

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

HORSES OF CUMBERLAND ISLAND, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	No. 1:23-cv-01592-SEG
DEB HAALAND, in her official capacity as)	
Secretary of the Department of interior, et al.,)	
)	
Defendants.)	

**FEDERAL DEFENDANTS’ OPPOSITION TO PLAINTIFFS’
EMERGENCY MOTION FOR INTERMEDIATE EQUITABLE RELIEF**

Plaintiffs seek an injunction under the All Writs Act, 28 U.S.C. § 1651(a), requiring Defendants to provide supplemental water and forage to the Cumberland Island National Seashore’s (the “Seashore”) feral horse population. *See* Pls.’ Br. in Support of Emergency Mot., ECF No. 83-1 at 17-18 (“Pls.’ Br.”). Because both Federal and State Defendants have pending motions to dismiss, the Court should not entertain requests for injunctive relief before resolving those motions. Even if the Court were to deny the motions to dismiss, it should deny Plaintiffs’ motion because they have not demonstrated that All Writs Act properly applies here, much less that they are entitled to the extraordinary remedy of an injunction under that Act.

I. LEGAL STANDARD

The All Writs Act “confers on courts ““extraordinary powers that are firmly subscribed.”” *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1132 (11th Cir. 2005) (quoting *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1358 (5th Cir.1978)). The All Writs Act provides that “[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). The All Writs Act ““invests a court with a power that is essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law.”” *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004) (quoting *Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999)). Importantly, as noted by Plaintiffs, the Act “does not create any substantive federal jurisdiction.” *Klay*, 376 F.3d at 1099 (11th Cir. 2004) (citing *Brittingham v. Comm’r*, 451 F.2d 315, 317 (5th Cir.1971) (“It is settled that . . . the All Writs Act, by itself, creates no jurisdiction in the district courts. It empowers them only to issue writs in aid of jurisdiction previously acquired on some other independent ground.”)). Rather, the Act “is a codification of the federal courts’ traditional, inherent power to protect the jurisdiction they already have, derived from some other source.” *Id.*

A “basic precondition” to the issuance of an All Writs Act injunction is “that there be some other matter over which the court has jurisdiction—some other proceeding in that court or some order or judgment previously made by that court—and that the All Writs Act order serve to protect that proceeding, order, or judgment from some threat to its integrity.” *Rohe v. Wells Fargo Bank, N.A.*, 988 F.3d 1256, 1266 (11th Cir. 2021) (noting this requirement defined “only the outer limit” of the court’s power, and that there are “further standards and doctrines governing the exercise of this power in particular circumstances”). Thus, although the traditional requirements for injunctive relief do not apply to injunctions under the All Writs Act, the party seeking the relief must “point to some ongoing proceeding, or some past order or judgment, the integrity of which is being threatened by someone else’s action or behavior.” *Id.* at 1100. All Writs Act authority is “only appropriately exercised where (1) “Necessary or appropriate in aid of [the court’s] jurisdic[t]io[n],” and “(2) the legal rights at issue are indisputably clear.” *Wisconsin Right to Life, Inc. v. Fed. Election Comm’n*, 542 U.S. 1305, 1306 (2004).

II. ARGUMENT

Federal Defendants have twice moved to dismiss Plaintiffs’ claims under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). *See* ECF Nos. 28, 66. With respect to Counts I, II, and III of Plaintiffs’ Amended Complaint, ECF No. 54, Federal Defendants

maintain that the Court lacks subject matter jurisdiction because Plaintiffs neither identified a “final agency action” nor a discrete action that the agency was required to take. *See* ECF No. 66 at 10-28. As explained above, the “broad authority that the [All Writs] Act invests in the federal courts to utilize traditional equitable tools is not unlimited.” *Burr & Forman v. Blair*, 470 F.3d 1019, 1027 (11th Cir. 2006). The All Writs Act “does not create subject matter jurisdiction for courts where such jurisdiction would otherwise be lacking.” *Id.* (citing *Henson v. Ciba-Geigy Corp.*, 261 F.3d 1065 (11th Cir. 2001)). The Court should first address Federal Defendants’ pending motions to dismiss for lack of subject matter jurisdiction prior to deciding the instant motion for emergency injunctive relief. If the Court finds that it lacks subject matter jurisdiction over Plaintiffs’ Administrative Procedure Act (“APA”) claims, it cannot issue an injunction under the All Writs Act. *See Joon LLC v. Walsh*, 2022 WL 1416743, at *8 (M.D. Al. May 4, 2022) (dismissing petition where Plaintiff failed to identify an independent basis for jurisdiction).

Plaintiffs’ only remaining claim against Federal Defendants¹ is for an alleged violation of the Endangered Species Act (“ESA”) relating to the loggerhead turtle and the piping plover. Federal Defendants previously explained why Plaintiffs fail to state a claim upon which relief can be granted. The Court

¹ Plaintiffs represented that they would move to withdraw their state-law based claims (for which the United States has not waived sovereign immunity, *see* ECF No. 66 at 28-29) against the Federal Defendants. *See* ECF No. 73 at 23.

should address Federal Defendants' pending motion to dismiss, which may result in there being no proceeding or action remaining for which the Court could exercise its All Writs Act authority.

However, even if the Court did find that it had jurisdiction over Plaintiffs' APA claims, or that Plaintiffs sufficiently stated an ESA claim against Federal Defendants, Plaintiffs have not identified any threat to the current proceeding for which the Court must exercise the extraordinary authority under the All Writs Act. The "power to issue writs under the All Writs Act is limited to situations where the court must act to protect its own jurisdiction." *Mountain Valley Pipeline, LLC v. 4.72 Acres of Land, Owned by Vest*, 529 F. Supp. 3d 563, 567 (W.D. Va. 2021) (citing *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008) (All Writs Act authorizes a court to "counter . . . threat[s] and to protect its jurisdiction)).² There is no other proceeding or action threatening the Court's ability to decide the issues in the current proceeding. See *In re Managed Care Litigation*, 236 F.Supp.2d 1336, 1341 (2002) ("Under the All Writs Act, an injunction requires a threat to the

² The Eleventh Circuit has provided examples of the types of situations in which a non-appellate court may exercise its power under the Act: (1) in an effort to "manage a case to judgment," orders that aid in conducting factual inquiries or permit interrogatories in habeas corpus proceedings; (2) protecting property that is the subject of an *in rem* proceeding by enjoining other proceedings regarding the same property; or (3) an order prohibiting disruption of a segregated school's operation in an effort to protect a final judgment desegregating the school. *Rohe*, 988 F.3d at 1266-67.

jurisdiction of the court, not just to the plaintiff’s continuing interest in prosecuting his lawsuit”) (internal quotation marks and citation omitted).

The purpose for which Plaintiffs seek injunctive relief relates (if at all) to their cause of action,³ and not to some threat to the court’s jurisdiction. *See* Dimitri D. Portnoi, *Resorting to Extraordinary Writs: How the All Writs Act Rises to Fill the Gaps in the Rights of Enemy Combatants*, 83 N.Y.U. L. Rev. 293, 300 (Apr. 2008) (discussing the Eleventh Circuit decision in *Klay v. United Healthgroup, Inc.*, and explaining that the “key difference between an [All Writs Act] injunction and a traditional injunction is the purpose for which it is issued. A traditional injunction issues to protect an individual; an [All Writs Act] injunction issues to protect the integrity of court orders or proceedings”).

Plaintiffs are seeking a traditional injunction under the guise of an All Writs Act injunction. The relief Plaintiffs seek is available, at least in theory, under Fed. R. Civ. P. 65. Because adequate remedies at law exist, injunctive relief under the All Writs Act is not available. *See Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1229 (11th Cir. 2005). Plaintiffs have not moved for any preliminary injunctive relief here in the nearly 18 months since first filing this case. Even if Plaintiffs had done so, as explained in Federal Defendants’ motions to dismiss,

³ Although, only to the causes of action directed to the State Defendants.

Plaintiffs are unlikely to succeed on the merits and thus could not satisfy the requirements for traditional injunctive relief.

III. CONCLUSION

This Court's authority under the All Writs Act "is to be used sparingly and only in the most critical and exigent circumstances." *Wisconsin Right to Life*, 542 U.S. at 1306 (internal quotation marks and citation omitted). This case does not present those circumstances. Accordingly, the Court should deny Plaintiffs' motion for emergency injunctive relief

Federal Defendants prepared this submission in accordance with the font and point selections approved in Local Rule 5.1(C).

Dated: August 30, 2024

Respectfully Submitted,

TODD KIM
Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

/s/ Frances B. Morris

FRANCES B. MORRIS (DC Bar No. 1016833)

Senior Trial Attorney

Natural Resources Section

ERIKA FURLONG (PA Bar No. 319350)

Wildlife & Marine Resources Section

Trial Attorney

150 M Street NE

Washington, DC 20002

Tel: (202)514-2855

Fax: (202)305-0506

Frances.morris@usdoj.gov

Erika.furlong@usdoj.gov

Attorneys for Federal Defendants