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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT CALIF.
LOS ANGELES

Plaintiffs
VFW Post 385 and VFW Department of California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

VFW POST 385 and VFW
DEPARTMENT OF CALIFORNIA,

Plaintiffs,

vs.

UNITED STATES OF AMERICA; KEN
SALAZAR, Secretary of the Interior in
his official capacity; CHRISTINE S.
LEHNERTZ, Regional Director, Pacific
Northwest Region of the National Park
Service, in her official capacity; DENNIS
SCHRAMM, Superintendent of the
Mojave National Preserve, in his official
capacity,

Defendants.

Case No. ~~CV 11 0284~~ ^{DDP} (DTBx)
COMPLAINT

- 1. Quiet Title Act, 28 U.S.C. 2409a
- 2. Declaratory Judgment
- 3. Injunctive Relief

1 Plaintiffs VFW Post 385 and VFW Department of California (collectively,
2 the "VFW"), hereby file this complaint, claiming as follows:

3 **THE PARTIES**

4 1. VFW Post 385 is a post of the congressionally chartered Veterans of
5 Foreign Wars organization. Its principal office is located at 100 East Veterans
6 Parkway, Barstow, California.

7 2. VFW Department of California is an arm of the congressionally
8 chartered Veterans of Foreign Wars organization. Its principal office is located at
9 1510 "J" Street, Suite 110, Sacramento, CA 95814.

10 3. The United States of America is named as a party defendant for the
11 purpose of adjudicating title to real property.

12 4. Kenneth Lee "Ken" Salazar is sued in his official capacity as Secretary
13 of the United States Department of the Interior ("Secretary Salazar"). As Secretary,
14 he is the federal official ultimately responsible for all official actions or inactions of
15 the Department of the Interior.

16 5. Christine S. Lehnertz is sued in her official capacity as Regional
17 Director, Pacific Northwest Region of the National Park Service ("Director
18 Lehnertz"). As Regional Director, she is the federal official responsible for all
19 official actions or inactions of the Department of the Interior with regards to the
20 Northwest Region.

21 6. Dennis Schramm, is sued in his official capacity as Superintendent of
22 the Mojave National Preserve ("Superintendent Schramm"). As Superintendent, he
23 is the federal official responsible for all official actions or inactions with regards to
24 the Mojave Preserve.

25 7. The United States of America, Secretary Salazar, Director Lehnertz,
26 and Superintendent Schramm are collectively referred to as the "Government."
27

1 **VENUE AND JURISDICTION**

2 8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§
3 1331, 1346, and 2409(a). Pursuant to 28 U.S.C. §§ 1391 and 1402, venue is proper
4 in this district, because a substantial part of the property that is the subject of this
5 action is situated in this District.

6 **FACTUAL BACKGROUND**

7 9. This case centers on a parcel of land which, pursuant to federal statute,
8 is to be conveyed as a matter of law from the Government to the VFW. The
9 specific parcel at issue is a one-acre tract of land in the Mojave Preserve, upon
10 which stood for over 70 years a war memorial (the "Memorial"). The Memorial
11 itself is a roughly seven-foot Latin cross on a small rock outcropping that was
12 originally erected in 1934 by a group of World War I veterans to commemorate
13 those who had served and lost their lives during the War. Over its 76-year history,
14 the Memorial has been maintained by the community and used as a gathering place
15 for the public to pay respect to those who have made the ultimate sacrifice for our
16 Nation.¹

17 10. In 2002, Congress designated the Memorial and its adjoining land "as
18 a national memorial, commemorating United States participation in World War I
19 and honoring American veterans of that war." Department of Defense
20 Appropriations Act, 2002 Pub. L. 107-117, § 8137(a), 115 Stat. 2278. This
21 designation placed the Memorial amongst our country's most revered monuments,
22 including the National D-Day Memorial and the Vietnam War Memorial. *See Note*
23 *following 16 U.S.C. §431.* The significance of the Memorial is further highlighted
24 by the fact that it is the *only* national memorial dedicated to World War I veterans.

25
26 ¹ In May 2010, the Latin cross that forms part of the Memorial was torn down and
27 stolen by vandals. The VFW has repeatedly asked the Government to restore the
28 Memorial to its status quo, but the Government has refused to do so. Permitting the
Memorial to remain in its current state, which is the result of the actions of lawless
vandals, is deeply offensive and disrespectful to the veterans the Memorial was
intended to honor.

1 *See Salazar v. Buono*, 130 S. Ct. 1803, 1817 (2010). (“Research discloses no other
2 national memorial honoring American soldiers – more than 300,000 of them – who
3 were killed or wounded in World War I.”).

4 11. In March 2001, Frank Buono (“Buono”) filed suit, alleging a violation
5 of the Establishment Clause and seeking an injunction requiring the Government to
6 remove the Memorial. After concluding that the presence of this cross conveyed an
7 impression of government endorsement of religion, the Court issued an injunction,
8 prohibiting the display of the cross as part of the Memorial (the “2002 injunction”).

9 12. As the Supreme Court has now explained, the 2002 injunction
10 presented the Government with a catch-22 situation. *See Salazar*, 130 S. Ct. at
11 1817. “[The Government] could not maintain the [Memorial] without violating the
12 injunction, but it could not remove the [Memorial] without conveying disrespect for
13 those [veterans] the cross was seen as honoring.” *Id.* Deeming neither of these
14 options satisfactory, Congress enacted a statute (the “land-transfer statute”)
15 directing the Secretary of the Interior to transfer the one-acre parcel on which
16 Memorial is located to the VFW, in exchange for a five-acre parcel of land
17 elsewhere in the Mojave Preserve, to be donated by the Memorial’s primary
18 caretaker, Henry Sandoz, a private citizen, and his wife, Wanda. *See Department of*
19 *Defense Appropriations Act*, 2004 Pub. L. 108-87, § 8121(a) & (b), 117 Stat. 1100.

20 13. In 2005, Buono challenged the constitutionality of the land-transfer
21 statute. He filed a motion to enforce or modify the existing 2002 injunction, so as
22 to prevent the land transfer from taking effect. The Court granted Buono’s motion,
23 concluding that the land-transfer statute was an attempt by the Government to keep
24 the Monument in its place, and the Ninth Circuit affirmed. The Supreme Court
25 granted certiorari and reversed, holding that the land-transfer statute was
26 constitutional. *See Salazar*, 130 S. Ct. at 1817-19.

27 14. Despite the reversal by the Supreme Court, the Government has
28 refused to give effect to the land-transfer statute and transfer the land upon which

1 the Memorial stands to the VFW. Therefore, the VFW now seeks to quiet title and
2 enforce the land-transfer statute, and further seeks a declaration that the land, with
3 the boundaries as described in Exhibit A, is the property of the VFW, by operation
4 of law pursuant to the land-transfer statute.

5
6 **FIRST CAUSE OF ACTION**

7 *(Quiet Title Act: 28 U.S.C. 2409a)*

8 *(Against All Defendants)*

9 15. The VFW restates and incorporates by reference its allegations in
10 paragraphs 1-14, *supra*.

11 16. The VFW has an interest in the one-acre parcel of land, with
12 boundaries as set forth in Exhibit A.

13 17. This parcel of land is part of the Mojave National Preserve and, until
14 the land-transfer statute, was owned and controlled by the Government.

15 18. The VFW's interest in the one-acre of land, with the boundaries as set
16 forth in Exhibit A, was acquired as a result of the land-transfer statute, 2004 Pub. L.
17 108-87, § 8121(a) & (b), 117 Stat. 1100, by which the Secretary of the Interior was
18 directed to transfer the one-acre parcel to the VFW, in exchange for a five-acre
19 parcel of land elsewhere in the Mojave Preserve, to be donated by the Memorial's
20 primary caretaker, Henry Sandoz, a private citizen, and his wife, Wanda.

21 19. As a result of the Supreme Court's decision in *Salazar v. Buono*, 130
22 S. Ct. 1803 (2010), in which the Court determined that land-transfer statute was
23 constitutional, the VFW now seeks to quiet title to the one-acre parcel with the
24 boundaries described in Exhibit A.

25 20. An actual case or controversy exists between the VFW and the
26 Government regarding the ownership of the parcel of land with the boundaries
27 described in Exhibit A.

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SECOND CAUSE OF ACTION
(Declaratory Judgment: 28 U.S.C. 2201)
(Against All Defendants)

21. The VFW restates and incorporates by reference its allegations in paragraphs 1-20, *supra*.

22. An actual case or controversy exists between the VFW and the Government regarding the ownership of the parcel of land with the boundaries described in Exhibit A.

23. A judicial determination is necessary and appropriate so that the VFW can ascertain its rights to the parcel of land with the boundaries described in Exhibit A.

24. Under the land-transfer statute, the VFW is the owner of the parcel of land with the boundaries as described in Exhibit A.

THIRD CAUSE OF ACTION
(Injunctive Relief)
(Against Secretary of the Interior)

25. The VFW restates and incorporates by reference its allegations in paragraphs 1-24, *supra*.

26. Under the land-transfer statute, the VFW is the owner of the parcel of land with the boundaries as described in Exhibit A.

27. The VFW seeks injunctive relief, ordering the Secretary of the Interior to consummate the land transfer, as he is mandated to do under the land-transfer statute.

28. The VFW would suffer great and irreparable harm if the land with the boundaries as described in Exhibit A were not transferred to it, as is mandated by the land-transfer statute. By contrast, the Government would suffer no harm by virtue of consummating the transfer, for it would gain a five-acre parcel in exchange for the one-acre parcel at issue. Thus, the balance of the equities tips in

1 favor of the VFW, and the public interest would be served by effectuating the land
2 transfer.

3 29. The VFW has no adequate remedy at law, and alleges that monetary
4 damages are incapable of compensating it for the harm that will result if the land
5 transfer is not consummated.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the VFW prays for judgment as follows:

8 1. A declaration that the land with the boundaries as described in Exhibit
9 A is the property of the VFW;

10 2. A declaration that the VFW is entitled to the quiet and peaceful
11 possession of the land with the boundaries as described in Exhibit A, and that the
12 Government has no estate, right, title, lien, or interest in or to said premises;

13 3. A declaration that title to the land with the boundaries as described in
14 Exhibit A be quieted against all claims of the Government;

15 4. An injunction, ordering the Secretary of the Interior to consummate the
16 transfer of the land with the boundaries as described in Exhibit A, as he is mandated
17 to do under the land-transfer statute; and

18 4. An order directing the execution of a deed on behalf of the VFW, so
19 that the deed can be recorded to properly reflect the VFW's sole ownership of the
20 land with the boundaries as described in Exhibit A; and


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5. For such other and further relief as the Court deems just and proper.

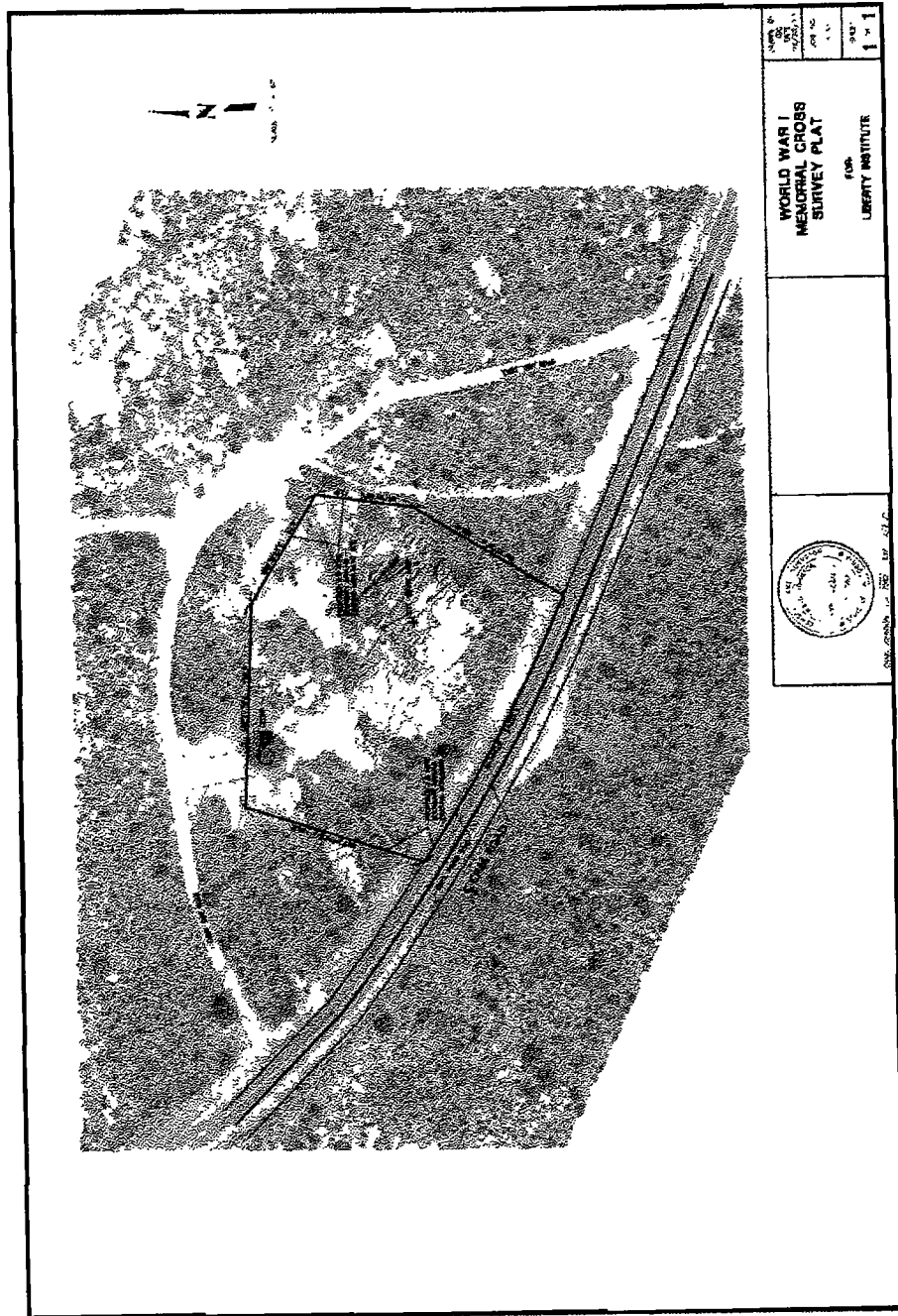
Dated: January 10, 2011

MORGAN, LEWIS & BOCKIUS LLP

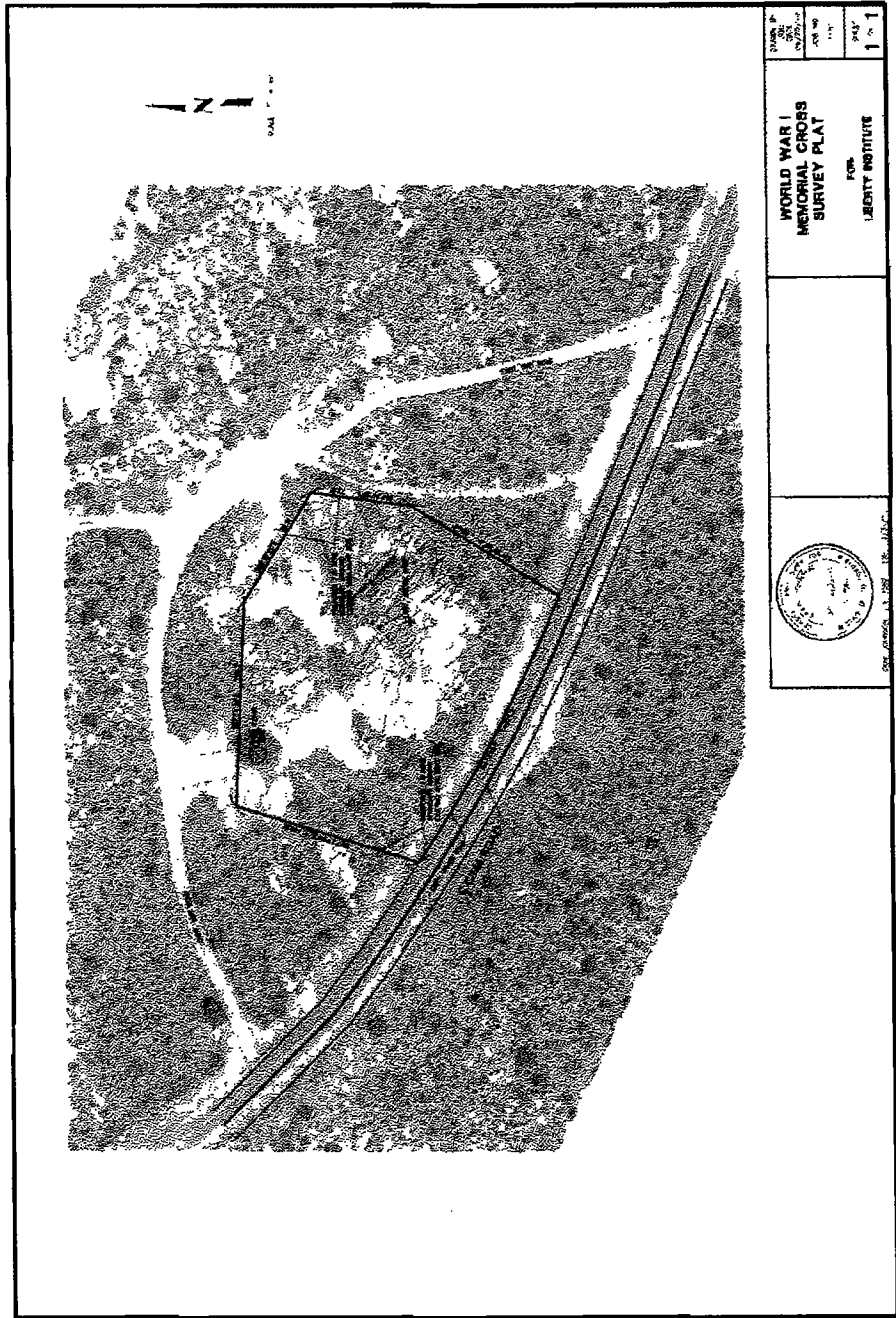
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Attorneys for Plaintiffs
VFW POST 385 AND VFW DEPARTMENT
OF CALIFORNIA

EXHIBIT A



WORLD WAR I MEMORIAL CROSS SURVEY PLAT	AREA OF SURVEY ACRES 1.11
	FOR LIBERTY INSTITUTE
	DATE OF SURVEY 1951



DRAWN BY DATE JOB NO. 111	WORLD WAR I MEMORIAL CROSS SURVEY PLAT	FOR LIBERTY INSTITUTE	SHEET 1 OF 1
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