

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 15-0080
)
Timothy L. Stark, an individual,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

On February 26, 2015, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this adjudicatory proceeding by filing an Order to Show Cause Why Animal Welfare Act License 32-C-0204 Should Not Be Terminated [Order to Show Cause]. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [Animal Welfare Act]; the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.153) [Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Administrator alleges: (1) Mr. Stark was convicted in *United States v. Stark*, Case No. 4:07CR00013-001 (S.D. Ind. Jan. 17, 2008), of violating the Endangered Species Act (16 U.S.C. § 1538(a)(1)(E));¹ and (2) permitting Mr. Stark to continue to hold an Animal Welfare Act license would be contrary to the Animal Welfare Act's purpose of ensuring humane treatment

¹Order to Show Cause ¶ 3 at 2.

of animals because Mr. Stark has been found to have harmed the animals in his custody.² The Administrator seeks an order terminating Mr. Stark's Animal Welfare Act license.³

On March 23, 2015, Mr. Stark filed an Answer to Order to Show Cause Why Animal Welfare Act License 32-C-00204 [sic] Should Not Be Terminated [Answer] in which Mr. Stark: (1) admits he was convicted in *United States v. Stark*, Case No. 4:07CR00013-001 (S.D. Ind. Jan. 17, 2008), of violating 16 U.S.C. § 1538(a)(1)(E), as alleged in the Order to Show Cause; (2) denies he has been found to have harmed an animal in his custody; and (3) denies his continuing to hold an Animal Welfare Act license would be contrary to the Animal Welfare Act's purpose of ensuring humane treatment of animals.⁴ Mr. Stark asserts the Administrator is barred by estoppel and laches from seeking termination of Mr. Stark's Animal Welfare Act license based upon Mr. Stark's conviction of violating 16 U.S.C. § 1538(a)(1)(E).⁵

On March 25, 2015, Mr. Stark filed a motion to dismiss the Order to Show Cause,⁶ and, on April 15, 2015, the Administrator filed a response in opposition to Mr. Stark's Motion to Dismiss.⁷ On April 21, 2015, Administrative Law Judge Janice K. Bullard [ALJ] issued an Order denying

²Order to Show Cause ¶ 4 at 2.

³Order to Show Cause at 2-3.

⁴Answer ¶¶ 2-3 at the first unnumbered page.

⁵Answer ¶¶ 4-5 at the first through the third unnumbered pages. Mr. Stark's Answer contains two paragraphs designated "5". Mr. Stark raises estoppel as a defense in the first paragraph designated "5" and raises laches as a defense in the second paragraph designated "5".

⁶Motion to Dismiss.

⁷Complainant's Response to Motion to Dismiss.

Mr. Stark's Motion to Dismiss based upon the Rules of Practice which provide that any motion will be entertained other than a motion to dismiss on the pleading.⁸

On June 3, 2015, the Administrator filed Complainant's Motion for Summary Judgment [Administrator's Motion for Summary Judgment] and, on July 28, 2015, Mr. Stark filed a Response to Complainant's Motion for Summary Judgment and a Memorandum in Support of Respondent's Response to Complainant's Motion for Summary Judgment. On July 28, 2015, Mr. Stark also filed Respondent's Motion for Summary Judgment [Mr. Stark's Motion for Summary Judgment] and Memorandum in Support of Stark's Motion for Summary Judgment on the Pleadings and Submitted Evidence.

On January 11, 2016, the ALJ issued a Decision and Order Denying and Granting Summary Judgment [Decision and Order] in which the ALJ: (1) found Mr. Stark transferred possession of one ocelot to an individual in Texas in October 2004 in violation of the Endangered Species Act; (2) found Mr. Stark pled guilty in August 2007 to violating the Endangered Species Act; (3) found no evidence that Mr. Stark's transfer of possession of one ocelot in October 2004 harmed the ocelot or any other animal; (4) found the Animal and Plant Health Inspection Service, United States Department of Agriculture [APHIS], routinely renewed Mr. Stark's Animal Welfare Act license after Mr. Stark's conviction of violating the Endangered Species Act; (5) concluded the Administrator failed to establish how Mr. Stark could be determined to be unfit to hold an Animal Welfare Act license based upon "an old conviction, which did not prevent APHIS from repeatedly thereafter issuing [Mr. Stark] the [Animal Welfare Act] license which the [Administrator] seeks to terminate"; (6) denied the Administrator's Motion for Summary Judgment; (7) granted Mr. Stark's Motion for Summary Judgment; and (8) ordered APHIS to issue

⁸ALJ's Order Denying Respondent's Motion to Dismiss and Setting Date for Submissions.

Mr. Stark's Animal Welfare Act license if Mr. Stark timely submits the license for renewal and pays all fees.⁹

On February 11, 2016, the Administrator filed Complainant's Petition for Appeal and Supporting Brief [Appeal Petition], and on February 29, 2016, Mr. Stark filed Respondent Stark's Response in Opposition to Complainant's Appeal. On March 1, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration and decision.

The Administrator requests either that I issue a final decision reversing the ALJ's Decision and Order or that I vacate the ALJ's Decision and Order and remand this proceeding to the ALJ for issuance of a decision and order in conformance with the Regulations, United States Department of Agriculture precedent, and relevant case law (Appeal Pet. ¶ III at the eleventh unnumbered page). Based upon a careful review of the record, I affirm the ALJ's Decision and Order denying the Administrator's Motion for Summary Judgment and granting Mr. Stark's Motion for Summary Judgment, and I dismiss the Order to Show Cause.

DECISION

Discussion

The Animal Welfare Act provides that the Secretary of Agriculture shall issue licenses to dealers and exhibitors upon application therefore in such form and manner as the Secretary may prescribe (7 U.S.C. § 2133). The power to require and to issue licenses under the Animal Welfare Act includes the power to terminate licenses and to disqualify persons from becoming licensed.¹⁰

⁹ALJ's Decision and Order at 7-8.

¹⁰Greenly, AWA Docket No. 11-0073, 2013 WL 8213613, at *2 (U.S.D.A. July 2, 2013), *aff'd per curiam*, 576 F. App'x 649 (8th Cir. 2014); Vanishing Species Wildlife, Inc., AWA Docket No. 10-0194, 69 Agric. Dec. 1068, 1070 (U.S.D.A. Nov. 3, 2010); Animals of Montana, Inc., 68 Agric. Dec. 92, 94 (U.S.D.A. Mar. 10, 2009); Amarillo Wildlife Refuge, Inc., AWA Docket

The Regulations specify certain bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). The Regulations provide an initial application for an Animal Welfare Act license will be denied if the applicant is unfit to be licensed and the Administrator determines the issuance of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act, as follows:

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

....

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11(a)(6).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

No. 07-0077, 68 Agric. Dec. 77, 81 (U.S.D.A. Jan. 6, 2009); Vigne, AWA Docket No. 07-0174, 67 Agric. Dec. 1060, 1062 (U.S.D.A. Nov. 18, 2008); Bradshaw, AWA Docket No. 90-22, 50 Agric. Dec. 499, 507 (U.S.D.A. May 17, 1991).

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131.

The Administrator alleges and Mr. Stark admits that, on January 17, 2008, Mr. Stark was convicted of violating 16 U.S.C. § 1538(a)(1)(E) in October 2004 by unlawfully receiving, transporting, and shipping in interstate commerce, in the course of a commercial activity, one ocelot.¹¹ The Administrator alleges but Mr. Stark denies that permitting Mr. Stark to continue to hold an Animal Welfare Act license would be contrary to the Animal Welfare Act's purpose of ensuring humane treatment of animals because Mr. Stark has been found to have harmed the animals in his custody.¹²

The Administrator's Appeal Petition

The Administrator raises seven issues in his Appeal Petition. First the Administrator contends the ALJ erroneously found Mr. Stark was convicted in 2007 of violating the Endangered Species Act (Appeal Pet. ¶ IIA at the third unnumbered page).

¹¹Order to Show Cause ¶ 3 at 2; Answer ¶ 2 at the first unnumbered page.

¹²Order to Show Cause ¶ 4 at 2; Answer ¶ 3 at the first unnumbered page.

The ALJ found Mr. Stark was convicted in 2007 of violating the Endangered Species Act (ALJ's Decision and Order at 7). The record establishes that, on January 17, 2008, Mr. Stark was convicted in the United States District Court for the Southern District of Indiana of violating 16 U.S.C. § 1538(a)(1)(E) (Order to Show Cause Attach. CX 2 at 18). Therefore, I conclude the ALJ's finding that Mr. Stark was convicted in 2007 of violating the Endangered Species Act, is error; however, I conclude the ALJ's error is harmless.

Second, the Administrator asserts Mr. Stark's receipt, transportation, and shipment of one ocelot in October 2004 did not trigger the ability of the Administrator to institute this Animal Welfare Act license termination proceeding (Appeal Pet. ¶ IIA at the third and the fourth unnumbered pages). I infer the Administrator contends the ALJ erroneously found the Administrator instituted this proceeding based upon Mr. Stark's October 2004 violation of the Endangered Species Act rather than based on Mr. Stark's January 17, 2008, conviction of violating the Endangered Species Act.

The Regulations provide that an Animal Welfare Act license may be terminated when an Animal Welfare Act licensee "has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals[.]"¹³ The plain language of 9 C.F.R. § 2.11(a)(6) establishes that a violation of law by itself is not a sufficient basis for the institution of an action to terminate an Animal Welfare Act license. Instead, in order to institute an action to terminate an Animal Welfare Act license pursuant to 9 C.F.R. § 2.11(a)(6), an Animal Welfare Act licensee must have pled no contest to a charge that the licensee has violated a law or regulation pertaining to the transportation, ownership, neglect, or welfare of animals or must have been found to have violated a law or

¹³ 9 C.F.R. § 2.11(a)(6).

regulation pertaining to the transportation, ownership, neglect, or welfare of animals. Thus, Mr. Stark's January 17, 2008, conviction of violating the Endangered Species Act, not Mr. Stark's October 2004 violation of the Endangered Species Act, triggered the ability of the Administrator to institute this Animal Welfare Act license termination proceeding pursuant to 9 C.F.R. §§ 2.11(a)(6) and 2.12.¹⁴

The ALJ found the instant action to terminate Mr. Stark's Animal Welfare Act license rests on Mr. Stark's "conviction" and concluded the Administrator has failed to establish how Mr. Stark could be determined unfit to hold an Animal Welfare Act license based upon an old "conviction."¹⁵ Therefore, I reject the Administrator's contention that the ALJ erroneously found that the basis for this proceeding is Mr. Stark's October 2004 violation of the Endangered Species Act. Instead, I conclude the ALJ correctly found the instant action to terminate Mr. Stark's Animal Welfare Act license rests on Mr. Stark's January 17, 2008, conviction of violating the Endangered Species Act.

Third, the Administrator contends the ALJ's statement that the Administrator did not allege or present evidence that Mr. Stark failed to report his conviction, is irrelevant (Appeal Pet. ¶ IIA at the fourth unnumbered page).

The ALJ states "[t]here has been no allegation made, and no evidence presented, that [Mr. Stark] failed to report his conviction" (ALJ's Decision and Order at 6). The Regulations do

¹⁴See, Greenly, AWA Docket No. 11-0073, 2013 WL 8213613, at *6 (U.S.D.A. July 2, 2013) (stating the "claim" in this proceeding first accrued on March 14, 2007, when Mr. Greenly was convicted of violating the Lacey Act, not in September and October 2005, when Mr. Greenly violated the Lacey Act), *aff'd per curiam*, 576 F. App'x 649 (8th Cir. 2014); Animals of Montana, Inc., AWA Docket No. D-05-0005, 68 Agric. Dec. 92, 109 (U.S.D.A. Mar. 10, 2009) (holding conviction triggers the Secretary of Agriculture's ability to terminate an Animal Welfare Act license pursuant to 9 C.F.R. §§ 2.11(a)(6) and 2.12; not the date of the underlying criminal activities).

¹⁵ALJ's Decision and Order at 7-8.

not require the Administrator to establish that a respondent failed to report a conviction in order to terminate that respondent's Animal Welfare Act license based upon that conviction. Therefore, I agree with the Administrator's contention that the ALJ's statement regarding the lack of evidence to establish that Mr. Stark failed to report his conviction, is irrelevant. I note, however, that the ALJ's irrelevant statement is factually correct. Moreover, the ALJ's statement is not part of the basis for the ALJ's disposition of this proceeding.

Fourth, the Administrator contends the ALJ failed to cite a statute of limitations which bars the Administrator from instituting this Animal Welfare Act license termination proceeding (Appeal Pet. ¶ IIA at the fourth through the sixth unnumbered pages).

The ALJ did not conclude that the Administrator is barred by a statute of limitations from instituting this Animal Welfare Act license termination proceeding. Therefore, I reject the Administrator's suggestion that the ALJ's failure to cite a statute of limitations which bars the Administrator from instituting this proceeding, is error.¹⁶

While the ALJ did not conclude that the Administrator is barred by a statute of limitations from instituting this proceeding, the ALJ characterized Mr. Stark's conviction of violating the Endangered Species Act as an "old" conviction and concluded the Administrator failed to establish how Mr. Stark could be determined to be unfit to hold an Animal Welfare Act license based upon that old conviction (ALJ's Decision and Order at 8).

¹⁶The parties do not cite, and I cannot locate, a statute of limitations that bars the Administrator from instituting this Animal Welfare Act license termination proceeding. I have concluded in previous proceedings instituted under 9 C.F.R. §§ 2.11 and 2.12 that the statute of limitations in 18 U.S.C. § 3282(a) and the statute of limitations in 28 U.S.C. § 2462 are not applicable to Animal Welfare Act license termination proceedings. See, Greenly, AWA Docket No. 11-0073, 2013 WL 8213613, at *5-6 (U.S.D.A. July 2, 2013), *aff'd per curiam*, 576 F. App'x 649 (8th Cir. 2014); Vigne, AWA Docket No. 07-0174, 67 Agric. Dec. 1060, 1067-68 (U.S.D.A. Nov. 18, 2008).

Mr. Stark was convicted on January 17, 2008, of violating the Endangered Species Act (Order to Show Cause Attach. CX 2 at 18). The Administrator did not file the Order to Show Cause initiating this Animal Welfare Act license termination proceeding until February 26, 2015, seven years one month nine days after Mr. Stark's conviction. Each of the previous Animal Welfare Act license termination proceedings based upon a respondent's conviction of violating a law or regulation pertaining to the transportation, ownership, neglect, or welfare of animals, which have come before me, have been instituted by the Administrator within four years following the conviction.¹⁷ Therefore, at least in the context of an Animal Welfare Act license termination proceeding, I do not disagree with the ALJ's characterization of Mr. Stark's conviction as an "old" conviction. Moreover, based upon the facts in this proceeding and particularly the more than seven-year period between Mr. Stark's conviction and the Administrator's institution of this proceeding, I am reluctant to disturb the ALJ's January 11, 2016, Decision and Order denying the Administrator's Motion for Summary Judgment and granting Mr. Stark's Motion for Summary Judgment.

¹⁷See, Greenly, AWA Docket No. 11-0073, 2013 WL 8213613 (U.S.D.A. July 2, 2013) (the Administrator instituted the Animal Welfare Act license termination proceeding on November 29, 2010, based upon a March 14, 2007, conviction of violating the Lacey Act), *aff'd per curiam*, 576 F. App'x 649 (8th Cir. 2014); Ash, Docket No. 11-0380, 71 Agric. Dec. 900 (U.S.D.A. Sept. 14, 2012) (the Administrator instituted the Animal Welfare Act license termination proceeding on August 31, 2011, based upon an April 29, 2011, conviction of violating New York Penal Law § 120.20); Bauck, AWA Docket No. D-09-0139, 68 Agric. Dec. 853 (U.S.D.A. Dec. 2, 2009) (the Administrator instituted the Animal Welfare Act license termination proceeding on June 22, 2009, based upon a March 24, 2009, conviction of violating Minnesota Statute § 343.21 and a May 19, 2008, conviction of violating Minnesota Statute § 156.10), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); Amarillo Wildlife Refuge, Inc., AWA Docket No. 07-0077, 68 Agric. Dec. 77 (U.S.D.A. Jan. 6, 2009) (the Administrator instituted the Animal Welfare Act license termination proceeding on March 6, 2007, based upon a July 21, 2006, conviction of violating the Endangered Species Act); Vigne, AWA Docket No. 07-0174, 67 Agric. Dec. 1060 (U.S.D.A. Nov. 18, 2008) (the Administrator instituted the Animal Welfare Act license termination proceeding on August 21, 2007, based upon a January 4, 2007, conviction of violating the Endangered Species Act).

Fifth, the Administrator contends the ALJ erroneously equated issuance of an Animal Welfare Act license with renewal of an existing, valid Animal Welfare Act license (Appeal Pet. ¶ IIB at the sixth through the eighth unnumbered pages).

The Regulations applicable to licensing under the Animal Welfare Act (9 C.F.R. §§ 2.1-2.12) distinguish between issuance of an Animal Welfare Act license and renewal of an existing Animal Welfare Act license. The Administrator alleges and Mr. Stark admits Mr. Stark holds Animal Welfare Act license number 32-C-0204.¹⁸ The ultimate issue in this proceeding conducted pursuant to 9 C.F.R. § 2.12 is whether Mr. Stark's existing Animal Welfare Act license should be terminated.

Throughout the ALJ's Decision and Order, the ALJ interchangeably refers to "issuance" and "renewal" of an Animal Welfare Act license.¹⁹ Therefore, I agree with the Administrator's contention that the ALJ erroneously equated issuance of an Animal Welfare Act license with renewal of an existing, valid Animal Welfare Act license.

Sixth, the Administrator contends the ALJ erroneously concluded APHIS' renewal of Mr. Stark's Animal Welfare Act license reflects APHIS' determination that Mr. Stark was fit to hold an Animal Welfare Act license (Appeal Pet. ¶ IIC at the eighth through the tenth unnumbered pages).

The ALJ found APHIS annually renewed Mr. Stark's Animal Welfare Act license after Mr. Stark's conviction of violating the Endangered Species Act. The ALJ further found each

¹⁸Order to Show Cause ¶ 1 at 1; Answer ¶ 1 at the first unnumbered page.

¹⁹See, e.g., the ALJ statement that "[t]he evidence fails to establish that the Administrator of APHIS determined that the issuance of a license to Respondent would be contrary to the purposes of the Act. In fact, APHIS has renewed Respondent's AWA license following his conviction, most recently in November, 2014." (ALJ's Decision and Order at 6 (footnote omitted)).

annual renewal reflects APHIS' determinations that Mr. Stark was fit to hold an Animal Welfare Act license and that Mr. Stark's continuing to hold an Animal Welfare Act license was consistent with the purposes of the Animal Welfare Act (ALJ's Decision and Order at 6, 8). Moreover, the ALJ's finding regarding the import of APHIS' annual renewal of Mr. Stark's Animal Welfare Act license forms part of the basis for the ALJ's denial of the Administrator's Motion for Summary Judgment:

3. The denial of summary judgment to Complainant USDA is appropriate, as USDA has failed to establish how Respondent could be determined unfit to hold an AWA license for an old conviction, which did not prevent APHIS from repeatedly thereafter issuing him the license which USDA seeks to terminate.

ALJ's Decision and Order at 8.

The ALJ's finding that APHIS' renewal of Mr. Stark's Animal Welfare Act license reflects APHIS' determinations that Mr. Stark was fit to hold an Animal Welfare Act license and that Mr. Stark's continuing to hold an Animal Welfare Act license was consistent with the purposes of the Animal Welfare Act, is error. The Regulations require that APHIS annually renew each Animal Welfare Act license upon the Animal Welfare Act licensee's payment of an Animal Welfare Act license fee (9 C.F.R. § 2.6) and filing an annual report and an application for license renewal with the AC Regional Director of APHIS (9 C.F.R. § 2.7(a)). As long as the Animal Welfare Act licensee meets these three requirements, APHIS must renew the licensee's Animal Welfare Act license.²⁰

Seventh, the ALJ found the evidence fails to support the Administrator's allegation that Mr. Stark has been found to have harmed the animals in his custody (ALJ's Decision and Order at 6). The Administrator contends termination of Mr. Stark's Animal Welfare Act license is not

²⁰Animal Legal Defense Fund v. U.S. Dep't of Agric., 789 F.3d 1206, 1211 (11th Cir. 2015).

dependent on the Administrator's establishing that Mr. Stark harmed animals (Appeal Pet. ¶ IID at the tenth through the eleventh unnumbered pages).

The Regulations provide that an Animal Welfare Act license may be terminated if an Animal Welfare Act licensee has been found to have violated any law or regulation pertaining to the transportation, ownership, neglect, or welfare of animals and the Administrator determines the licensee's retention of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act.²¹ The Administrator bases his determination that Mr. Stark's retention of his Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act on Mr. Stark's having been found to have harmed the animals in his custody (Order to Show Cause ¶ 4 at 2). Therefore, I reject the Administrator's contention that termination of Mr. Stark's Animal Welfare Act license is not dependent on the Administrator's establishing that Mr. Stark harmed animals.

The Administrator contends the allegation that Mr. Stark has been found to have harmed the animals in his custody is supported by Mr. Stark's conviction of violating the Endangered Species Act. Specifically, the Administrator contends, when Mr. Stark violated the Endangered Species Act, he harmed ocelots by taking and selling an ocelot, interfering with that particular ocelot's normal behavioral activities, and interfering with the welfare of the ocelot species as a whole (Appeal Pet. ¶ IID at the tenth and the eleventh unnumbered pages).

Mr. Stark was convicted of violating 16 U.S.C. § 1538(a)(1)(E) (Order to Show Cause Attach. CX 2 at 18). The elements of Mr. Stark's October 2004 violation of 16 U.S.C. § 1538(a)(1)(E) are that Mr. Stark (1) did knowingly, intentionally, and unlawfully receive, transport, and ship, (2) in interstate commerce, (3) an endangered species (one ocelot), (4) in the

²¹ 19 C.F.R. §§ 2.11(a)(6) and 2.12.

course of a commercial activity (Order to Show Cause Attach. CX 2 at 9-10). The elements of Mr. Stark's violation of 16 U.S.C. § 1538(a)(1)(E) do not include Mr. Stark's taking and selling an ocelot, Mr. Stark's interference with the normal behavioral activities of an ocelot, or Mr. Stark's interference with the welfare of the ocelot species as a whole, as the Administrator contends. Therefore, I reject the Administrator's contention that his allegation that Mr. Stark has been found to have harmed the animals in his custody is supported by Mr. Stark's conviction of violating 16 U.S.C. § 1538(a)(1)(E).

Based upon my review of the record, I agree with the ALJ's conclusion that termination of Mr. Stark's Animal Welfare Act license based upon Mr. Stark's January 17, 2008, conviction of violating 16 U.S.C. § 1538(a)(1)(E) would be arbitrary and capricious. While the Administrator is not barred by a statute of limitations from instituting this Animal Welfare Act license termination proceeding, the Administrator instituted this proceeding more than seven years after Mr. Stark was convicted of violating 16 U.S.C. § 1538(a)(1)(E). The delay between Mr. Stark's conviction and the institution of this Animal Welfare Act license termination proceeding implicates the necessity for termination of Mr. Stark's Animal Welfare Act license in order to carry out the purposes of the Animal Welfare Act. Further, the Administrator alleges that permitting Mr. Stark to continue to hold an Animal Welfare Act license would be contrary to the Animal Welfare Act's purpose of ensuring humane treatment of animals because Mr. Stark has been found to have harmed the animals in his custody. However, the record is devoid of any evidence that Mr. Stark has been found to have harmed the animals in his custody.

I note the Order in the ALJ's January 11, 2016, Decision and Order requires APHIS to "issue" Mr. Stark's Animal Welfare Act license, "if it has been timely submitted for renewal and

if all fees have been paid.”²² I do not adopt this provision of the ALJ’s Order because the Administrator’s compliance with the Animal Welfare Act license renewal provisions of the Regulations is not at issue in this proceeding, the ALJ’s Order conflates renewal of an Animal Welfare Act license and issuance of an Animal Welfare Act license, the ALJ’s Order requires the submission of Mr. Stark’s Animal Welfare Act license for renewal rather than the filing of an application for license renewal as required by 9 C.F.R. § 2.7(a), and the ALJ’s Order does not require that Mr. Stark file an annual report as required by 9 C.F.R. § 2.7(a).

Findings of Fact

1. Mr. Stark is an individual whose mailing address is in the State of Indiana (Order to Show Cause ¶ 1 at 1; Answer ¶ 1 at the first unnumbered page).
2. Mr. Stark holds Animal Welfare Act license number 32-C-0204 (Order to Show Cause ¶ 1 at 1; Answer ¶ 1 at the first unnumbered page).
3. In October 2004, Mr. Stark received, transported, and shipped one ocelot in interstate commerce in a commercial activity (Order to Show Cause ¶ 3 at 2, Attach. CX 2; Answer ¶ 2 at the first unnumbered page).
4. Based on Mr. Stark’s activity described in Finding of Fact number three, Mr. Stark was convicted on January 17, 2008, in the United States District Court for the Southern District of Indiana of violating 16 U.S.C. § 1538(a)(1)(E) (Order to Show Cause ¶ 3 at 2, Attach. CX 2; Answer ¶ 2 at the first unnumbered page).
5. On February 26, 2015, the Administrator instituted this Animal Welfare Act license termination proceeding, seven years one month nine days after Mr. Stark was convicted of violating 16 U.S.C. § 1538(a)(1)(E) (Order to Show Cause at 1).

²²ALJ’s Decision and Order at 8.

6. The record is devoid of any evidence that Mr. Stark was found to have harmed the animals in his custody.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. This Animal Welfare Act license termination proceeding is not time barred by an applicable statute of limitations.
3. The Administrator did not establish that Mr. Stark was unfit to hold an Animal Welfare Act license.
4. The Administrator did not establish that allowing Mr. Stark to hold an Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act.

For the foregoing reasons, the following Order is issued.

ORDER

1. The ALJ's Decision and Order, filed January 11, 2016, denying the Administrator's June 3, 2015, Motion for Summary Judgment and granting Mr. Stark's July 28, 2015, Motion for Summary Judgment, is affirmed.
2. The Administrator's Order to Show Cause, filed February 26, 2015, is dismissed.

Done at Washington, DC

July 15, 2016

William G. Jenson
Judicial Officer