No. ______

In the

Supreme Court of the United States

KYLE RAY HURST, Personal Representative of the Estate of Andrew James Hurst and on Behalf of the Estate of Andrew James Hurst Deceased and the Statutory Wrongful Death Survivor of Andrew James Hurst,

Petitioner,

v.

UNITED STATES OF AMERICA, Tony Lourey, Acting by and Through the Department of Agriculture US Forest Service,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Eleventh Circuit wrongfully absolved Respondent of liability when it determined that Moore Lake was not an "area" where a fee was charged, or a part of an area used for commercial purposes.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this Court are as follows:

Kyle Ray Hurst, Personal Representative of the Estate of Andrew James Hurst and on Behalf of the Estate of Andrew James Hurst Deceased and the Statutory Wrongful Death Survivor of Andrew James Hurst, Petitioner.

United States of America, Tony Lourey, Acting by and Through the Department of Agriculture US Forest Service, Respondent.

LIST OF PROCEEDINGS

ELEVENTH CIRCUIT COURT OF APPEALS
Docket No. 18-12574
KYLE RAY HURST, *et al. v.* UNITED STATES OF AMERICA.
Case No. 4:17-cv-00025-RH-CAS
Judgment dated 8/13/19 District Court AFFIRMED;

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA – TALLAHASSEE
Case No. 4:17-cv-00025-RH-CAS
KYLE RAY HURST, *et al. v.* UNITED STATES OF AMERICA.
Judgment dated 5/30/18 Government motion to dismiss for lack of subject-matter jurisdiction or alternatively for summary judgment are GRANTED.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDINGS ii

LIST OF PROCEEDINGS ii

TABLE OF AUTHORITIES v

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

BASIS FOR JURISDICTION IN THIS COURT 1

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

A. Factual Basis for the Writ 3

REASONS TO GRANT THIS PETITION 7

I. THE DECISION OF THE UNITED STATES COURT OF APPEALS INCORRECTLY DISMISSED PETITIONER'S APPEAL AT SUMMARY JUDGMENT AND IMPROPERLY APPLIED THE FACTS TO ESTABLISHED FEDERAL JURISPRUDENCE 7

A. The Court of Appeals incorrectly held that Moore Lake is not an "area" where a fee was charged as considered by FRUS 9

CONCLUSION 13

APPENDIX

Appendix A Opinion in the United States Court of Appeals for the Eleventh Circuit (August 13, 2019) .... App. 1

Appendix B Order of Dismissal and Judgment in the United States District Court for the Northern District of Florida Tallahassee Division (May 30, 2018). . . . . App. 13

Appendix C U.S. Department of Agriculture Forest Service Special Use Permit for Noncommercial Group Use for Rainbow Family Gathering . . . . App. 28

TABLE OF AUTHORITIES

CASES

Abdin v. Fischer,
374 So. 2d 1379 (Fla. 1979) 8, 9

Cox v. Community Services Dep't,
543 So. 2d 297 (Fla. 5th DCA 1989) 8

Fisher v. United States,
2019 U.S. Dist. LEXIS 135997,
2019 WL 3802461
(M.D. Fla. August 13, 2019) 12

Goodman v. Juniper Springs Canoe Rentals & Recreation, Inc.,
983 F. Supp. 1384 (M.D. Fla. 1997) 9, 11, 12

Kleer v. United States,
761 F.2d 1492 (11th Cir. 1985) 8, 9

Pensacola v. Stamm,
448 So. 2d 39 (Fla. 1st DCA 1984) 7

STATUTES AND REGULATIONS

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1346(b)(1) 8

60 F.R. 42428-01 4

Fla. Stat. § 327.251 8

Fla. Stat. § 375.251 .... *passim*

PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully requests that a Writ of Certiorari be issued to review the Denial of his appeal to the United States Court of Appeals for the Eleventh Circuit on August 13, 2019.

OPINIONS BELOW

The August 13, 2019 Order of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's judgment, which unpublished decision is herein sought to be reviewed, *Hurst v. United States*, 2019 U.S. App. LEXIS 24061 (11th Cir. 2019) is reproduced at App. 1. The May 30, 2018 Order and Judgment in the United States District Court, Northern District of Florida, Tallahassee is reproduced at App. 13.

BASIS FOR JURISDICTION IN THIS COURT

The August 13, 2019 Order of the United States Court of Appeals for the Eleventh Circuit affirming the District Court's judgment, which decision is herein sought to be reviewed *Hurst v. United States*, 2019 U.S. App. LEXIS 24061 (11th Cir. 2019).

The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question is 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Fla. Stat. § 375.251(1).

Limitation on liability of persons making available to public certain areas for recreational purposes without charge.—

(1) The purpose of this section is to encourage persons to make land, water areas, and park areas available to the public for outdoor recreational purposes by limiting their liability to persons using these areas and to third persons who may be damaged by the acts or omissions of persons using these areas.

(2)(a) An owner or lessee who provides the public with an area for outdoor recreational purposes owes no duty of care to keep that area safe for entry or use by others, or to give warning to persons entering or going on that area of any hazardous conditions, structures, or activities on the area. An owner or lessee who provides the public with an area for outdoor recreational purposes:

1. Is not presumed to extend any assurance that the area is safe for any purpose;

2. Does not incur any duty of care toward a person who goes on the area; or

3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.

STATEMENT OF THE CASE

This Petition brings a challenge to the Court of Appeals' failure to appropriately apply federal and state law to the facts of this case. The Petition's central argument is that the Eleventh Circuit applied the incorrect set of facts when it affirmed the District Court's position that the matters involving the wrongful death of Andrew Hurst. First, USFS applied a fee for access to Silver Lake which is the same "area" permitted by the USS to Rainbow Family of Living Light in order to host a gathering in the Apalachicola National Forest. Therefore, the Florida law the lower court deferred to, per the FTCA, does not bar Petitioner's claim. Second, Moore Lake and Silver Lake are the same "area" for purposes of Fla. Stat. § 375.251. Subsequently, Petitioner's claim should be allowed to proceed for adjudication on the merits.

A. Factual Basis for the Writ.

Andrew Hurst died at age sixteen from several drug-induced seizures while attending an outdoor gathering on public land approved by the United States Forest Service ("USFS").

On March 1, 2013 the USFS provided the Rainbow Family of Living Light ("the Rainbows") a permit to host one the Rainbow's annual gatherings in the Apalachicola National Forest ("the Forest). The gathering took place on March 9, 2013 at Moore Lake, which is roughly ten miles west of Tallahassee, Florida. Importantly, the Rainbows are a very well-known decentralized group of counterculture members that gather in outdoor public spaces. In fact, the Rainbows

are the largest such group nationally. Supposedly, the Rainbows aim to promote peace and love. Unfortunately, and perhaps unsurprisingly, illegal drug use is rampant at the gatherings. So much so that the USFS have cooperated with the Rainbows to develop and implement plans to enforce local, state, and national laws and mitigate criminal activity. *See* 60 F.R. 42428-01.

The permit which was issued to the Rainbows included a provision which states that the permit holder "shall comply with all federal, state, county, and municipal laws, ordinances, and regulations which are applicable to the area or operations covered by the permit." Appx. C. When issuing the permit, the USFS turned to the criteria listed in the USFS manual ("the Manual"). Appx. C. In addition, according to the Special Permit issued by the USFS, the planned activity was for camping only at the Moore Lake and Dog Lake areas. An Exhibit was attached identifying the area at Moore Lake that was permitted by the USFS. In this regard, the Permit states: "Rainbow Family C/O Greg Beck (the holder) is hereby authorized to use, subject to the terms of this permit, National Forest Service lands described as Moore and Dog Lake, as shown in attached Exhibit A. Appx. C. This permit covers approximately 3 square miles." *Id*.

The USFS manual requires a law enforcement plan for gatherings such as the one giving rise to this action. Additionally, the Manual requires the USFS to patrol national forests and to cooperate with local police in enforcing applicable laws on USFS land.

Andrew Hurst arrived with several of his acquaintances on March 9, 2013. Soon thereafter, Andrew Hurst suffered his first seizure. Contrary to the USFS manual, there was no one Andrew could turn to in his time of desperation. There was no medical care, law enforcement, nor security personnel at the gathering.

Despite Andrew's lonely yet valiant efforts, the seizures persisted for the next several hours. Tragically, Andrew passed away in his vehicle.

An autopsy found that Andrew's seizure and death were caused by an illegal drug, 2C-C-NBOME ("NBOME"). NBOME is commonly distributed and used whenever the Rainbows gatherings.

The district court dismissed Petitioner's claims under the Florida Recreational Use Statute ("FRUS") at summary judgment. App. B. Petitioner then appealed to the Eleventh Circuit which ultimately found in favor of Respondent and affirmed the district court's rulings, noting:

> *"Hurst has failed to carry his burden of showing that a 'private individual' or a "private person" would be liable under the circumstances of this case (i.e., that the FRUS would not apply to shield a private landowner from liability), we conclude that the United States has not waived its traditional all-encompassing immunity, and thus cannot be held liable in tort under the FTCA."*

App. A.

In its determination the Eleventh Circuit made several findings.

1. *Although there are designated recreation areas within the Apalachicola National Forest that require guests to pay a fee and from which the government derives revenue, Moore Lake and the area surrounding it is not such an area.*

2. *The closest recreation area inside the Apalachicola National Forest that charges a fee and generates government revenue is Silver Lake, which is located approximately three to four miles away from the Moore Lake area.*

3. *Hurst has not pointed to—and we are unaware of—any Florida authority indicating that, when an area of property is used for more than one purpose, at least one of which clearly qualifies as an "outdoor recreational purpose" under the FRUS, immunity under the FRUS is abrogated by the fact that the public also uses the land for a purpose that is not an "outdoor recreational purpose" or even by the fact that the public also uses the land for an unlawful purpose.*

App. A.

This Petition for Writ of Certiorari followed.

REASONS TO GRANT THIS PETITION

I. THE DECISION OF THE UNITED STATES COURT OF APPEALS INCORRECTLY DISMISSED PETITIONER'S APPEAL AT SUMMARY JUDGMENT AND IMPROPERLY APPLIED THE FACTS TO ESTABLISHED FEDERAL JURISPRUDENCE.

Florida enacted the Florida Recreational Use Statute

> "to encourage persons to make land, water areas, and park area available to the public for outdoor recreational purposes by limiting liable to persons using these areas…" Fla. Stat. § 375.251(1).

The limitation of liability only applies if the property owner does not derive revenue from any part of the property. Fla. Stat. § 375.251(2)(c).

Importantly, Florida's recreational use statute does not apply to Florida's cities and counties. *See*, *Pensacola v. Stamm*, 448 So. 2d 39, 41-42 (Fla. 1st DCA 1984):

> [S]ection 375.251 is intended to encourage private persons or entities to make their property available for public recreational use without being subject to liability for unknown hazardous conditions. The motivation of private persons to offer their property for recreational use by the public free of charge is the obvious purpose of this statute. A governmental body, on the other hand, needs no such motivation

> because its principal purpose for owning public park land is to make the park available for public use.
>
> As previously stated, section 375.251 is intended to encourage private persons and entities to open their private lands for public recreational use; it is not intended to protect governmental entities already charged with that responsibility.

See also, *Cox v. Community Services Dep't*, 543 So. 2d 297, 298 (Fla. 5th DCA 1989) ("[§ 375.251] does not relate to municipalities and counties.").

Under the FTCA, § 375.251 applies to the United States to the same extend it would apply to a private person in Florida. 28 U.S.C. § 1346(b)(1); *Kleer v. United States*, 761 F.2d 1492, 1494 (11th Cir. 1985).

The FRUS does not rid a negligent property owner of liability when the property owner charges a fee to the public to use the "area." Fla. Stat. § 327.251. Under the statute, the "area" includes "land, water, and park areas" while "outdoor recreational purposes" includes but is not limited to "hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites." Fla. Stat. § 375.251(5)(a–b). If the charge was assessed for the "area" which the claim arose, a property owner owes a duty of care. *Abdin v. Fischer*, 374 So. 2d 1379, 1380 (Fla. 1979) (property owner's tackle shop and boat ramp were open to the public, and where plaintiff slipped on slime on

ramp, since there was commercial activity at the nearby tackle shop the statutory protection did not absolve liability); *Kleer*, at 1495 (11th Cir. 1985) ("…we hold that the statute bars suits for injuries sustained in areas of parks where no fee is charged and no commercial activity takes place.).

A. The Court of Appeals incorrectly held that Moore Lake is not an "area" where a fee was charged as considered by FRUS.

In *Abdin*, the court held that where a boat ramp was adjacent to a tackle shop, and boat ramp was open to tackle shop customers, the boat ramp was "part of an area" that was used for commercial purposes, and so the FRUS did not apply. Similarly, Moore Lake was part of an area where a fee was charged. In *Goodman v. Juniper Springs Canoe Rentals & Recreation, Inc.*, 983 F. Supp. 1384 (M.D. Fla. 1997), the distance between where the fee was assessed, and the place of injury was just over 7 miles apart. In *Goodman*, the court found that the place of injury was a part of an area where a fee was charged. Therefore, the property owner was held liable.

In the present case, the Respondent and Court of Appeals suggest that the USFS did not assess a fee for entry into the part of the Forest where Petitioner passed. Under *Goodman,* this argument is without merit. Albeit, a fee was charged to use Silver Lake. However, analogous to the boat ramp in *Abdin*, Silver

Lake and Moore Lake are connected by road, pathways, and is a less than one-minute walk from each other. [1]

The Rainbow Group received a permit to camp and host their gathering. Notably, people cannot camp at Silver Lake. Silver Lake is a parking and recreation area. If a patron wants to camp, they must travel a miniscule distance to Moore Lake. The distance between Silver Lake and Moore Lake is less than 1 nautical mile. Silver Lake has a Longitudinal coordinate of 84° 24.293' W with a Latitudinal coordinate of 30° 24.244' N. Moore Lake has a Longitudinal coordinate of 84° 24.219' W with a Latitudinal coordinate of 30° 23.557' N.[2] According to the National Oceanic and Atmospheric Administration, the distance between Silver Lake and Moore Lake is less than 1 mile. [3]

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[1] According to the United States Department of Agriculture website, https://www.fs.usda.gov/recarea/apalachicola/recarea/?recid=75238, Silver Lake is only open for "Day use only" and a "fee" is charged for some activities: "$5.00/vehicle for day use area. There is a separate fee to use the OHV trails.". It is operated by the National Forest Service in Florida and has available picnic tables, toilets, drinking water and parking but no camping, as operational hours are 8 a.m. to a p.m. The U.S.D.A. site specifically states that camping is not allowed in Silver Lake: "Camping is not allowed at Silver Lake, but restrooms are available."

[2] The distances are confirmed by the Apalachicola National Forest Aviation Hazard Map found at https://www.fl-ficc.com/wp-content/uploads/2019/02/ApalachicolaNF_AerialHazards_Landscape_E_2019_FINAL_WITH_TABLE.pdf. Source:T:\FS\NFS\NFinFlorida\Project\Apalach\Fire\Aviation\Document\FireAviationPointTable_08162016

[3] https://www.nhc.noaa.gov/gccalc.shtml

Equally important, the Permit for the Rainbow Group covered "3 square miles". [4] Since the distance to Moore Lake and Silver Lake is less than 1 nautical mile, the holding in *Goodman* means that the properties are the same "area" and the Permit covered activity at both Silver Lake and Moore Lake. The Eleventh Circuit failed to correctly apply *Goodman* for the following reasons:

1. A "fee" is charged for access to Silver Lake;

2. Moore Lake and Silver Lake are less than 1 mile apart;

3. Both Moore Lake and Silver Lake are covered by the plain language of the Permit, stating that activity of Rainbow Family is permitted up to "3 square miles" from Moore Lake.

The holding in *Goodman* means that USFS cannot avoid liability and the Eleventh Circuit opinion incorrectly interpreted federal law. The Court of Appeal's decision strays from the factual issues in the case. The facts are clear that Moore Lake is a part of Silver Lake. Moore Lake is the camping compliment to Silver Lake. A reasonable inference can easily conclude

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[4] Following the Incident with the Rainbow Family, on March 6, 2015, the U.S. Forest Service – National Forests in Florida closed Moore Lake camping area, stating: "Wright Lake campground and Hickory Landing boat ramp are closed due to an ongoing investigation into a shooting that occurred on the Apalachicola National Forest. An area around Moore Lake is also closed to camping." *See*, https://www.facebook.com/NationalForestsinFlorida /posts/wright-lake-campground-and-hickory-landing-boat-ramp-are-closed-due-to-an-ongoin/824625660907104/

that the fee assessed to the Rainbow Group was intended to enable the Rainbow Group to use Silver Lake and Moore Lake. Therefore, the lower court's ruling is in error as they did not make all reasonable inferences in favor of Petitioner, as prescribed by law. As in *Goodman*, the place of Mr. Hurst's injury-(Moore Lake)-is a part of an area where a fee was charged-(Silver Lake). The Eleventh Circuit misinterpreted *Goodman*, which extended liability under a factual pattern up to a 7-miles between the injury and an area wherein a fee is charged, against the factual issues in Mr. Hurst' case which show the plain language of the Permit extended activity for "3 square miles" from Moore Lake. "3 square miles" from Moore Lake includes the fee area of Silver Lake, and the express language of the Permit means liability attaches under the holding of *Goodman*.

Moreover, Petitioner should be considered an invitee rather than a member of the general public. This removed Petitioner form the scope of § 375.251. In *Fisher v. United States*, 2019 U.S. Dist. LEXIS 135997, *4, 2019 WL 3802461 (M.D. Fla. August 13, 2019), the court held that Petitioner was a member of the public because the area was free and open to the public. Mr. Hurst's case is the opposite. First, there was a fee assessed for access to Silver Lake and under the express terms of the Permit, Rainbow had access to both Silver Lake and Moore Lake which encompassed "3 square miles". Second, Once the permit was issued, Moore and Silver Lake were reserved for the Rainbow Group.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: November 8, 2019

APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Opinion in the United States Court of Appeals for the Eleventh Circuit (August 13, 2019) .... App. 1

Appendix B Order of Dismissal and Judgment in the United States District Court for the Northern District of Florida Tallahassee Division (May 30, 2018). . . . . App. 13

Appendix C U.S. Department of Agriculture Forest Service Special Use Permit for Noncommercial Group Use for Rainbow Family Gathering . . . . App. 28

APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 18-12574
Non-Argument Calendar
D.C. Docket No. 4:17-cv-00025-RH-CAS

[Filed August 13, 2019]

KYLE RAY HURST, Personal Representative of the Estate of Andrew James Hurst on behalf of the Estate of Andrew James Hurst Deceased and the Statutory Wrongful Death Survivors of Andrew James Hurst,
Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA, acting by and through the Department of the Agriculture US Forest Service,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Florida

(August 13, 2019)

Before MARCUS, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Kyle Ray Hurst ("Hurst"), as personal representative of his deceased son's estate and also on behalf of his son's statutory wrongful death survivors, sued the United States government for damages for wrongful death under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671 et seq. (the "FTCA"), and relevant laws of the State of Florida, after his son died of an apparent drug overdose at a gathering of the Rainbow Family of Living Light (the "Rainbow Family") in the Apalachicola National Forest. He appeals the district court's order granting the government's motion to dismiss for lack of subject-matter jurisdiction and, alternatively, granting the government's motion for summary judgment. Because both holdings of the district court involved sufficiently intertwined jurisdictional-merits issues, we exercise our discretion to address in this opinion only the latter alternative holding.[1] On appeal, Hurst argues that the district court erred by granting the government's

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[1] Hurst also challenges the district court's decision to grant the government's 12(b)(1) motion to dismiss on grounds that the discretionary function exception under the FTCA does not apply in this case because the government failed to perform several mandatory government functions with respect to the Rainbow Family gathering at Moore Lake. In light of our holding that Hurst's claims against the government are barred under the FTCA because Hurst has not carried his burden of showing that an individual person would be liable under Florida law in similar circumstances, we need not address this additional argument raised by Hurst.

motion for summary judgment because the Florida Recreational Use Statute, Fla. Stat. § 375.251 (the "FRUS"), does not apply in this case. We have reviewed the parties' briefs, relevant portions of the record, and applicable law. For the reasons described below, we affirm the district court's decision dismissing Hurst's claims.

I. BACKGROUND

We assume the parties are familiar with the factual and procedural background of this case and recount that background here only to the extent necessary to provide context for our decision. Hurst's 16-year-old son Andrew James Hurst died on or about March 9, 2013 while attending the Sixth Annual A-cola North Florida/Apalachicola Rainbow Gathering at Moore Lake. The gathering was hosted by the Rainbow Family, which according to Hurst "is known to be the largest non-organization of non-members in the world without official leaders or structures." Although the Rainbow Family aims to "honor[ ] Mother Earth" and "promote peace and love on Earth," its gatherings are also known for "the sale, distribution, and use of controlled substances."

Moore Lake, the site of the relevant Rainbow Family gathering, is located on the Florida Panhandle near Tallahassee. It is also located inside the Apalachicola National Forest, which is administered by the United States Forest Service ("USFS"). Although there are designated recreation areas within the Apalachicola National Forest that require guests to pay a fee and from which the government derives revenue, Moore Lake and the area surrounding it is not such an

area. The closest recreation area inside the Apalachicola National Forest that charges a fee and generates government revenue is Silver Lake, which is located approximately three to four miles away from the Moore Lake area.

The USFS issued a special use permit to the Rainbow Family for its 2013 gathering at Moore Lake. The permit allowed the Rainbow Family to use a three-square-mile area near Moore Lake for its gathering. It expressly authorized the Rainbow Family to conduct certain enumerated activities, including "recreational gathering," camping, and swimming. The permit also required the Rainbow Family to comply with federal, state, county, and municipal laws. Sadly, Hurst's son died while attending the 2013 Rainbow Family gathering. An autopsy determined that the cause of death was the toxic substance 2C-C-NBOME, a psychedelic and illegal drug.

After exhausting administrative remedies, Hurst brought a wrongful death action for damages against the United States government under the FTCA and relevant laws of the State of Florida. In essence, Hurst alleged that the government should not have issued the special use permit for the Rainbow Family gathering in the first place (because it was aware of the Rainbow Family's reputation for criminality, including the sale, distribution, and use of controlled substances) and, once it did, it should have performed several non-discretionary governmental functions that possibly would have prevented Hurst's son's death (including, as relevant to this appeal, creating a law enforcement

plan, patrolling the gathering, and cooperating with local police in enforcing applicable laws).

The government moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), asserting that Hurst failed to state a claim on which relief could be granted. It argued, as it does here, that the FTCA provided no relief for Hurst's claims because the FRUS would bar claims against a private person or individual under Florida law in similar circumstances. The district court converted the Rule 12(b)(6) motion to a motion for summary judgment. The district court then granted the government's converted motion for summary judgment on grounds that the FRUS would bar recovery under the FTCA. It entered judgment dismissing all of Hurst's claims. This appeal followed.

II. STANDARD OF REVIEW

This Court reviews a district court's grant of summary judgment de novo. Swafford v. United States, 839 F.3d 1365, 1369 (11th Cir. 2016). Summary judgment is appropriate if the record shows "no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Id. (quoting Fed. R. Civ. P. 56(a)).

III. DISCUSSION

The district court did not err when it granted the government's motion for summary judgment on grounds that the FRUS would bar recovery against the government in this case. The United States, as a sovereign power, "is immune from suit unless it consents to be sued." Zelaya v. United States, 781 F.3d 1315, 1321 (11th Cir. 2015). With respect to certain tort

claims, the FTCA waives this "traditional all-encompassing immunity" under particular circumstances. Douglas v. United States, 814 F.3d 1268, 1280 (11th Cir. 2016) (Tjoflat, J., concurring) (quoting Rayonier Inc. v. United States, 352 U.S. 315, 319, 77 S. Ct. 374, 377 (1957)). As relevant to our disposition of this appeal, § 2674 of the FTCA provides that "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances." 28 U.S.C. § 2674 (emphasis added). A related jurisdictional statute grants the district courts of the United States "exclusive jurisdiction of civil actions on claims against the United States . . . for personal injury or death . . . under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1) (emphasis added); see also Zelaya, 781 F.3d at 1322–24 (discussing interplay between § 1346(b)(1) and § 2674). In other words, two relevant provisions of federal law work together to "preclude liability of the federal government absent a showing by the plaintiff that a private individual . . . in like circumstances[ ] would be liable for the particular tort under governing state law where the tort occurred." Zelaya, 781 F.3d at 1323. As plaintiff, it is Hurst's burden to make this showing. See id.; Douglas, 814 F.3d at 1282 n.3 (Tjoflat, J., concurring) (citing 28 U.S.C. § 1346(b)(1)).

In turn, relevant Florida law (the FRUS) provides individual owners of land with certain legal protections when they make their land available to the public for

certain purposes without charging a fee. See generally Fla. Stat. § 375.251. The relevant statutory language is as follows:

> An owner or lessee who provides the public with an area for outdoor recreational purposes owes no duty of care to keep that area safe for entry or use by others, or to give warning to persons entering or going on that area of any hazardous conditions, structures, or activities on the area. An owner or lessee who provides the public with an area for outdoor recreational purposes:
>
> 1. Is not presumed to extend any assurance that the area is safe for any purpose;
>
> 2. Does not incur any duty of care toward a person who goes on the area; or
>
> 3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.

Id. § 375.251(2)(a). The FRUS defines "area" to include "land, water, and park areas," and "outdoor recreational purposes" to include, without limitation, "hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites." Id. § 375.251(5). The FRUS further acknowledges "that an area offered for outdoor recreational purposes may be subject to multiple uses," and that the limitation of liability applies "only if no charge is made for entry to or use of the area for outdoor recreational purposes and

no other revenue is derived from patronage of the area for outdoor recreational purposes."[2] Id. § 375.251(2)(c). The FRUS limitation of liability also does not relieve the landowner of any liability "that would otherwise exist for deliberate, willful, or malicious injury to persons or property." Id. § 375.251(4).

Thus, subject only to a limited number of exceptions, the Florida legislature made it clear that the purpose of the FRUS "is to encourage persons to make land, water areas, and park areas available to the public for outdoor recreational purposes by limiting their liability to persons using these areas and to third persons who may be damaged by the acts or omissions of persons using these areas." Id. § 375.251(1).

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[2] Courts applying Florida law have construed this limitation relatively strictly. See, e.g., Fernandez v. United States, No. 17-cv-21422, 2017 WL 6343575, at *2–4 (S.D. Fla. Dec. 12, 2017) (granting motion to dismiss in favor of the United States because "a plain reading of the statute as [a] whole suggests that liability will not attach unless the injury occurred in the distinct area where revenue is derived from patronage," even though revenue was generated in other areas inside the same national park), aff'd 766 F. App'x 787 (11th Cir. 2019) (unpublished); accord Kleer v. United States, 761 F.2d 1492 (11th Cir. 1985). Hurst has not argued on appeal that the area surrounding Moore Lake in which the 2013 Rainbow Family gathering occurred is an area (or part of an area) where a charge is made for entry or where revenue is derived from outdoor recreational activities, and therefore has abandoned any challenge to the district court's dismissal of his claims on that basis. See Access Now, Inc. v. Sw. Airlines Co., 385 F.3d 1324, 1330 (11th Cir. 2004) ("Any issue that an appellant wants [us] to address should be specifically and clearly identified in the brief. Otherwise, the issue—even if properly preserved at trial—will be considered abandoned.").

Hurst presents two arguments on appeal with respect to the FRUS. Neither argument is persuasive. First, Hurst argues that the Rainbow Family used the Moore Lake area for criminal activity (i.e., illegal drug use) and not for "outdoor recreational purposes" as contemplated by the FRUS. But, this argument ignores the plain language of the FRUS, which clearly acknowledges that "that an area offered for outdoor recreational purposes may be subject to multiple uses," and that camping and swimming—two of the activities expressly authorized by the special use permit issued by the USFS to the Rainbow Family in connection with the 2013 gathering—are included within the FRUS definition of "outdoor recreational purposes."[3] Moreover, the FRUS clearly provides that landowners covered by the statute have no duty to warn of any hazardous activities on the area and also are "not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area." This indicates to us that once land is made available to the public for legitimate outdoor recreational purposes at no charge, immunity under the FRUS still attaches even if the unlawful acts or omissions of persons present at the property cause injury.

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[3] Based on our review of the record (including evidence of what has occurred at other Rainbow Family gatherings and the characteristics of Moore Lake and the Apalachicola National Forest), it also is likely that the Rainbow Family used the Moore Lake area for other outdoor recreational purposes under the FRUS, including wildlife viewing, nature study, and visiting scenic sites.

This is not to suggest that the USFS could issue a special use permit for the sole purpose of providing the Rainbow Family (or any other group) with an area to sell and use illegal drugs; it clearly could not. But Hurst has not pointed to—and we are unaware of—any Florida authority indicating that, when an area of property is used for more than one purpose, at least one of which clearly qualifies as an "outdoor recreational purpose" under the FRUS, immunity under the FRUS is abrogated by the fact that the public also uses the land for a purpose that is not an "outdoor recreational purpose" or even by the fact that the public also uses the land for an unlawful purpose. The absence of such authority—together with the clear statutory language acknowledging that land may be subject to multiple uses and that a landowner need not warn of hazardous activities and will not liable for acts or omissions of persons using the area so long as they do not charge a fee or act deliberately, willfully, or maliciously to cause injury[4]—means that Hurst has failed to carry his burden of showing that the FRUS does not limit the government's FTCA liability under the circumstances of this case.

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[4] Although Hurst argued below that the FRUS limitation of liability should not apply because the government acted deliberately, willfully, or maliciously, he does not challenge on appeal the district court's conclusion that "the record includes no evidence supporting the claim that the government deliberately, willfully, or maliciously injured [Hurst's son]." Although we are inclined to agree with the district court on this point, we decline to address this issue because Hurst has abandoned it on appeal. See Access Now, 385 F.3d at 1330.

Second, Hurst argues that the FRUS does not apply to government entities like the United States. In support of this argument, he points to cases from the Florida state courts holding that the FRUS does not protect government entities but instead only protects individual persons. See, e.g., City of Pensacola v. Stamm, 448 So. 2d 39, 41 (Fla. 1st DCA 1984) (concluding that "section 375.251 is intended to encourage private persons and entities to open their private lands for public recreational use" and that "it is not intended to protect governmental entities already charged with that responsibility"). This argument misunderstands the necessary interplay between the FTCA and state tort law. The United States is only liable in tort—and the federal district courts only have jurisdiction to entertain suits against the United States—in cases where a "private individual [would be liable] under like circumstances," 28 U.S.C. § 2674, and in cases "where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred," 28 U.S.C. § 1346(b)(1). Accord Zelaya, 781 F.3d at 1322–24. Because Hurst has failed to carry his burden of showing that a "private individual" or a "private person" would be liable under the circumstances of this case (i.e., that the FRUS would not apply to shield a private landowner from liability), we conclude that the United States has not waived its "traditional all-encompassing immunity," Douglas, 814 F.3d at

1280 (Tjoflat, J., concurring), and thus cannot be held liable in tort under the FTCA.[5]

IV. CONCLUSION

We hold that the district court did not err when it granted the government's converted motion for summary judgment on grounds that an applicable Florida law, the FRUS, shields the government from tort liability under the FTCA. This is because Hurst has not carried his burden of showing that a private person or individual would be liable under the circumstances of this case, as required by relevant provisions of the FTCA. The judgment of the district court is therefore

AFFIRMED.[6]

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[5] Indeed, Hurst seems to agree with this conclusion in his brief on appeal. In particular, he acknowledges that "[o]f course, federal courts have previously reviewed claims against the United States under both the FTCA and the [FRUS], and these courts have held that the statutes together absolve the United States from liability." Appellant's Br. 25. This is precisely what we hold today, and the fact that Florida courts reviewing claims not involving the FTCA have held that the FRUS does not shield state governmental actors from liability is immaterial.

[6] Any other arguments asserted on appeal by Hurst are rejected without need for further discussion.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

CASE NO. 4:17cv25-RH/CAS

[Filed May 30, 2018]

KYLE RAY HURST,	)
	)
Plaintiff,	)
	)
UNITED STATES OF AMERICA,	)
	)
Defendant.	)
	)

ORDER OF DISMISSAL

A teenager died of an overdose during an event in a national forest. His estate filed this action under the Federal Tort Claims Act. The Act allows tort actions against the government in specified circumstances. The plaintiff asserts the government's negligence allowed unsafe conditions to exist on its land, causing the teenager's death. The government has moved to dismiss based on the Act's discretionary-function exception. The government has moved alternatively for summary-judgment based on the Florida Recreational Use Statute, which protects a landowner from tort claims based on the condition of land made available to the public for recreational use without charge. This order grants the government's motion.

I

Andrew Hurst ("Mr. Hurst") was 16 years old when he went without an adult to the 6th Annual A-cola Rainbow Gathering ("the A-cola Gathering" or "the Gathering") in the Apalachicola National Forest. He had a seizure after arriving. He returned to his car, where he seized a second time. Event attendees witnessed his distress but were unable to locate medical assistance. Mr. Hurst died in his car. An autopsy concluded that he overdosed on an illegal psychedelic. A reasonable inference is that he got the drug at the Gathering.

The Gathering was organized by local members of the Rainbow Family of Living Light, a non-hierarchical, global countercultural movement. The Rainbow Family obtained a permit to hold the Gathering in the Apalachicola National Forest from the United States Forest Service, the federal agency that manages national forests. The permit authorized the Rainbow Family to use undeveloped land around Moore Lake for the event.

Forest Service law enforcement officers knew that other Rainbow Gatherings in national forests had involved illegal drug use. The Forest Service created law enforcement plans to handle security at some of those events. It did not create a law enforcement plan for the A-cola Gathering, and there is little evidence that Forest Service law enforcement officers patrolled the day Mr. Hurst died. There is no evidence that local law enforcement officers were on the scene prior to Mr. Hurst's death.

After exhausting administrative remedies, Mr. Hurst's estate brought this action, claiming the Forest Service's negligence caused Mr. Hurst's death. The estate points to four allegedly negligent acts: issuing a permit to a group known to host events involving illegal drug use; failing to create a law enforcement plan; failing to patrol the event the day Mr. Hurst died; and failing to coordinate with local law enforcement to patrol the event the day Mr. Hurst died.

The United States has moved to dismiss or alternatively for summary judgment. The motion has been fully briefed and orally argued and is ripe for a decision.

II

The United States mounts a factual attack on subject-matter jurisdiction, not a facial challenge on the pleadings. This makes it proper to independently weigh the evidence in the record. *See Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159, 1169 (11th Cir. 2011). The burden is on the plaintiff to demonstrate that subject-matter jurisdiction exists. *See OSI, Inc. v. United States,* 285 F.3d 947, 951 (11th Cir. 2002).

In contrast, on the summary-judgment motion, disputes in the evidence must be resolved, and all reasonable inferences from the evidence must be drawn, in favor of the nonmoving party. The moving party must show that, when the facts are so viewed, the moving party "is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A summary-judgment

motion cannot be used to resolve in the moving party's favor a "genuine dispute as to any material fact." Fed. R. Civ. P. 56(a).

III

The United States has waived its sovereign immunity from tort claims to the extent set out in the Federal Tort Claims Act. The Act makes the United States liable for tort claims "in the same manner and to the same extent as a private individual under like circumstances," with specific exceptions. 28 U.S.C. § 2674. At issue here is the "discretionary function" exception, which deprives the court of subject-matter jurisdiction over "[a]ny claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." *Id.* § 2680(a).

Absent any violation of policy, the four allegedly negligent acts at issue—issuing a permit for use of a national forest, creating a law enforcement plan for the event, deciding how frequently to patrol the event, and coordinating with local law enforcement—are all discretionary functions. The court lacks subject-matter jurisdiction.

The analysis that supports this conclusion derives from a long line of cases applying the discretionary-function exception. *See, e.g.*, *United States v. Gaubert*, 499 U.S. 315, 325 (1991); *Swafford v. United States*, 839 F.3d 1365, 1370 (11th Cir. 2016); *Zelaya v. United States*, 781 F.3d 1315, 1330 (11th Cir.

2015); *Cohen v. United States*, 151 F.3d 1338, 1344-45 (11th Cir. 1998). As these cases explain, the discretionary-function exception applies if the "challenged conduct is a matter of choice for the acting employee" and if that choice "is of the kind that the discretionary function exception was designed to shield"—that is, if the choice involves "considerations of public policy." *Swafford*, 839 F.3d at 1370.

The exception does not apply unless both conditions are met. Conduct that does not involve an element of choice, as is the case when a "federal statute, regulation, or policy specifically prescribes a course of action," is not a discretionary function. *Cohen*, 151 F.3d at 1341. Neither is a choice that does not involve policy matters. To use an example given by the Supreme Court, driving an automobile "requires the constant exercise of discretion" but "can hardly be said to be grounded in regulatory policy." *Gaubert*, 499 U.S. at 325 n.7.

A

A group like the Rainbow Family must apply for and obtain a permit from the Forest Service before holding a large event in a national forest. A federal regulation governs the application process. 36 C.F.R. § 251.54(g)(3). It provides that the Forest Service "shall grant an application" for a permit if it determines that the application meets eight specified criteria. *Id.* As one criterion, the Forest Service must determine that "the proposed activity will not pose a substantial danger to public safety." *Id.*

The regulation prescribes a course of action for handling permit applications. The Forest Service must consider all eight criteria and must issue a permit if all eight are met. But the Forest Service exercises discretion in determining whether an application meets the criteria. For example, the Forest Service must weigh competing policy interests to determine what kinds of activities would pose a "substantial" danger to public safety.

The Forest Service complied with the regulation's prescribed course of action in issuing the Rainbow Family a permit for the A-cola Gathering. The Forest Service agent who issued the permit testified that he "look[ed] at the list [of factors] every time" he issued a permit. ECF No. 49-1 at 7. By considering the eight criteria and issuing a permit upon determining that an applicant met them, the agent did all the regulation demanded. Determining whether the Rainbow Family's application fit the criteria was a discretionary function.

There is a wrinkle. Asked whether he "ha[d] the power to deny these Rainbow Family Gathering permit applications," the Forest Service agent who issued the A-cola Gathering permit testified that he could "not deny them, no." *Id.* at 15. Instead, he said he would "work with [the Rainbow Family] to find an area that would be something that they could use for their event." *Id.* As an example, the agent said the Forest Service once changed the location of a Rainbow Family Gathering in the Apalachicola National Forest to protect a salamander habitat. *Id.* at 16.

The plaintiff says the agent's testimony that he could not deny a permit means he must have deviated

from the prescribed course of action, on the theory that an agent who believed himself powerless to deny an application could not have given the factors meaningful consideration. But this is an unjustifiably inhospitable reading of the testimony. The best reading of the testimony is that the Rainbow Family never submitted an application that did not—or could not with proper tweaking—meet the criteria. On that reading, the testimony is true and not surprising—the agent did not have authority to deny an application that met the criteria. The agent did not say he could *never* deny an application. The agent did not say he could not deny a nonconforming application. Instead, the agent said that if an application did not meet the criteria as originally submitted, the agent would work with the applicant to cure the deficiency—to find a suitable place for the proposed event.

In sum, the best view of the evidence is that the agent considered the eight factors before issuing the A-cola Gathering permit. I so find.

B

The Forest Service did not create a plan to handle law enforcement at the A-cola Gathering. But no policy required it do so. Deciding how to handle group-event law enforcement is a discretionary function.

To be sure, Forest Service policies provide "direction on the development of special law enforcement plans and/or required analysis necessary for group management." ECF No. 49-9 at 60. Among other things, these policies provide a checklist of issues to consider "as a guide" when planning for group events.

Id. They allow the Forest Service to "modify" the checklist "when necessary to meet the nature and complexity of the incident." *Id.*

These policies leave the Forest Service with broad discretion to plan for group events. The law enforcement needs of a 75-person private birthday party or 75-student school event differ substantially from those of a public event with an expected attendance exceeding 1,000. The Forest Service could have chosen to lock in procedures applicable to every event, no matter its nature, but the Forest Service understandably did not do so. It would impose significant costs on the Forest Service to require a formal analysis for every group event.

Perhaps the Forest Service should have created a law enforcement plan for this event, as it did for other Rainbow Gatherings in Florida and around the country. But the discretionary-function exception applies "whether or not the discretion involved be abused." 28 U.S.C. § 2680(a). The exception applies to the failure to create a law enforcement plan for this event.

C

The record provides little evidence that Forest Service law enforcement officers patrolled the A-cola Gathering the day Mr. Hurst died.

In support of its contention that Forest Service law enforcement officers *did* patrol the Gathering, the government has submitted the declaration of Kelada Bennett-Wallace, a Forest Service official who was not "personally present" but says she "ensured that law

enforcement was present and patrolled." ECF No. 53-3. Ms. Bennett-Wallace has not said how she knows any officer was actually there. She has not even identified a patrolling officer or said when the officer was purportedly there. Further, Ms. Bennett-Wallace was not listed in the government's Federal Rule of Civil Procedure 26(a)(1) disclosures and has not been deposed, in part because the government successfully opposed the plaintiff's effort to depose her. Having failed to properly disclose the witness and having blocked her deposition, the government cannot rely on her declaration to support its position on the current motion. *See* Fed. R. Civ. P. 37(c)(1).

The government also points to the testimony of Courtney McCrae, another Forest Service official who was not present at the A-cola Gathering. Mr. McCrae testified that two officers "routinely" patrolled the Apalachicola National Forest and "would have" enforced the permit. ECF No. 53-2 at 2-3. But patrolling the forest does not mean patrolling the event. And what matters is not what an officer "routinely" did but what an officer did at this Gathering on this day. Finally, what matters is not what an officer "would have" done but what an officer actually did. Mr. McCrae's testimony gives little assurance that any officer in fact patrolled the A-cola Gathering.

There is, finally, an interrogatory answer stating that Forest Service law enforcement officers "patrol these events"—presumably meaning group events like the Rainbow Gathering. ECF No. 49-12 at 3. But again, evidence that law enforcement routinely patrolled

events of this kind gives little assurance that law enforcement patrolled *this* event.

Even assuming, though, that Forest Service law enforcement officers did not patrol the A-cola Gathering, this does not mean that the Forest Service violated a nondiscretionary duty. Forest Service policies require law enforcement to patrol national forests and to "monitor developed recreation areas, areas of concentrated public use, and dispersed areas for illicit drug possession and use." ECF No. 49-10 at 4. But no policy requires the Forest Service to conduct patrols with any specified frequency. No policy required patrols at the A-cola Gathering at the time when Mr. Hurst obtained or took drugs or seized that day. The decisions when and how frequently to patrol the forest or the A-Cola Gathering implicated policy choices about the best use of scarce law enforcement resources. Making those decisions was a discretionary function.

D

Forest Service policy required Forest Service law enforcement to "cooperate with local law enforcement agencies in the enforcement of all State and local laws that are related to public safety." ECF No. 49-9 at 12. The Forest Service had a standing agreement with the Leon County Sheriff that satisfied this requirement. ECF No. 49-12 at 3.

The Forest Service did not execute a separate agreement with the Leon County Sheriff to provide law enforcement for the A-cola Gathering. Deputy sheriffs were not on scene until after Mr. Hurst overdosed. But no policy required the Forest Service to enter separate

agreements for group events, nor was the Forest Service required to arrange for local law enforcement to be present during group events. Whether to request backup local law enforcement presence at the A-cola Gathering was a discretionary function.

IV

Even if the Federal Tort Claims Act's discretionary-function exception did not bar this action, the government would be entitled to summary-judgment under the Florida Recreational Use Statute.

Under Florida law, a property owner ordinarily owes invitees a duty to use reasonable care to maintain the property in a reasonably safe condition. *Grimes v. Family Dollar Stores*, 194 So. 3d 424, 427 (Fla. 3d DCA 2016). But under the Florida Recreational Use Statute, a property owner "who provides the public with an area for outdoor recreational purposes owes no duty of care to keep that area safe for entry or use by others, or to give warnings to persons entering or going on that area of any hazardous conditions, structures, or activities on the area." Fla. Stat. § 375.251. This statutory limitation on tort liability "applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes." *Id.*

The government did not charge a fee for entry to or use of the area around Moore Lake, where the A-cola Gathering was held. The government also did not derive any revenue from patronage of that area. Under the plain terms of the Florida Recreational Use

Statute, the government had no duty to make the area safe. The government is entitled to summary judgment on that basis.

This result accords with ample authority on the Florida Recreational Use Statute. *See Kleer v. United States*, 761 F.2d 1492 (11th Cir. 1985) (holding there was no duty to make safe an area of a national forest from which the government derived no revenue); *Fernandez v. United States*, No. 17-cv-21422-GAYLES, 2017 WL 6343575 (S.D. Fla. Dec. 12, 2017) (holding there was no duty to make safe an area of a national park from which the government derived no revenue); *Lopez v. United States*, No. 13-22427-CIV-GRAHAM/SIMONTON, 2014 WL 11894429 (S.D. Fla. June 10, 2014) (same); *Zuk v. United States*, 698 F. Supp. 1577 (S.D. Fla. 1988) (holding there was no duty to make safe an area of a national historic site from which the government derived no revenue).

In asserting the contrary, the plaintiff cites *Goodman v. Juniper Springs Canoe Rentals & Recreation*, 983 F. Supp. 1384 (M.D. Fla. 1997). There the plaintiff sued the government for injuries sustained in the Ocala National Forest while using a canoe rented from a private rental agency. The court rejected the recreational-use defense because the government received a portion of the rental agency's revenue. Here, in contrast, the government did not derive any revenue at all from Mr. Hurst's activities, the A-cola Gathering, or more generally from the public's use of the Moore Lake area.

To be sure, the United States charges for entry to other areas of the Apalachicola National Forest—areas

within three or four miles of Moore Lake. But the Florida Recreational Use Statute's limitation of liability turns not on whether an owner derives revenue from *any* part of the property, but whether the owner derives revenue from the "area" of the property where an injury occurred. "Area," as the statute uses that term, "denotes something less than an entire parcel of land." *Kleer*, 761 F.2d at 1495. The areas the government charges to access are separate from Moore Lake—indeed, getting from the latter to the former requires passing through a gate and paying a fee. The statute bars the claim of negligent failure to make the Moore Lake area reasonably safe.

Finally, as the plaintiff correctly notes, the Florida Recreational Use Statute "does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property." Fla. Stat. § 375.251. The plaintiff says this provision applies here. But the record includes no evidence supporting the claim that the government deliberately, willfully, or maliciously injured Mr. Hurst. Even if the plaintiff's claims were not barred by the Federal Tort Claims Act's discretionary-function exception, the government would be entitled to summary judgment based on the Florida Recreational Use Statute.

V

For these reasons,

IT IS ORDERED:

1. The government's motion to dismiss for lack of subject-matter jurisdiction or alternatively for summary judgment, ECF No. 48, is granted.

2. The clerk must enter judgment stating, "This action was resolved on a motion to dismiss or for summary judgment. The claims of the plaintiff Kyle Ray Hurst, as personal representative of the estate of Andrew James Hurst, against the defendant United States of America are dismissed for lack of subject-matter jurisdiction and would alternatively be dismissed on the merits."

3. The clerk must close the file.

SO ORDERED on May 30, 2018.

s/Robert L. Hinkle
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO. 4:17-cv-00025-RH-CAS

[Filed May 30, 2018]

KYLE RAY HURST,	)
	)
VS	)
	)
UNITED STATES OF AMERICA,	)
	)

JUDGMENT

This action was resolved on a motion to dismiss or for summary judgment. The claims of the plaintiff Kyle Ray Hurst, as personal representative of the estate of Andrew James Hurst, against the defendant United States of America are dismissed for lack of subject-matter jurisdiction and would alternatively be dismissed on the merits.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

May 30, 2018	s/Tiffinie Larkins
DATE	Deputy Clerk: Tiffinie Larkins

APPENDIX C

Authorization ID: WAK30012 Contact ID: RAINBOW FAMILY Expiration Date: 03/31/2013	F8-2700-3b (10/09) OMB No. 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SPECIAL USE PERMIT FOR
NONCOMMERCIAL GROUP USE
(Ref.: 36 CFR 251.54)
Authority: Organic Act of 1897,16 U.S.C. 551
PART I - APPLICATION

1. APPLICANT INFORMATION:

Name of Group or Event: Rainbow Family Gathering

Address of Group or Contact: Greg Beck
PO Box 16622 T, Tallahassee, FL 32317

Name of Contact: Forkman

The contact shall be available to the Forest Service from the date this application is signed until it is accepted, rejected, or denied.

Day Phone: (850) 443-7590
Evening Phone: (850) 878-4493

2. DESCRIPTION OF PROPOSED ACTIVITY: Gathering/Camping according to map Exhibit A and operating plan Exhibit B	
3. LOCATION & DESCRIPTION OF NATIONAL FOREST SYSTEM LANDS & FACILITIES APPLICANT WOULD LIKE TO USE: Moore and Dog Lake area, Attached map Exhibit A	
4. ESTIMATED NUMBER OF PARTICIPANTS & SPECTATORS FOR PROPOSED ACTIVITY: Participants: 600 to 1,000 Spectators:	
5. STARTING & ENDING DATE & TIME OF PROPOSED ACTIVITY: Start Date: 03/01/2013 Time: 0800 End Date: 03/31/2013 Time: 2400	
6. NAME OF PERSONS WHO WILL SIGN A SPECIAL USE PERMIT ON BEHALF OF THE GROUP (May be same as contact listed in Item 1.):	
Name: Greg Beck Address: 16622 T, Tallahassee, FL 32317 Day Phone: (850) 443-7590 Evening Phone: ( ) - Signature: s/____________ Date: 3-1-13	Name: Harold Shenk Address: Day Phone: ( ) - Evening Phone: ( ) - Signature: s/____________ Date: 3-1-13

APPLICATION NOT VALID UNLESS SIGNED BY CONTACT
________________________ Date: Signature of Contact
18 U.S.C. § 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its Jurisdiction. Anyone who knowingly or willfully makes or uses any false writing shall be fined not more than $10,000 or imprisoned not more than five years, or both.
PART II - PERMIT Purpose: Noncommercial group use permits do not grant or deny freedom of assembly or freedom of speech. The rights to freedom of assembly and freedom of speech are guaranteed by the United States Constitution. These rights are fully respected by the Forest Service. When noncommercial group use permits are issued, they regulate time, place, and manner with respect to the exercise of these rights by groups of 75 or more people on National Forest System lands. Noncommercial group use permits authorize the holder to use and occupy the National Forest System lands covered by the permit, subject to rights retained by the United States, including continuing rights of access, a continuing right of physical entry for inspection, monitoring, or for any other purposes consistent with any right or obligation of the United

States, and the right to require common use of the land or to authorize use by others In any way that is not inconsistent with the privileges granted by the permit. The use and occupancy authorized by a noncommercial group use permit would not be allowed without the permit. The primary purposes of noncommercial group use permits include protection of National Forest System lands and resources, promotion of public health and safety, and allocation of space among competing uses of National Forest System lands.

1. Use under this permit shall begin on 03/01/2013 08:00 and end on 03/31/2013 24:00. The permit shall not be extended.

2. Rainbow Family C/O Greg Beck (the holder) is hereby authorized to use, subject to the terms of this permit, National Forest System lands described as Moore and Dog Lake, as shown in attached Exhibit A. This permit covers approximately 3 square miles.

3. The holder is authorized to conduct the following activities and install the following improvements in the permitted area:

Recreational gathering from March 1 to March 31 at location known as Moore Lake and Dog Lake as Exhibit A and B regulate.

4. The holder shall conduct the authorized activities according to the attached approved plans and specifications, Exhibit(s) A, B. The holder shall not install any improvements not specifically identified and approved in clause 3, in exhibits attached to this

permit, or by the authorized officer during the activity authorized by this permit.

5. No soil, trees, or other vegetation may be destroyed or removed from National Forest System lands without specific prior written permission from the authorized officer.

6. The holder shall comply with all federal, state, county, and municipal laws, ordinances, and regulations which are applicable to the area or operations covered by this permit.

7. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. The holder shall fully repair and bear the expense for all damages, other than ordinary wear and tear, to National Forest System lands, roads and trails caused by the holder's activities.

8. The holder has the responsibility of inspecting the use area and adjoining areas for dangerous trees, hanging limbs, and other evidence of hazardous conditions which would pose a risk of injury to individuals. After securing permission from the authorized officer, the holder shall remove such hazards.

9. The holder shall be liable for any injury, loss, or damage including fire suppression costs and environmental harm or injury to natural resources, that arises in connection with the use and occupancy authorized by this permit.

10. The holder shall indemnify and hold harmless the United States for any injury, loss, or damage, including third-party claims, damage to federal property, fire suppression costs, and environmental harm or injury to natural resources, that arises in connection with the use and occupancy authorized by this permit.

11. The persons who sign this permit are not subject to any individual liability under this permit as a result of that signature. They provide their name solely to allow notice of actions pertaining to the permit to be communicated to the holder and to give the permit legal effect. At least one of the persons who sign this permit shall be available to the Forest Service from the date this permit is issued until the use authorized by this permit has concluded.

12. The holder agrees to permit free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

13. This permit is subject to all valid existing rights and claims outstanding in third parties.

14. This authorization may be revoked or suspended only in accordance with 38 CFR 251.80(a)(1)(i). Upon expiration or revocation of this permit, the holder shall immediately remove all improvements except those owned by the United States, and shall restore the site within 30 days, unless otherwise agreed upon in writing. If the holder fails to remove the improvements, they shall become the property of the

United States, but that will not relieve the holder of liability for the cost of their removal and the restoration of the site. 15. This permit is a license for the use of federally owned land. It does not grant any interest in real property. This permit is not transferable. The holder shall not enter into any agreements with third parties for occupancy of the authorized premises and improvements. 16. Any decision concerning this permit, including but not limited to suspension or revocation and modification of permit terms and conditions, is not subject to administrative appeal and is immediately subject to judicial review. 17. This permit is accepted subject to the conditions set forth herein, including any conditions in any exhibits attached to land made a part of this permit. 18. The above clauses shall control if they conflict with additional clauses or provisions.	
I have read and understand the terms and conditions and agree to abide by them. HOLDER:	**U.S. DEPARTMENT OF AGRICULTURE Forest Service** Authorization is granted:
By:____________________ (Holder Signature)	By:____________________ (Authorized Officer Signature)

RAINBOW FAMILY C/O Greg Beck “Forkman”	MARCUS A. BEARD
Name:__________________	Name:_________________
	District Ranger
Date:___________________	Title:__________________

EXHIBIT B

OPERATING PLAN
FOR
RAINBOW FAMILY 2013
WAKULLA RANGER DISTRICT
APALACHICOLA NATIONAL FOREST

1. No parking along FR 358 (Silver Lake Road), FR 370, or FR 324 (Dog Lake Tower Road).

2. The dispersed areas known as Moore and Dog Lake will be open to the general public for use and motorcycle trails within this area will not be blocked.

3. Live aboard, parking, and camping will be located in areas identified on map Exhibit A. All vehicles parked along roads must park in a manner to not restrict ingress and egress of emergency vehicles. Gathering participants on site will inform new arrivals as to where to park vehicles.

4. All digging must occur only in authorized areas as shown on map Exhibit A (unauthorized in red hatched areas on map).

5. No camping is permitted within 75 feet of any body of water.

6. No camping, or digging within areas marked with pink and black striped colored flagging.

7. Campfires must be attended at all times

8. Water within the permitted area may be used for a variety of activities, not to exclude swimming.

9. Only dead and down wood (no green or standing trees) may be used for fires and building of kitchens.

10. Trash, after recycling, will be removed from the site on a daily basis and not allowed to pile up.

11. Owners of vehicles will comply with all federal, state, county and municipal regulations concerning the disposal of gray/black water.

12. Participants must adhere to the food storage restriction order regarding substances that may attract bears.

13. There will be a point of contact available daily.

	Date:_________________

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