

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES ASSOCIATION OF REPTILE KEEPERS, INC., <i>et al.</i>)	
)	
Plaintiffs,)	
)	
v.)	Civ. No. 1:13-cv-02007-RDM
)	
THE HONORABLE)	
SALLY JEWELL, <i>et al.</i>)	
)	
Defendants.)	
)	

**PLAINTIFFS’ APPLICATION FOR TEMPORARY RESTRAINING
ORDER AND MOTION FOR RELIEF PENDING REVIEW**

Plaintiffs United States Association of Reptile Keepers, Inc. (“USARK”), Caroline Seitz, Dr. Raul Diaz, Benjamin Renick, and Matthew Edmonds (collectively, “Plaintiffs”), by and through their attorneys, respectfully move this Court to enter a temporary restraining order and to grant injunctive relief pending review pursuant to Rule 65 of the Federal Rules of Civil Procedure, Local Civil Rule 65.1(a), (c), and Section 705 of the Administrative Procedure Act (“APA”), 5 U.S.C. § 705.¹ Specifically, Plaintiffs seek to enjoin Defendants’ – the Secretary of the Interior, the Honorable Sally Jewell, and the U.S. Fish and Wildlife Service – implementation of the final rule entitled *Injurious Wildlife Species; Listing Three Anaconda Species and One Python Species as Injurious Reptiles*, 80 Fed. Reg. 12702, 12702 (Mar. 15, 2015), on its scheduled effective date of April 9, 2015. Plaintiffs have conferred with Defendants’ counsel

¹ While Plaintiffs are seeking a temporary restraining order (“TRO”), they are providing notice of this application to Defendants, who have entered an appearance in this case. Plaintiffs have sought a TRO because it is not clear that preliminary injunction proceedings could be completed prior to the April 9, 2015, effective date of the rule at issue. If Plaintiffs’ application can be briefed, heard and decided as a motion for relief pending review within that time frame, we would respectfully ask the Court to treat this as an application for preliminary injunctive relief.

pursuant to LCvR 7(m). Defendants opposed this Motion. Defendants have received actual notice of the time Plaintiffs made this application through the Court's electronic case filing system, as well as copies of all pleadings and papers filed in the action to date. *See* LCvR 56.1(a)(1).

As explained in greater detail in the accompanying Memorandum of Points and Authorities in Support of this Application and Motion, Plaintiffs will suffer irreparable harm if the rule at issue becomes effective on April 9, 2015, and remains in effect while this matter is being litigated. Without a temporary restraining order and relief pending review, a number of small businesses will be forced to cease operations due to the prohibitive costs of sustaining large inventories of reticulated pythons and green anacondas, the interstate sale of which Defendants' rule prohibits. For this same reason, thousands of constricting snakes will be euthanized and, in some instances, rare genotypic and phenotypic variations will be lost. Breeders and pet owners of the species subject to the rule that are forced by circumstances to euthanize their animals will suffer emotional harm. Owners of the species subject to the March 10, 2015 rule will also be prohibited from traveling among continental states with their snakes. As a result, some of these owners will not be able to seek emergency medical attention for their pets and others will not be able avail themselves of opportunities for career advancement except at the price of divesting themselves of beloved and valuable snakes.

Plaintiffs are also likely to succeed on the merits of Counts One, Two, and Six of their Second Amended Complaint.² Counts One and Two involve straightforward matters of statutory

² Plaintiffs select these Counts to argue in this Application because these can be decided without an administrative record. Counts Three and Four arise under the National Environmental Policy Act, 42 U.S.C. §§ 4321-4370e, and Count Five under the Lacey Act and the APA. Plaintiffs are likely to succeed on these counts as well, but each relies on a detailed review of the record which heretofore has not been produced.

interpretation. The attached Memorandum of Points and Authorities demonstrates that Defendants have exceeded their authority under the Lacey Act, 18 U.S.C. § 42, by purporting to ban transportation and commerce in the listed species between and among the continental states. The statutory interpretation Defendants have applied in the March 10, 2015, rule (as with the January 23, 2012, rule also at issue in this case), is not only contrary to the Lacey Act's plain terms, but also to Defendants' own prior understanding of the law. Plaintiffs are likely to succeed on Count Six, with involves allegations that Defendants failed to meet their duties under the Regulatory Flexibility Act, 5 U.S.C. Chapt. 6, because, among other reasons, they failed to adhere to the law's procedural requirements.

For the reasons stated above and, in greater detail, in the accompanying Memorandum of Points and Authorities, Plaintiffs respectfully request that this Court grant its application for a temporary restraining order and relief pending review.

Dated: April 1, 2015

Respectfully submitted,

/s/ Shaun M. Gehan

Shaun M. Gehan

D.C. Bar No. 483720

THE LAW OFFICE OF SHAUN M. GEHAN

3050 K Street, N.W. – Suite 400

Washington, D.C. 20007

Telephone: (202) 342-8400

Facsimile: (202) 342-8451

David E. Frulla

D.C. Bar No. 414170

Paul C. Rosenthal

D.C. Bar No. 235242

KELLEY DRYE & WARREN LLP

3050 K Street, N.W. – Suite 400

Washington, D.C. 20007

Telephone: (202) 342-8400

Facsimile: (202) 342-8451

Attorneys for Plaintiffs