

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

**HORSES OF CUMBERLAND ISLAND,)
THE GEORGIA EQUINE RESCUE LEAGUE, LTD,)
THE GEORGIA HORSE COUNCIL, INC.,)
WILL HARLAN, AND CAROL RUCKDESCHEL)**

PLAINTIFFS,)

v.)

CIVIL ACTION

File No.

1:23-cv-01592-SEG

**HON. DEB HAALAND, in her official capacity as)
SECRETARY OF THE INTERIOR, et al.)**

DEFENDANTS.)

**PLAINTIFFS’ BRIEF IN SUPPORT OF EMERGENCY MOTION
FOR INTERMEDIATE EQUITABLE RELIEF**

Plaintiff, the horses of Cumberland, is suffering unnecessary hardship and death from attempting to survive in the harsh environment of Cumberland Island. Because this situation has become dire, Plaintiffs ask the Court to exercise its extensive equitable powers under the All Writs Act and the inherent powers doctrine to bring the horses reasonable interim relief in the form of supplemental water and forage.

I. PROCEDURAL HISTORY

On or about April 12, 2023, Plaintiffs filed their initial Complaint against both federal and state defendants (collectively “defendants” or “Defendants”),

seeking to stop the free ranging of the feral horses on Cumberland Island and within the Cumberland Island National Seashore. ECF No. 1. Subsequently, Defendants filed motions to dismiss, primarily challenging the Court's jurisdiction to hear the case. ECF Nos. 13, 28, and 35. The parties thoroughly briefed these motions and argued before the Court on December 19, 2023. On February 23, 2024, Plaintiffs filed the newly Amended and Restated Complaint as ordered by the Court. ECF Nos. 53, and 54. Defendants again moved to dismiss. ECF Nos. 66, 67, and 68. All briefing concluded on Defendants' motions to dismiss on or about May 20, 2024, the matter now resting with the Court.

II. INTERVENING EVENTS.

The horses of Cumberland are struggling in an environment inhospitable to their ability to live. The following events have rendered this situation more chronic and threatening, compelling Plaintiffs to seek this emergency measure moving the Court to render complete justice through the provision of interim forage and water to the horses.

Climate change/extreme heat and drought. The weather on Cumberland Island has been hotter and drier than normal so far in 2024. Ruckdeschel Affidavit (Aff.), attached hereto as Exhibit A, at ¶ 10. According to the National Oceanographic and Atmospheric Agency's (NOAA) National Integrated Drought Information System, June was the second driest June on record over the past 130 years in Camden County (the location of Cumberland Island), having a shortfall of 3.41 inches below normal rainfall. As a result of both the heat and the shortage of rainfall, the normal sources of freshwater (seeps, the interdune wetlands and

ponds) were depleted if not completely dry. While recent rains have helped this situation, the situation remains critical. The horses are having to travel further and work harder to acquire the fresh water vital to their health and survival.

NPS's enforcement measure against Plaintiff Ruckdeschel of May 15, 2024.

Defendant NPS, new Superintendent Trenchik, sent a letter dated May 15, 2024 through counsel for Plaintiff Carol Ruckdeschel formally warning Ruckdeschel of her violation of federal law relating to the protection of wildlife. *Trenchik letter* attached hereto as Exhibit B. NPS alleged Ruckdeschel had violated such laws by allegedly relocating a gopher tortoise to prevent it from being harmed from impending mowing scheduled by the NPS. NPS further directed Ruckdeschel was not to “touch, move, harass, or manipulate ANY wildlife on Cumberland Island National Seashore, to include the tidal areas of the island and the beach” subject to being prosecuted in a court of law.” *Trenchik letter*. NPS’s unwarranted enforcement measure against Plaintiff Ruckdeschel has chilled Ruckdeschel’s legendary willingness and ability to study and care for the island’s wildlife, including the horses. Ruckdeschel Aff., Exh. A at ¶ 7. Despite Superintendent Trenchik’s offer to explain the parameters of the warning, she has twice refused requests from Ruckdeschel’s counsel to provide the necessary contact information, conditions, and process Ms. Ruckdeschel is to follow should she find “wildlife” in need of attention on the island. Defendant NPS’s threatening letter to Plaintiff Ruckdeschel is preventing possible care to the horses of Cumberland.

Horse Deaths. June 1, 2024 (approx.). On information and belief, at least two horses, one a foal, inexplicably die. The horses’ bodies are believed hidden by NPS. It is believed other horses are dying.

Foal with Neck Injury. June 3, 2024. Plaintiffs’ counsel received video of a small foal showing flesh injury at neck covered with maggots. *Id.* at ¶ 17.

The fatal virus, Eastern equine encephalitis (EEE), is detected in three south Georgia counties in June, 2024. As of July 1, 2024, three cases of Eastern equine encephalitis (EEE) had been reported to the Georgia Department of Public Health and confirmed in horses in Berrien, Lowndes, and Irwin County, Georgia.¹ These are the first confirmed cases of EEE in Georgia this year. Wild birds are a natural reservoir of EEE. Mosquitoes that feed on EEE-infected birds can transmit the

¹ See. <https://www.walb.com/2024/07/02/3-cases-eee-detected-across-south-georgia/>

virus to humans, horses, and other birds. While horses with the EEE virus are not contagious to other animals or humans, the EEE virus is generally considered fatal and for that reason EEE is regarded as one of the most serious mosquito-borne diseases in the United States. Affidavit of Gloria Bell, attached hereto as Exhibit C, ¶ 17.

There have been incidents of EEE or equine infectious anemia (EIA) on Cumberland which have killed numerous horses. Aff. Ruckdeschel, Exh A at ¶ 18. Neither NPS nor the State of Georgia tests the horses for any contagious viruses or diseases including EEE or EIA. Aff. Ruckdeschel, Exh A at ¶19 ; Aff. Bell, Exh C at ¶17. The recent reported incidents of EEE in South Georgia threaten the horse herd on Cumberland, especially given the Defendants' lack of care for the horses and the non-existent control of mosquitoes on the island.

United States Supreme Court rulings likely to delay relief to the horses.

June 28, 2024; *Loper Bright Enterprises v. Raimondo*, No. 22-451, 603 U.S. ____ (2024); the United States Supreme Court rules the Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, is overruled.

July 1, 2024; *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*, No. 22-1008, 603 U.S. ____ (2024); the United States Supreme Court rules an Administrative Procedures Act claim does not accrue for purposes of 28 U. S. C. §2401(a) — the default 6-year statute of limitations applicable to suits against the United States — until the plaintiff is injured by final agency action.

The United State Supreme Court's rulings in *Loper* and *Corner Post* are likely to impede this Court's ruling on the current motions to dismiss as well as the administration of the case to a final resolution. It is not unreasonable to conclude these rulings will result in an increased workload for the Court as litigants (and the Court) struggle to determine and apply the meaning and reach of these rulings. Generally, an increase in appeals based on these rulings is also likely. The takeaway for this case is these Supreme Court rulings threaten to delay this Court granting relief to the horses - relief the horses need.

III. FACTUAL BACKGROUND

Cumberland Island.

The Cumberland Island National Seashore (CUIS) lies within the Environmental Protection Agency's (EPA) Southern Coastal Plain Level III Ecoregion. The Southern Coastal Plain is a diverse ecoregion that includes coastal marshes, lagoons, barrier islands, and swampy lowlands along the Atlantic and Gulf coasts. Natural Resource Condition Assessment: Cumberland Island National Seashore²; p. 8. Cited hereafter as "*NRCA-CUIS*".

The water resources on Cumberland Island originate from the precipitation that falls on the island. As an island, CUIS should not be thought of as part of a larger "watershed". Rainfall which falls on the island remains as either surface water/shallow groundwater or flows into the ocean. "Since rainwater is the only natural replenishing source of freshwater on the island, the water table fluctuates considerably, as seen in the changes in water levels of the many temporary ponds and sloughs." Ruckdeschel, Carol, A Natural History of Cumberland Island, Georgia; Mercer University Press, 2017; p. 11. Freshwater is ephemeral on barrier islands. As such, freshwater has the potential to be "the critical limiting

² Full Cite: Natural Resource Condition Assessment: Cumberland Island National Seashore; Natural Resource Report NPS/CUIS/NRR—2018/1773; Kathy Allen, Andy J. Nadeau, Andy Robertson; GeoSpatial Services; Saint Mary's University of Minnesota, 890 Prairie Island Road, Winona, Minnesota 55987. Cited hereafter as "*NRCA-CUIS*".

resource” on barrier islands, especially in times of drought or extreme heat conditions. *Id.*; NRCA-CUIS at p. 70.

There are several natural drains on the island. The Whitney/South Cut outflow and the Lake Retta outflow drain portions of the east side of the island, specifically the 300-acre Sweetwater Lake Complex comprising a series of linked interdunal wetland complexes. Several creek outflows drain to the west side of the island together with the remnants of canals and levees constructed to drain historical agricultural fields. *NRCA-CUIS* at p. 70. See also. *NRCA-CUIS*; Part 4. Natural Resource Conditions, Water Quality (Freshwater), pp.180-192;(freshwater on the island is not only limited but transient, varying from year to year and seasonally). Ruckdeschel, in discussing the island’s precipitation and its impact on available surface water, notes “major fluctuations of surface water characterize the Georgia barrier islands and are an important aspect of the ecology.” Ruckdeschel, *A Natural History of Cumberland Island* at 18.

Cumberland Island can be viewed as divided into two land types: coastal lowlands (beaches, salt marshes) and uplands (dunes, forests). As highlighted in *NRCA-CUIS*, “[t]he eastern coast of the island is dominated by flat, sandy beaches, while the western lowlands consist primarily of salt marshes and mud flats intersected by tidal creeks. The salt marshes provide valuable breeding and nursery

habitat for a variety of wildlife and important feeding grounds for game and fish species from neighboring estuarine areas.” Cite omitted. *Id.* at pp. 9,10. The uplands of Cumberland Island are dominated by one of the largest intact maritime forests on the Eastern Seaboard. The dominant upland species is the live oak, whose trunks and branches are covered in Spanish moss and polypody ferns (Resurrection ferns). The uplands also contain vast areas of dense saw palmetto thickets beneath the forest understory; multiple species of vines and thorns render many areas of the upland almost impenetrable. The beaches to the east are backed by extensive secondary dune systems with some dunes reaching 50 feet in height. These massive dunes systems transition into the upland maritime forest system. *Id.* Many of the previously cleared and disturbed upland areas, including those areas previously kept “cleared” by the island’s free ranging cattle, have transitioned to habitats which are non- conducive to horses. The forested areas have become thicker and more heavily vegetated. Many of the island’s “field” areas are being reclaimed by young live oaks, providing less forage for the horses. Aff. Ruckdeschel, Exh A at ¶11.

Horses of Cumberland Island

Origin

The horses of Cumberland number between 100 and 130 animals. The current number of horses on the island is unknown as NPS ceased conducting the

annual horse census many years ago. According to the NPS's own web page,³ the horses on Cumberland descended from modern breeds, not from any original horses brought to the island by Spanish explorers in the 17th Century. See also. Ruckdeschel, A Natural History of Cumberland Island at p. 278. Throughout the early 1900's and until the park was established in 1972, the Carnegies and other island residents brought horses to the island. Some were stabled while others were free ranged; eventually all the horses on the island became feral and were free ranged. In fact, in 1921, the Carnegies arranged to have a carload of mustangs delivered by the Seaboard Airline Railway Company from Globe, Arizona to Fernandina, Florida; they were barged to Cumberland Island and released as free range feral horses. Ruckdeschel, A Natural History of Cumberland Island at p. 277. *NPS* at footnote 3. These horses are the genetic foundation of today's Cumberland Island herd.

Management

Today, the horses of Cumberland are the only herd of feral horses (also considered by NPS as non-native animals) on the Atlantic Coast which are not managed – receiving no water, food, vet care, or birth control. “The herd is [adversely] affected by all the natural stressors faced by native wildlife.” *NPS* at

³ See. <https://www.nps.gov/cuis/learn/nature/feral-horses.htm>, hereinafter referred to as “*NPS* at footnote 3”.

footnote 3. No management plan exists for the island’s horses as “public and visitor sentiment, combined with political factors, have made the species nearly impossible to actively manage on the island (i.e., remove or reduce the herd size). *NRCA-CUIS* at p. 127. NPS has refused to manage the horses despite the NPS’s own recognition that “as long as the population is left unmanaged” the horses will continue to have a significant adverse “impact on the CUIS ecosystem”; “represent a threat to many native communities (e.g., freshwater wetlands, salt marshes, shore-nesting birds)”; and “compete[] with native wildlife for resources” *NRCA-CUIS*, pp. 127, 242.

Horses of Cumberland are in Poor Health.

Because these horses are left unassisted to overcome “the natural stressors” of Cumberland Island, the horses’ life span is necessarily shortened to “as long as 9 to 10 years. Causes of mortality include high parasite loads, drought-related stress, age, natural accidents, and suspected eastern equine encephalitis and West Nile virus.” *NPS* at footnote 3. Many of the horses on Cumberland do not live past 9 years, much less reach the age of 30 plus years of an average domestic horse. Affidavit of Patty Livingston attached as Exhibit D at ¶¶11; Affidavit of Jessica Howell-Edwards attached as Exhibit E.

There is no disputing the horses of Cumberland are in poor health and suffering from the multiple hardships attendant to being an ecological stranger in a barrier island ecosystem.

These hardships include:

- 1) Limited freshwater supplies especially during times of high heat and drought.



- 2) Insufficient forage including lack of appropriate essential minerals, vitamins, and nutrition.



3) Parasite loading, and large populations of ticks and mosquitoes serving as vectors for disease.



and 4) direct injuries and death to the horses caused by snake bite, entanglement or impalement in forest vegetation, broken limbs, hoof disease or damage, cacti, drowning, or territorial in-fighting.



The Elements Critical to Horse Health

Following is a brief overview of four of the elements or factors deemed most critical to the overall well-being of the horses on Cumberland Island: 1) freshwater; 2) adequate forage and nutrition; 3) management of parasites, insects, and disease loading; and 4) minimizing injury⁴. This list is not meant to be all inclusive as there are certainly other factors which contribute to the total health and welfare of horses.

Water.

Normally, a horse will consume between 8 and 10 gallons of freshwater per day. However, this amount can range between 5 gallons and 15 gallons depending upon the horse's level of activity, the heat level, and whether the horse is lactating. A lactating mare needs from two to three times as much freshwater as a non-

⁴ All these elements are influenced by what some have labeled the hierarchal structure of the wild horse herd. Under this structure, the horse herd is organized into smaller groups of horses controlled most often by a dominant stallion. The wellbeing of each group (sometimes referred to as "harems"), and in turn the herd, is determined through the leadership and order established by the dominant horses of each smaller group. For example, the dominant stallion establishes what his smaller herd or group values and where—food, water, shade, and shelter.

In the case of the horses of Cumberland, this social structure could very well serve to ration the island's resources as between the various smaller horse herds with the groups led by the more dominate stallions accessing the better resources. As resources are already generally limited on Cumberland Island, this social structure likely prevents many horses from gaining access to the food and water they need. This dynamic becomes more acute with the increase in environmental stress and the greater number of horses on the island.

lactating horse. Ralston, Sarah L., VMD, PhD, DACVN; *Nutritional Requirements of Horses and other Equids, Professional Version*; Merck Vet Manual; Reviewed and Revised January 2021.⁵ A horse's demand for water will increase if a horse must range a larger area to obtain the necessary forage to sustain itself. Compared to freshwater, for example, brackish water, as is common throughout Cumberland Island, can cause dehydration and directly interfere with the proper functioning of the horse's digestion system and nutrient uptake.

As discussed above, the sources of freshwater on Cumberland Island are limited and transient. During periods of drought and extensive heat, many sources of freshwater dry up, or are marginalized, causing additional stress and hardship among the horse herd. Increasing the overall availability of clean freshwater at multiple sites spaced throughout the island will improve the overall health and wellbeing of the horse herd on Cumberland. Aff. Bell, Exh C at ¶19; Affidavit of Patty Livingston attached as Exhibit D at ¶¶13, 20.

Nutrition (Forage/Minerals/vitamins).

⁵ For a link to the article see <https://www.merckvetmanual.com/management-and-nutrition/nutrition-horses/nutritional-requirements-of-horses-and-other-equids>; cited hereafter as "Merck Vet Manual at fn. 4".

Forages such as pasture/range grasses and legumes, preserved hays, and other forage-based feeds can serve equines as the major or sole sources of nutrition due to fermentation in the horse's digestive tract.

A good source of roughage should constitute at least 50% of the horse's total daily intake by dry-matter weight, with horses receiving at least 1.5% to 2% of their body weight in forages daily measured on a dry-matter basis. The overall daily dry matter intake of equines should be 2.5% to 3% of body weight. See *Merck Vet Manual*. Compare. *NPS* at footnote 2 (“The horse herd on Cumberland likely consumes between 200 to 400 tons of vegetation each year, removing up to 98% of it in areas they frequent.”). The overall availability and quality of the forage on Cumberland Island is not sufficient to meet the horses' nutritional requirements. The forage on Cumberland is generally of low nutritional value, tending more towards what is commonly thought of as roughage. This helps explain the horses' overall malnourished condition as well as their heaving grazing activity. Cumberland Island's insufficiency of forage resources is made worse by the fact the NPS provides no supplemental forage or nutrition to the horses. Aff. Ruckdeschel, Exh A at ¶¶10,11; Aff. Bell, Exh C at ¶¶14,15; Aff. Livingston, Exh D at ¶¶ 15,16.

The total mineral contribution and availability from all parts of the horse's daily diet (forages and roughages, concentrates, supplements, and even water,

which can be high in iron and other minerals) should be considered when evaluating mineral intake and horse health. Minerals are a key component of a horse's diet and essential to a horse's health. For example, selenium is an essential mineral which is generally absent along the Atlantic seaboard, especially in the south. Likewise, horses feeding on low quality forages without access to fresh grazing on grasses and legumes may be at risk of deficient vitamin intake. *Merck Vet Manual* at fn. 4. Because Cumberland Island provides poor quality forage for the horses of Cumberland, the health of the horses is adversely affected by lack of mineral and vitamins. Aff. Bell, Exh C at ¶¶12,14,16; Aff. Livingston, Exh D at ¶¶ 15,17. The horses' health can be improved by reasonably supplementing the horses' daily diet through mineral blocks providing the necessary minerals and vitamins. Aff. Bell, Exh C at ¶¶16, 19; Aff. Livingston Exh D at ¶¶17, 20.

Parasites/insects/disease loading.

There are many blood sucking insects on Cumberland Island including multiple species of ticks, mosquitoes, and biting flies; and tabanids (horse and deer flies). These insects can transmit various diseases and viruses from other animals to both horses and humans.

One such virus is equine infectious anemia (EIA). Biting flies and tabanids (horse and deer flies), both prevalent on Cumberland, are considered the most significant transmitters of EIA.

Horses with equine infectious anemia (EIA) are most often asymptomatic carriers—showing no signs or symptoms—which is one of the reasons testing is so important. The State of Georgia requires the owner of a horse to obtain a negative Coggins test (the name given to the test for EIA), showing the absence of equine infectious anemia (EIA) prior to transporting any horse intrastate or bringing any horse into the state. Ga. Rule 40-13-2-.12 Equine. Horses positive for EIA are lifelong carriers and pose a risk to any other horse they may be around. Therefore, EIA carriers must either be permanently quarantined and kept at least 200 yards away from other horses or euthanized.

Eastern equine encephalitis (EEE) is another virus of concern to the health of horses. Wild birds are a natural reservoir of EEE. Mosquitoes that feed on EEE-infected birds can transmit the virus to humans, horses, and other birds. While horses with the EEE virus are not contagious to other animals or humans, the EEE virus is generally considered fatal and for that reason EEE is regarded as one of the most serious mosquito-borne diseases in the United States.

Despite the prevalence of virus transmitting blood sucking insects on Cumberland Island and the threat they pose to transmitting the EEE and EIA viruses to both horses and humans, neither the State of Georgia nor the NPS tests for the existence of these viruses or acts to prevent these viruses from infecting the horses of Cumberland or other horses. Aff. Ruckdeschel, Exh A at ¶19; Aff. Bell, Exh C at ¶17; Aff. Livingston, Exh D at ¶ 19.

Injury

A direct threat to the horses' health is direct injury to the horse. Cumberland Island is a beautiful but harsh environment. As a group, the horses face certain injury, suffering, and death by multiple sources including snake bite, drowning, entanglement or impalement by forest vegetation, cacti, hoof disease or damage, and territorial in-fighting.

To summarize and simplify: the horses are non-native to Cumberland Island and are suffering horribly because of it.

IV. ARGUMENT AND CITATION OF AUTHORITIES.

Plaintiffs seek interim injunctive relief under the Court's inherent equitable powers and the All Writs Act to alleviate the inhumane living conditions of the

plaintiff horses of Cumberland. The relief Plaintiffs seek is not only essential to doing complete justice but also is necessary for the Court's final resolution of the issues before it in a manner which is just and equitable.

Plaintiffs seek an injunction under 28 U.S.C. § 1651(a), the All Writs Act, which states, "The 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." "The Act does not create any substantive federal jurisdiction. [Citation and quotation omitted]. Instead, it is a codification of the federal courts' traditional, inherent power to protect the jurisdiction they already have, derived from some other source." Citation and quotation omitted. *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099 (11th Cir. 2004). "Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Procup v. Strickland*, 792 F.2d 1069, 1074 (11th Cir.1986) (en banc).

A writ is appropriately granted by the court under the Act whenever it is "calculated in [the court's] sound judgment to achieve the ends of justice entrusted to it," and not only when it is "'necessary' in the sense that the court could not otherwise physically discharge its ... duties." *Klay*, 376 F.3d at 1100 (quoting

Adams v. United States, 317 U.S. 269, 273, 63 S.Ct. 236, 239, 87 L.Ed. 268 (1942)).

As noted by the Court in *Klay*, "[t]he All Writs Act is a residual source of authority to issue writs that are not otherwise covered by statute. Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling." *Pennsylvania Bureau of Corr. v. United States Marshals Serv.*, 474 U.S. 34, 43, 106 S.Ct. 355, 361, 88 L.Ed.2d 189 (1985); *see also Clinton v. Goldsmith*, 526 U.S. 529, 537, 119 S.Ct. 1538, 1543, 143 L.Ed.2d 720 (1999) (holding that an injunction under the All Writs Act is an extraordinary remedy that "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")." *Id.*

"The Act is necessary because federal courts, being courts of limited jurisdiction, would not otherwise possess the tools necessary to implement their jurisdictional grants." *ITT Community Development Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978). "The All Writs Act also empowers a federal court to employ procedures necessary to promote the resolution of issues in a case properly before it." *Id.*

“The requirements for a traditional injunction do not apply to injunctions under the All Writs Act because a court's traditional power to protect its jurisdiction, codified by the Act, is grounded in entirely separate concerns.” *Klay*, 376 F.3d at 1100 (citing *United States v. New York Tel. Co.*, 434 U.S. 159, 174, 98 S. Ct. 364, 54 L.Ed.2d 376 (1977))⁶. All a party must do to be able to apply for a writ under the All Writs Act is simply 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.*

In pending proceedings, the Act allows a court “to enjoin almost any conduct which, left unchecked, would have the practical effect of diminishing the court's power to bring the litigation to a natural conclusion or to compel acts necessary to promote the resolution of issues in a case properly before it or facilitate the court's effort to manage the case to judgment.” Cleaned up. *Id.* at

⁶ Indeed, the Court in *Klay* noting specifically “a good number of cases in which we have approved the grant of writs under the Act, it is unclear how those traditional standards would even be applicable.” *Klay*, 376 F.3d at 1102. The Court listing numerous cases in which the traditional standards simply could not be applied.

1102 (quoting *ITT Community Develop. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir.1978)⁷).

As with the All Writs Act, the “inherent powers doctrine provide[s] a federal court with various common law equity devices to be used incidental to the authority conferred on the court by rule or statute.” *Barton*, 569 F.2d at 1359.

The inherent powers doctrine “is rooted in the notion that a federal court, sitting in equity, possesses all of the common law equity tools of a Chancery Court (subject, of course, to congressional limitation) to process litigation to a just and equitable conclusion.” Cite omitted. *Id.*

The United States Supreme Court acknowledged and affirmed the extensiveness of the District Court’s equitable powers in *Porter v. Warner Holding Co*, 328 U.S. 395, 66 S. Ct. 1086, 90 L.Ed. 1332 (1946):

Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction. And since the public interest is involved in a proceeding of this nature, those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake. . . .

. . . In addition, the court may go beyond the matters immediately underlying its equitable jurisdiction and decide whatever other issues and

⁷ All decisions of the former Fifth Circuit handed down prior to October 1, 1981, are binding precedent in the 11th Circuit, *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc).

give whatever other relief may be necessary under the circumstances. Only in that way can equity do complete rather than truncated justice. . . .

. . . Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.'

Cites omitted. Id. at 398. See also. *F.T.C. v. Gem Merchandising Corp.*, 87 F.3d 466, 469 (11th Cir. 1996) (“As Porter makes plain, absent a clear command to the contrary, the district court's equitable powers are extensive.”).

Applying the above law to the facts of this case leads to the inescapable conclusion the Court should immediately exercise the “proper and complete” range of its equitable powers to “secure complete justice” by relieving the death and suffering of the horses by ordering the supplementation of the horses’ supplies of freshwater and forage until further relief is provided by the Court. *Id.* See also. *Klay*, 376 F.3d at 1100.

In the current proceeding the Plaintiffs challenge the Defendants free ranging the horses of Cumberland throughout the entirety of the island. Plaintiffs allege the free ranging of the horses 1) is impairing the Seashore’s natural, wildlife and wilderness resources and 2) is forcing the horses to endure inhumane living conditions ending in premature death. Plaintiffs petition the Court to exercise its equitable powers to protect the Seashore’s invaluable natural and wildlife

resources by removing the horses from the island over time and by a means which is both practical and most humane to the horses.

The humane treatment of horses is an issue at the core of these proceedings. The very principles of equity and the pursuit of justice which these proceedings are meant to advance would be subverted should the Plaintiffs and/or this Court accept any amount of suffering and death of the plaintiff horses during the pendency of these proceedings. This is especially true given that reasonable measures can be taken to reduce the amount of suffering and death.

Furthermore, given the issue(s) in this case – the welfare of the horses together with the safekeeping of the public’s natural resources – is of such direct public interest and import, the Court is fully justified (if not compelled out of a sense of good conscience and fair dealing) to grant whatever equitable relief it determines appropriate to advance the ends of justice. *Porter*, 328 U.S. at 398.

The Court is authorized, right, and just to order Defendants to immediately undertake the following to the benefit and relief of the plaintiff horses:

- i. Supplement the supplies of freshwater assuring a separate source of freshwater for each individual group of horses throughout the island.

- ii. Provide mineral blocks to increase the nutrition received by the horses in approximately the same sectors associated with each individual group of horses.
- iii. Provide supplemental hay during the winter months of October through March when forage materials are limited. The supplemental hay should be staged at roughly the same locations as the mineral blocks.
- iv. The above measures should remain in place until final relief is granted in this case.

Dated this 23rd day of August 2024.

This submission has been prepared in accordance with the font and point selections approved in LR 5.1(b).

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CERTIFICATE OF SERVICE

A copy of this Motion was served upon the parties by the Court's electronic filing system.

/s/ Howell Franklin Wright
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