA also provides that the claimant “may petition the court to determine whether the forfeiture was constitutionally excessive.” 18 U.S.C. § 983 (g)(1).

37. In that case, “the court **shall** compare the forfeiture to the gravity of the offense giving rise to the forfeiture.” 18 U.S.C. § 983 (g)(2). Emphasis added. It is not discretionary.

38. If “grossly disproportional to the offense it **shall** reduce or eliminate the forfeiture as necessary to avoid a violation of the Excessive Fines Clause of the Eighth Amendment of the Constitution.” 18 U.S.C. § 983 (g)(4). Emphasis added. It is not discretionary.

**C. Petition for Remission: 50 C.F.R. § 12.24**

39. Petitions for remission to mitigate or remit are determined by a Solicitor.

Unbeknown to trophy owners, the Solicitor is employed by the Department of Interior and not as an independent tribunal.

40. The Code of Federal Regulations provides that “the Solicitor **shall** consider the information submitted by the petitioner....” 50 C.F.R. § 12.24 (e). Emphasis added.

41. If the Solicitor decides “relief should not be granted, the Solicitor **shall** so notify the petitioner in writing, stating in the notification the reasons for denying relief. The petitioner may then file a supplemental petition....” 50 C.F.R. § 12.24 (g). Emphasis added.

42. The first step of the Solicitor is to determine if the import violated any law or regulation.

43. The second step is to consider legal defenses such as innocent owner and proportionality.

44. The third step is consideration of all other mitigating circumstances that warrant discretionary remittance or mitigation.

45. Although the Solicitor has discretionary authority to remit or mitigate the forfeiture as the circumstances justify when there has been a violation of law, the forfeiture itself must still be lawful and the Solicitor must (“shall”) consider the information and the claimant must still be accorded notice and due process, the innocent owner and

proportionality defenses. 50 C.F.R. § 12.24 (e) and (g); 18 U.S.C. § 983 (d)(1), (e)(1), and (g)(1).

## **VI. Facts**

### **A. Miguel Madero**

46. Plaintiff Miguel Madero took a leopard in a licensed, regulated hunt in Zambia that was part of a quota established by the Parties of CITES.

47. Plaintiff applied for and obtained an import permit from the USF&WS after establishing the take was not detrimental and that it enhanced the species' survival.

48. Plaintiff also obtained an export permit from Zambia, the country where the leopard was lawfully taken.

49. It is undisputed that while the leopard was being transported exclusively within the control and custody of an airline, the airline lost the export permit and other papers that accompanied the leopard trophy shipment.

50. When the shipment arrived in the port of entry, San Francisco, the inspector detained it because the leopard did not have the required export permit even though the private import broker furnished a photocopy of the export permit that was notarized to be a true copy of the original and the CITES permit number and quota number permanently attached to the skin matched that on the notarized copy of the export permit.

51. The Zambia CITES Management Authority was contacted about the loss and when the airline satisfied those authorities that the original export permit had been lost, that Management Authority issued a **replacement** export permit as authorized by both a CITES Recommendation and the USF&WS's own implementation regulations.

52. The port Inspector of USF&WS ignored the replacement permit and unlawfully issued a notice of seizure on April 2, 2008 in total disregard of the facts and replacement export permit.

53. The seizure notice arbitrarily set the deadlines for claimant to file a petition for remission for May 24, 2008 and to file a Claim and stated petitioner could still file a Claim if he so chose after filing a Petition for Remission.

54. It also stated that the time to file a Claim (judicial proceeding) was suspended while the Petition for Remission was pending.

55. Despite those clear representations, the defendants did not permit an opportunity for the filing of a Claim when the petition for remission process was completed. Instead, it ordered the immediate forfeiture.

56. Plaintiff's import broker filed a Petition for Remission with both a notarized duplicate copy of the original export permit, a duly issued original *replacement* export permit dated March 29, 2008, and a letter from the airline accepting full responsibility for the loss while the shipment was in transit. There was no legitimate doubt about the identity of the trophy as it had a permanent tag attached with numbers and data that perfectly matched the copy of the export permit.

57. One could not be more innocent than plaintiff Miguel Madero as all events occurred outside of his control, custody and knowledge. Moreover, he obtained a replacement permit. Both of those separate facts qualified him to be an innocent owner.

58. The Assistant Field Solicitor, defendant Carolyn Lown denied the Petition for Remission.

59. The denial erroneously stated “Petitioner’s good faith or innocence is not material to the proposed forfeiture...Under CAFRA, an innocent ‘owner defense’ may *not* be asserted in instances when the property to be forfeited to the United States is ‘contraband or other property that it is illegal to possess.’...Wildlife specimens are ‘illegal to possess’ for purposes of CAFRA when imported...in violation of wildlife laws and regulations. *United States v. 144, 774 Pounds of Blue King Crab*, 410 F. 3d 1131 (9<sup>th</sup> Cir. 2005). As the wildlife specimen in this case was imported in violation of the Endangered Species Act, petitioner may not raise an innocent owner defense.” This hard line was the verbatim erroneous reason given in this and the following two seizures cited in this petition and others.

60. This position that the innocent owner defense does not apply to trophy imports is an unlawful practice of defendants that in effect makes the petition for remission process a sham. Defendants claim the property can’t be remitted as a matter of law, so the remission is destined for denial before it is filed as a matter of course.

61. Petitioner was entirely blame-free but was not given his trophy or even allowed to re-export it to Zambia to get export documentation. No consideration was given to the alleged “immeasurable subjective value” of the trophy that cost more than \$40,000.00 to acquire and the replacement export permit was wholly disregarded by the Solicitor because 1) the Zambia authorities had not “immediately” informed the U.S. of the loss, and 2) the replacement permit was not signed by a Zambia CITES official exactly on the line.

62. Had plaintiff known that nothing he said or did in the petition would lead to the release of his trophy, we would have filed a Claim for judicial determination rather than a petition for remission.

63. The computation of time left to file a Claim after the denial was nonsensical. No time remained.

64. Plaintiff retained counsel and filed a Supplemental Petition for Remission. It too was denied.

65. Plaintiff Miguel Madero's acquisition cost of the trophy exceeded \$40,000.00 but plaintiff was not reasonably exposed to any fine within that range and no harm was done to the species (none) or defendant government (none) by the inevitable accidental loss of the export permit while in transit.

66. The penalty of forfeiture was out of all proportion to the harm done.

67. The Solicitor, defendant Carolyn A. Lown, did not truly consider the "information submitted by the petitioner" as mandated ("shall consider") because that statutory defense was ruled out from the inception by the misinterpretation of the law in violation of 50 C.F.R. § 12.24 (e), *Petition for Remission of Forfeiture*.

### **B. Colin G. Crook**

68. In another case, on September 25, 2008 the same Solicitor denied a petition for remission filed in behalf of Colin Crook for the seizure of a leopard where Namibia authorities admitted they had made a typographical error in the expiration date of the export permit which they stood ready to correct.

69. That plaintiff had no knowledge of the typo until his leopard trophy was seized. He took immediate steps to have it corrected/amended to no avail. Both the lack of

knowledge and the action to amend the typo separately and independently should have entitled him to the innocent owner defense.

70. In that case as in others, the Assistant Field Solicitor denied all defense on the basis *“Petitioner’s good faith or innocent is not material to the proposed forfeiture of the wildlife specimen. Under CAFRA, an ‘innocent owner defense’ may not be asserted in instances when the property...is ‘contraband’ or other property that is illegal to possess....Wildlife specimens are ‘illegal to possess’ for purposes of CAFRA when imported...in violation of wildlife laws and regulations...Petitioner may not raise an innocent owner defense....Petitioner does not provide a basis for the remedy of remission.”*

### **C. William Pritchard**

71. In another case, the leopard trophy of William R. Pritchard, taken in Namibia, was detained and he was sent a *Notice of Seizure and Proposed Forfeiture* dated September 29, 2008. In that instance the export permit was not lost but the required tag attached to the leopard trophy was lost while in transit by plane from Africa to San Francisco.

72. The trophy owner filed a petition for remission based upon the innocence of owner defense and the special value of the trophy particularly to him.

73. The petition was denied by defendant Assistant Field Solicitor Carolyn Lown.

74. It was destined to be denied because of the systematic refusal to apply the innocent owner defense, to fairly consider the proportionality test guaranteed by CAFRA, to “consider the information” provided in petitions and exhibits or even to consider the return of the trophy for curative re-tagging.

75. The trophy was the only animal taken on the owner's hunt and was taken at a cost exceeding \$25,000.00. Moreover, it had great emotional value to the owner/hunter.

76. The trophy was accompanied by original export and import permits and the pictures and exhibits left no doubt as to the identity of the trophy.

77. Moreover, the forfeiture only served to penalize the wholly innocent owner for a harmless mishap in transit. The penalty of forfeiture was excessive.

78. The reasons for the denial of the petition for remission were verbatim those cited in the leopard seizure of Miguel Madero and Colin G. Crook, also before the same Assistant Field Solicitor.

79. In this instance, the denial fortuitously was dated February 24, 2009 and stated petitioner still had til March 6, 2009 to file a claim (judicial) in lieu of submitting a supplemental request for reconsideration.

80. The hunter/owner managed to receive the denial, get the Claim form that was not included, and timely file a claim.

81. Consequentially, that trophy owner is expected to get judicial relief in another division of this court.

82. He filed a claim instead of a supplemental petition (request for reconsideration) only because of the discovery of the systematic pattern of denials that leave no doubt that denial is a foregone conclusion due to unlawful practices of defendants in the Petition for Remission process.

83. The defendant Assistant Field Solicitor Carolyn Lown's reason for not remitting or mitigating was exactly the same in all three of the above cited cases, which in part follows:



*“Petitioner has asserted his good faith in this matter and ignorance of the law. However, Petitioner’s good faith or innocence is not material to the proposed forfeiture of the Wildlife Specimen. Under CAFRA, an ‘innocent owner defense’ may not be asserted in instances when the property to be forfeited to the United States is ‘contraband or other property that it is illegal to possess.’ 18 U.S.C. § 983. Wildlife specimens are ‘illegal to possess’ for purposes of CAFRA when imported, received, or acquired in violation of wildlife laws and regulations. United States v. 144,774 Pounds of Blue King Crab, 410 F.3d 1131 (9<sup>th</sup> Cir. 2005). As the Wildlife Specimen in this case was imported in violation of the Endangered Species Act, Petitioner may not raise an innocent owner defense.*

*“A. Denial of an innocent owner defense in this matter is further supported by the very nature of the property to be forfeited. Property acquired or possessed in violation of law may not be returned to the requesting party. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 699-700 (1965) (return of contraband ‘would clearly have frustrated the express public policy against the possession of such objects’); One Lot Emerald Cut Stones v. United States, 409 U.S. 232, 237 (1972) (forfeiture ‘prevents forbidden merchandise from circulating in the United States’).*

*“B. In addition, the Endangered Species Act makes it unlawful to possess any wildlife traded contrary to the provisions of CITES. 16 U.S.C. § 1583(c).”*

84. The King Crab cited was one in which a commercial shipment that was poached in violation of law in Russia was treated as contraband, unlike the lawfully acquired trophies of concern in this petition.

85. The other two cases pre-date CAFRA and are wholly irrelevant to the rights of innocent trophy hunters since smuggled goods without declaration and drugs are expressly excluded by CAFRA from coverage. To the contrary, the *One 1958 Plymouth Sedan* case confirms that it is unconstitutional to forfeit property that is not contraband, which favors its release.

86. The three hunters and others similarly situated have no chance of a fair petition for remission or supplemental petition administrative process because any CITES infraction makes it impossible to release the trophy according to defendant's erroneous position.

87. The defendants have a litany of reasons to ignore the obvious excessiveness of the forfeiture penalty, but in all cases refuse to honor the CAFRA and constitutional mandate to determine the proportionality of the forfeiture.

88. The Solicitor did not even consider re-exportation or provide an opportunity to re-export the trophies to the country of origin, even after the permit irregularity was cured or it was verified it could be cured.

89. Miguel Madero and Colin G. Crook filed supplemental petitions for remission in which all information and arguments were disregarded instead of considered because of the Solicitor's position that the innocent owner defense does not apply and the property can't be returned in any event.

90. The Solicitor refused to consider the innocence of the trophy owners and wholly refused to consider the excessiveness of the forfeiture.
91. Just like the innocent owner defense, the Solicitor excludes the proportionality or excessiveness from consideration from the get-go as the standard practice.
92. The Solicitor did not mitigate or remit, did not permit shipment back to the country of origin, did not assess a smaller penalty, and did not accept the replacement permit or allow correction of the typo.
93. Plaintiffs were denied a meaningful hearing in any meaningful sense due to the Solicitor's misapplication of the innocent owner, proportionality and other laws.
94. The plaintiffs were innocent owners under both of the definitions of that term and valued their trophies far more than any harm by the innocent loss of the permit or error in paperwork.
95. Remitting and/or mitigating the forfeitures in these cases should have been more than a matter of grace. It should have been a matter of law.
96. The Agency in effect refused to exercise its discretion from the inception and thereby denied plaintiffs the procedural safeguards of the forfeiture statutes.
97. Conservation Force believes and alleges that millions of dollars of its members and those it represents are lost and jeopardized each year by these unlawful forfeiture practices.
98. The cost of each of the underlying hunts generally range from \$20,000.00 to \$160,000.00 or more. The value to the hunters is even greater than what they pay.

99. The revenue of those hunts is absolutely critical to the range nations' conservation infrastructure and programs and the illegal practices of defendants is undermining and harming those conservation efforts contrary to CITES and the ESA.

100. The Solicitor's office, at least in the region these leopard were seized, has a formalized, invariable policy of denying petitions for remission and supplemental petitions.

101. The Solicitor's misunderstanding of the law prevents the Solicitor from even considering the statutory defenses afforded by Congress.

#### **D. Miguel Madero – Notice and Due Process**

102. In response to the supplemental petition for remission in the case of Miguel Madero, the Solicitor changed the reasons for not accepting the replacement export permit. Initially the Solicitor said the replacement was not signed by a designated CITES official, but when a letter from the signing official pointed out that it was her signature and that she was registered with the CITES Secretariat, the Solicitor then changed her reason to the fact that the last of several correspondence documents from the Zambia authorities was not itself "immediate."

103. Plaintiff was not given any opportunity to respond to that new reason by the Solicitor not to accept the replacement permit and consequently was not given the notice mandated by regulation and due process, which in turn denied him a hearing on the issue.

104. Nothing in the notice of seizure suggests that the innocent owner and proportionality defense don't apply in the petition for remission process or that the Solicitor can't remit the trophy and won't even allow it to be returned to the foreign country for curative work.

105. The Solicitor's misunderstanding of the law (innocent owner and proportionality) prevented the Solicitor from even considering the issue to exercise discretion.

### **E. Equitable Jurisdiction**

106. The adjudication process itself is defective, which in turn causes a bad result.

107. Defendants disregard the statutory rights of trophy owners in callous disregard of CAFRA, the Constitution and APA.

108. Those defects in the Petition for Remission procedural process deprive plaintiffs of the property they lawfully acquired and fully own. It is unfair and irrational to declare forfeiture when no harm has been done, the irregularity is inevitable and the conduct is innocent.

109. There is no other remedy of law other than this complaint.

### **PLAINTIFF'S CLAIMS FOR RELIEF**

#### **First Claim: Violation of CAFRA, APA, and Eighth Amendment**

110. Plaintiffs incorporate by reference all allegations of law and fact in the preceding paragraphs.

111. The forfeiture was procedurally defective because the petition for remission process is not what it is purported to be.

112. Plaintiffs were not afforded the innocent owner defense, the benefit of the proportionality test, nor notice and hearing (Miguel Madero) on all issues concerning the signage of the replacement permit.

113. Defendant's refusal to apply the innocent owner defense to listed hunting trophies violates CAFRA.

114. Failure to consider the option of re-exporting the trophy violates the petition for remission process.

115. The failure to consider the innocence of the owner invalidates the legitimacy of the entire petition for review process.

116. The Agency's failure to consider the value of the trophy and the cost of its acquisition violates CAFRA and the excessive penalty clause of the Eighth Amendment of the Constitution and violates the petition for remission process.

117. The loss of trophies is irreparable damage and the relief prayed for below would provide a remedy to plaintiffs.

**Second Claim: Violation of Both Substantive and Procedural Due Process**

118. All preceding allegations of law and fact are incorporated herein by reference.

119. Plaintiff Miguel Madero was not given timely notice of or an opportunity to address the issue that the Zambia authorities did not notify the U.S. authorities of the loss immediately first raised by the Assistant Field Solicitor in the denial of the supplemental petition. There was earlier correspondence from the Director of Zambia's highest wildlife authority and defendants knew of the loss before plaintiff.

120. The forfeiture of the trophies of both Miguel Madero and Colin G. Crook irrationally deprived them of their protected property interest because of the loss of the export permit and typographical error were correctable, of no harm to the species and the lawful origin was not truly in doubt.

121. The taking of plaintiffs' protected property interest under all of the facts herein deprives plaintiffs of their valuable property without procedural due process and violates substantive due process for it is unconscionably unfair.

122. The relief prayed for below would remedy otherwise irreparable injury to plaintiffs.

### **Third Claim: ESA**

123. All prior allegations are incorporated herein by reference.

124. The defendants' practices violated the intent and express requirement of the ESA that the defendants support and cooperate with foreign nation's conservation programs for ESA and CITES listed species such as the leopard, 16 USC 1537 *International Cooperation*, and section (b) "the Secretary...**shall** encourage...foreign countries...."

125. The relief prayed for below would provide a remedy to plaintiffs' otherwise irreparable injuries.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court:

- 1.) Declare that Defendants' practices are a violation of 16 USC 1537(b), CAFRA, Due Process, and the APA.
- 2.) Set aside the forfeiture of Miguel Madero's leopard trophy and order its release or, at the very least, acceptance of the foreign nation's curative efforts and/or re-export,
- 3.) Set aside the forfeiture of Colin G. Crook's leopard trophy and order its release or, at the very least, its export,

- 4.) Declare that the innocent owner and proportionality defenses are applicable to import of listed hunting trophies and should be taken into consideration in both the petition for remission and supplemental petition process,
- 5.) Enjoin defendants from adjudicating petitions for remission and supplemental petitions for remission without full and fair “consideration of all information” submitted in light of all applicable law including the innocent owner defense, a good faith proportionality test and other mitigating factors,
- 6.) Enjoin defendants from denying a reasonable opportunity and clear notice of time delays to seek judicial relief through the claim process should a petition for remission be denied,
- 7.) Order defendants to provide a reasonable length of time to file a claim as represented and notice of how that time is to be suspended and calculated,
- 8.) Award plaintiffs their attorney fees, costs and interest pursuant to CAFRA 28 U.S.C. § 2465 (b)(1)(A) and/or APA and/or the Constitution.
- 9.) Grant any other relief as the Court deems just and proper.

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