

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 13-0342
	)	
Lancelot Kollman Ramos, a/k/a	)	
Lancelot Ramos and Lancelot	)	
Kollman, an individual,	)	
	)	
Respondent	)	<b>Decision and Order</b>

**PROCEDURAL HISTORY**

On September 10, 2013, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], instituted this proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [Animal Welfare Act]; the regulations and standards issued pursuant to the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151).

The Administrator alleges: (1) on November 7, 2008, Mr. Ramos verbally abused and harassed Animal and Plant Health Inspection Service [APHIS] inspectors, in violation of 9 C.F.R. § 2.4;<sup>1</sup> (2) during the period from October 19, 2009, through November 8, 2010, Mr. Ramos operated as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, without having been licensed by the Secretary of Agriculture, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c);<sup>2</sup> (3) during the period from June 1, 2008,

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<sup>1</sup>Compl. ¶ 4 at 2.

<sup>2</sup>Compl. ¶ 5 at 2-3.

through October 29, 2008, Mr. Ramos failed to handle an elephant as carefully as possible in a manner that did not cause the elephant behavioral stress, physical harm, or unnecessary discomfort, in violation of 9 C.F.R. § 2.131(b)(1);<sup>3</sup> (4) between January 10, 2008, and November 7, 2008, Mr. Ramos failed to provide adequate veterinary care to an elephant, in violation of 9 C.F.R. § 2.40(b)(2);<sup>4</sup> (5) on October 29, 2008, Mr. Ramos failed to provide adequate veterinary care to a tiger, in violation of 9 C.F.R. § 2.40(b)(2);<sup>5</sup> (6) on October 29, 2008, Mr. Ramos failed to provide adequate veterinary care to a lion, in violation of 9 C.F.R. § 2.40(b)(2);<sup>6</sup> (7) on October 29, 2008, Mr. Ramos failed to have a written plan for the environmental enrichment of two nonhuman primates, in violation of 9 C.F.R. §§ 2.100(a) and 3.81;<sup>7</sup> (8) during the period October 29, 2008, through November 7, 2008, Mr. Ramos failed to feed an elephant wholesome, palatable food free from contamination and of sufficient quantity and nutritive value to maintain the elephant in good health and failed to prepare a diet with consideration for the elephant's condition and size, in violation of 9 C.F.R. §§ 2.100(a) and 3.129;<sup>8</sup> (9) on September 11, 2009, Mr. Ramos failed to design and construct the animal cargo space of his primary conveyance to protect the health and ensure the safety of four tigers and two

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<sup>3</sup>Compl. ¶ 6 at 3.

<sup>4</sup>Compl. ¶ 7 at 3.

<sup>5</sup>Compl. ¶ 8 at 3-4.

<sup>6</sup>Compl. ¶ 9 at 4.

<sup>7</sup>Compl. ¶ 10 at 4.

<sup>8</sup>Compl. ¶ 11 at 4.

lions contained in the animal cargo space, in violation of 9 C.F.R. §§ 2.100(a) and 3.138;<sup>9</sup> and (10) Mr. Ramos knowingly failed to obey a cease and desist order issued by the Secretary of Agriculture on May 10, 2001.<sup>10</sup> On September 26, 2013, Mr. Ramos filed an answer in which Mr. Ramos denied the material allegations of the Complaint, raised affirmative defenses of laches and selective prosecution, and requested oral hearing.<sup>11</sup>

On September 24-25, 2014, Administrative Law Judge Janice K. Bullard [ALJ] conducted a hearing by audio-visual telecommunication.<sup>12</sup> Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator and appeared at an audio-visual telecommunication site in Washington, DC. William J. Cook, Baker & Cook, P.A., Tampa, Florida, represented Mr. Ramos and appeared at an audio-visual telecommunication site in Palmetto, Florida. The ALJ presided over the hearing from a third audio-visual telecommunication site. Witnesses appeared at the Washington, DC, and the Palmetto, Florida, audio-visual telecommunication sites. The ALJ admitted to the record the Administrator's exhibits, identified as CX 1-CX 22, CX 25-CX 35, and CX 37-CX 53 (Tr. at 7-9, 245-46, 251, 503), and Mr. Ramos' exhibits, identified as RX 1-RX 17 (Tr. at 9-10). The parties entered into a stipulation of fact, which they memorialized in a document identified as

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<sup>9</sup>Compl. ¶ 12 at 4; Notice of Correction to Complaint, filed by the Administrator on August 21, 2014.

<sup>10</sup>Compl. ¶ 3 at 2.

<sup>11</sup>Respondent, Lancelot Kollman Ramos a/k/a Lancelot Ramos a/k/a Lancelot Kollman's Answer, Affirmative Defenses and Request for Hearing [Answer].

<sup>12</sup>References to the transcript of the September 24-25, 2014, hearing are designated as "Tr." and the page number.

ALJX 1 (Tr. at 12-15). The Administrator's exhibit and witness list is identified as ALJX 2,<sup>13</sup> Mr. Ramos' exhibit and witness list is identified as ALJX 3, and Mr. Ramos' supplemental list of witnesses and exhibits is identified as ALJX 4.

On July 14, 2015, after the parties filed post hearing briefs,<sup>14</sup> the ALJ issued a Decision and Order in which the ALJ: (1) found, during the period from October 19, 2009, through November 8, 2009, Mr. Ramos operated as a dealer without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c); (2) found, on September 13-14, 2008, Mr. Ramos exhibited an elephant while the elephant was in poor physical condition and health, in violation of 9 C.F.R. § 2.131(b)(1); (3) found Mr. Ramos failed to provide a timely written plan of environment enhancement to promote the psychological well-being of nonhuman primates, in violation of 9 C.F.R. § 3.81; (4) found, on September 13-14, 2008, when Mr. Ramos violated 9 C.F.R. § 2.131(b)(1), Mr. Ramos knowingly failed to obey a cease and desist order issued by the Secretary of Agriculture; (5) ordered Mr. Ramos to cease and desist from further violations of the Animal Welfare Act and the Regulations; and (6) assessed Mr. Ramos a \$6,650 civil penalty.<sup>15</sup> The ALJ found the Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated the Animal Welfare Act and the Regulations, as alleged in paragraphs 4, 7-9, and 11-12 of the Complaint.<sup>16</sup>

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<sup>13</sup>The transcript erroneously identifies the Administrator's exhibit and witness list as ALJX 1 (Tr. at 9).

<sup>14</sup>On February 11, 2015, the Administrator filed Complainant's Proposed Findings of Fact, Conclusions of Law, and Order, and Brief in Support Thereof [Complainant's Post Hearing Brief] and Mr. Ramos filed Respondent, Lancelot Kollman Ramos a/k/a Lancelot Ramos a/k/a Lancelot Kollman's Post Hearing Argument.

<sup>15</sup>ALJ's Decision and Order at 33-35.

<sup>16</sup>ALJ's Decision and Order at 26, 32-33.

On October 13, 2015, the Administrator filed Complainant's Petition for Appeal of Initial Decision; Supporting Brief [Appeal Petition], and, on November 24, 2015, Mr. Ramos filed Respondent, Lancelot Kollman Ramos a/k/a Lancelot Ramos a/k/a Lancelot Kollman's Response to Appeal Petition [Response to Appeal Petition]. On December 18, 2015, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

## **DECISION**

### **I. Summary of the Decision**

Based upon a careful consideration of the record, I affirm the ALJ's Decision and Order; except that, I find Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.138, as alleged in paragraph 12 of the Complaint and the Notice of Correction to Complaint, and I increase the \$6,650 civil penalty assessed by the ALJ to \$66,050.

### **II. Statutory and Regulatory Framework**

The purpose of the Animal Welfare Act is to regulate the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons engaged in using animals for research, experimentation, or exhibition or holding animals for sale as pets (7 U.S.C. § 2131).

The Animal Welfare Act defines the term "dealer" as including any person who, in commerce, for compensation or profit, delivers for transportation or transports (except as a carrier), buys, sells, or negotiates the purchase or sale of any animal for research, teaching, exhibition, or use as a pet (7 U.S.C. § 2132(f)). The Animal Welfare Act requires that each dealer obtain an Animal Welfare Act license, as follows:

**§ 2134. Valid license for dealers and exhibitors required**

No dealer . . . shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer . . . under this chapter any animals, unless and until such dealer . . . shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

7 U.S.C. § 2134.

The Animal Welfare Act authorizes the Secretary of Agriculture to issue regulations to effectuate the purposes of the Animal Welfare Act (7 U.S.C. § 2151). The Regulations require any person operating as a dealer to have an Animal Welfare Act license (9 C.F.R. § 2.1(a)(1)).<sup>17</sup> The Regulations prohibit any person whose Animal Welfare Act license has been revoked from buying, selling, transporting, exhibiting, or delivering for transportation, any animal during the period of revocation (9 C.F.R. § 2.10(c)).

The Regulations also prohibit an Animal Welfare Act licensee from abusing or harassing an APHIS official when that APHIS official is performing his or her duties (9 C.F.R. § 2.4) and impose standards for adequate veterinary care (9 C.F.R. § 2.40(b)(2)), humane handling (9 C.F.R. § 2.131(b)(1)), transportation (9 C.F.R. § 3.138), and feeding (9 C.F.R. § 3.129) of covered animals, as well as, environment enhancement for nonhuman primates (9 C.F.R. § 3.81).

The Animal Welfare Act authorizes the Secretary of Agriculture to assess civil penalties, issue cease and desist orders, and suspend or revoke Animal Welfare Act licenses for violations of the Animal Welfare Act or the Regulations (7 U.S.C. § 2149(b)). In addition, the Animal Welfare Act provides that any person who knowingly fails to obey a cease and desist order issued by the Secretary of Agriculture shall be subject to a civil penalty (7 U.S.C. § 2149(b)).

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<sup>17</sup>9 C.F.R. § 2.1(a) contains exceptions from the requirement that each dealer obtain an Animal Welfare Act license that are not relevant to this proceeding.

### III. Affirmative Defenses

Mr. Ramos raised two affirmative defenses, laches and selective prosecution,<sup>18</sup> both of which the ALJ rejected.<sup>19</sup> Mr. Ramos did not appeal the ALJ's rejection of his affirmative defenses.

### IV. Summary of Admissions, Stipulation, and Evidence

#### A. Admissions

Mr. Ramos admitted that, in *Octagon Sequence of Eight, Inc.*, AWA Docket No. 05-0016, 66 Agric. Dec. 1093 (U.S.D.A. Oct. 2, 2007), the Secretary of Agriculture revoked Mr. Ramos' Animal Welfare Act license. The Secretary of Agriculture's order revoking Mr. Ramos' Animal Welfare Act license became effective October 19, 2009.<sup>20</sup>

#### B. Stipulation

The parties stipulated that, on or about November 5, 2009, Mr. Ramos delivered for transportation, sold, and/or negotiated the sale of the animals described in ALJX 1<sup>21</sup> to Jennifer Caudill.

#### C. Summary of the Evidence

Mr. Ramos has worked as a circus performer and animal trainer his entire life (Tr. at 341). Mr. Ramos cared for numerous elephants owned by his family, several circuses, and

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<sup>18</sup>Answer at 2.

<sup>19</sup>ALJ's Decision and Order at 2-3.

<sup>20</sup>Compl. ¶ 1 at 1; Answer ¶ 1 at 1.

<sup>21</sup>ALJX 1 identifies the animals as 2 zebras, 2 llamas, 2 camels, 26 or 28 tigers, and 1 liger.

other individuals (Tr. at 348-49). In 2004, Mr. Ramos acquired an elephant named “Ned” from William Woodcock (Tr. at 347). Mr. Ramos was aware of rumors that something was wrong with Ned and was aware that Ned was thin, but Mr. Ramos did not know Ned had health problems (Tr. at 347). Mr. Ramos felt confident he could care for Ned with the help of his veterinarian, Dr. Thomas B. Schotman, who had cared for Ned in the past (Tr. at 350).

When Ned first moved to Mr. Ramos’ facility, he did well, but he soon experienced recurring bouts of refusing to drink and eating dirt (Tr. at 357, 360). Mr. Ramos treated Ned’s food with cilium to encourage the evacuation of the sand and dirt that Ned ate (Tr. at 361). Mr. Ramos described a “constant battle of eating the dirt, feeding him, trying to keep weight on him.” (Tr. at 362). Mr. Ramos consulted elephant veterinarians and experts, but none was familiar with Ned’s symptoms (Tr. at 362-63).

Dr. Schotman tried to determine the cause of Ned’s problems and recommended several dietary changes (Tr. at 364). Ned’s symptoms did not respond to beet pulp, hay, bran, corn, cracked corn, horse feed, or senior horse feed. *Id.* Mr. Ramos gave Ned the Mazuri brand of elephant feed, which contains 24 percent protein, but Ned then developed bumps on the outside of his stomach that burst and became open wounds (Tr. at 365). Dr. Schotman conducted tests of Ned’s stool and urine and tested Ned for tuberculosis. *Id.* Eventually, Dr. Schotman speculated Ned had ulcers, and he prescribed 100 tablets daily of Tagamet, which had no effect (Tr. at 366).

When Dr. Gregory Gaj, an APHIS supervisory animal care specialist (Tr. at 81), inspected Mr. Ramos’ facility on January 10, 2008, he observed that Ned looked thin, and Mr. Ramos told Dr. Gaj about Ned’s problems (Tr. at 368-69). Dr. Gaj suggested consulting with Dr. Schotman, which was what Mr. Ramos had been doing (Tr. at 369). Mr. Ramos’



regular APHIS inspector, Carol Porter, had not remarked on Ned's weight, although Mr. Ramos told Ms. Porter of Ned's issues (Tr. at 369-70).

In April 2008, Mr. Ramos was offered a job with an elephant in Bangor, Maine, and he thought more exercise and a change of scenery would help Ned (Tr. at 367). Mr. Ramos was not concerned about transporting Ned because Ned appeared to have gained some weight and he thought Ned might improve with some stimulation (Tr. at 367-68).

During an October 29, 2008, inspection of Mr. Ramos' facility, an APHIS inspector raised concerns about a tiger and a lion. Mr. Ramos addressed the APHIS inspector's concern about his tiger, explaining that one of his tigers had clawed another on the bottom of the foot while the tigers had been playing with a ball on the day before the APHIS inspection (Tr. at 379). Mr. Ramos separated the injured tiger from the others, as was the standard recommendation from Dr. Schotman (Tr. at 380). Mr. Ramos had called Dr. Schotman, but had not heard from him by the time of the October 29, 2008, inspection (Tr. at 380-81). Mr. Ramos also addressed the APHIS inspector's concern about his lion, explaining he was given two lions that developed wobbling, drooling, and other unusual symptoms. Dr. Schotman had been unable to diagnose a cause for the symptoms or to develop an effective treatment (Tr. at 384-85). Mr. Ramos and Dr. Schotman had tried various diets and vitamins, but the lions eventually had to be euthanized (Tr. at 386).

A retired organ grinder gave Mr. Ramos two capuchin monkeys shortly before the October 29, 2008, inspection (Tr. at 386). The APHIS inspector informed Mr. Ramos he was required to have a written plan of environmental enrichment for the monkeys. After the October 29, 2008, inspection, Dr. Schotman provided a written plan at Mr. Ramos' request (Tr. at 387).

Dr. Schotman has worked as a clinical veterinarian for 33 years and has treated over 100 different species of animals, including domestic pets, elephants, tigers, lions, bears, and reptiles (Tr. at 400). Dr. Schotman first began treating elephants when he lived near Circus World in Florida (Tr. at 400-01). By the end of the 1980s, Dr. Schotman was caring for 45 elephants, including Mr. Ramos' elephants (Tr. at 402-03).

Dr. Schotman knew Ned since his birth and saw him frequently after Mr. Woodcock purchased Ned (Tr. at 404-05). When Dr. Schotman first began examining Ned, Ned did not have any apparent health issues, had normal physical examinations, and was on a routine deworming and vaccination program (Tr. at 405-06). Dr. Schotman did not observe any problems with Ned's nutrition and assessed Ned's body score as a four or five on a scale of nine (Tr. at 406-07).

At some point, Ned began eating dirt, which is characteristic of elephants with upset stomachs (Tr. at 407-08). Ned developed a chronic condition of not eating or drinking for a day or two and then eating only roughage, despite treatments introduced by Mr. Ramos (Tr. at 409). Ned ate a large amount of hay, and it appeared as though grain would induce a "setback" (Tr. at 410). Ned may have experienced pain or discomfort, and Dr. Schotman treated Ned with non-steroid, anti-inflammatory medication. *Id.* Dr. Schotman and Mr. Ramos discussed Ned's diet many times, and Dr. Schotman recommended a diet that included palliative grain and access to roughage at all times (Tr. at 411). Dr. Schotman noted Ned's symptoms and his treatment in his records (Tr. at 412-13; RX 7; CX 22). Dr. Schotman and Mr. Ramos tried a variety of diets and medications (Tr. at 413). Ned's fecal tests were clear for parasites and, at times, Dr. Schotman concluded Ned had gained some weight (Tr. at 417).

Dr. Schotman believed Mr. Ramos took good care of his animals, and Mr. Ramos often called Dr. Schotman or another veterinarian to discuss problems (Tr. at 403-04). Dr. Schotman discussed Ned's problems with other veterinarians, who agreed that ulcers could have caused Ned's condition (Tr. at 419). Dr. Schotman prescribed a product used for horses with ulcers, but that product had no effect on Ned's condition (Tr. at 420).

In January 2008, Dr. Schotman was made aware that Dr. Gaj had concerns about Ned's eating problems (Tr. at 422). Dr. Schotman sent a letter, dated January 14, 2008, to Dr. Gaj describing his treatment of Ned (Tr. at 422-23). Based on his examination in March 2008, Dr. Schotman believed Ned was healthy enough to travel to Bangor, Maine, and to work in a show (Tr. at 429). Dr. Schotman concluded from his examination of Ned in September 2008, that Ned was fit to travel to Columbus, Georgia, for a show (Tr. at 430, 468-69; RX 7 at 44(a)). Ned's blood and fecal tests were normal, Ned had not eaten dirt for some time, and Dr. Schotman believed Ned had gained weight (Tr. at 431). Dr. Schotman thought Ned was improving. *Id.*

Dr. Schotman explained he kept no record of Ned's weight because weighing an elephant is an ordeal that involves finding a large scale (Tr. at 432). In Dr. Schotman's opinion, the actual weight is not as important as being aware of the animal's body condition and weight gain or loss. *Id.* He assigns a body score based on the muscle mass, visibility of bones, and size (Tr. at 433). Dr. Schotman was not concerned about Ned's general health because Mr. Ramos followed a good plan of nutrition (Tr. at 435).

Dr. Schotman noted on a report dated November 7, 2008, that he had spoken about Ned with Dr. Schmidt, a veterinarian for Ringling Brothers (Tr. at 438-39). Dr. Schmidt and his associate, Dr. Weidener, had concluded that Ned had an ulcerative disease that could not be

definitively diagnosed (Tr. at 439). Dr. Schotman disagreed with APHIS inspector Carol Porter's assertion that only a minimal number of diagnostic tests had been performed, explaining that no test could have been given to see the inside of Ned's stomach (Tr. at 440). An endoscopy would have put an elephant at risk as general anesthesia and an especially long scope would be required (Tr. at 475). Ultrasound was not developed at that time to penetrate the thick hide of an elephant (Tr. at 479). Dr. Schotman agreed with Ms. Porter that an expert should be consulted, and Dr. Schotman believed that he had consulted experts (Tr. at 441). Dr. Schotman agreed that the quantity of food Ned was eating would not be sufficient for a normal elephant, but Ned had periods of refusing to eat regardless of the quality or quantity of food offered (Tr. at 443-44). Dr. Schotman denied that low mineral scores on Ned's tests indicated malnutrition (Tr. at 488-89). Dr. Schotman distinguished between malnutrition due to inadequate diet and an inability to process food (Tr. at 489).

Dr. Schotman was aware that APHIS confiscated Ned and moved Ned to a facility in Tennessee where Ned died six months later (Tr. at 445). A postmortem of the elephant identified severe chronic ulceration of the bowel, which was consistent with Ned's symptoms (Tr. at 446). The scar tissue would have inhibited Ned's ability to absorb nutrients (Tr. at 490).

Dr. Schotman was familiar with Mr. Ramos' lions, which appeared to have cerebellar syndrome that caused ataxia (Tr. at 426). Dr. Schotman observed that other lions around the world were experiencing this problem, which he attributed to genetics (Tr. at 427). Dr. Schotman believed Mr. Ramos' lions came from a breeder in Texas, and he postulated that inbreeding caused the lions' condition (Tr. at 428).

Dr. Schotman testified that Mr. Ramos had telephoned on October 27, 2008, to report that one of his tigers had a bite wound on her forepaw that was draining and swelling (Tr.

at 449-50, 459). Dr. Schotman prescribed an antibiotic and directed that Mr. Ramos bring the tiger to the veterinary hospital if she showed no improvement in five to seven days (Tr. at 450). Dr. Schotman prepared an environmental enrichment plan for Mr. Ramos' capuchin monkeys and he discussed their diet and management with Mr. Ramos (Tr. at 451). Dr. Schotman recalled examining and testing the capuchin monkeys in September 2008, and finding them to be normal. *Id.* He did not know when Mr. Ramos first acquired the monkeys (Tr. at 455).

Dr. Susanne Brunkhorst is a veterinarian who has worked as an APHIS veterinary medical officer in Tennessee for more than 10 years (Tr. at 28). Before joining APHIS, Dr. Brunkhorst worked in her own veterinary practice for 13 years (Tr. at 29).

On September 11, 2009, Dr. Brunkhorst inspected the Triple W Alternative Livestock Auction in Cookeville, Tennessee, which is an animal auction that sells exotic animals (Tr. at 30). Dr. Brunkhorst observed two lions and four tigers in enclosures that were inside a trailer parked on the Triple W Alternative Livestock Auction premises (Tr. at 34-35). After Mr. Ramos, the owner of the animals and the trailer, arrived at the trailer, Dr. Brunkhorst inspected Mr. Ramos' trailer, took pictures of the trailer and its contents, and reviewed Mr. Ramos' records (Tr. at 37; CX 51). Dr. Brunkhorst concluded the ventilation of the trailer was not sufficient for the animals during transport because ventilation could only be achieved by opening the trailer doors, which presented the risk of exposing the animals to noxious fumes and other environmental hazards (Tr. at 38). Dr. Brunkhorst prepared an inspection report that cited Mr. Ramos for a violation of 9 C.F.R. § 3.138 (Tr. at 40; CX 26).

Dr. Brunkhorst was familiar with horse trailers that allow the entry of air while the trailers are being moved, and she acknowledged that noxious fumes could enter those trailers (Tr. at 44-45).

Dr. Brunkhorst described the doors on Mr. Ramos' trailer as spanning the entire height of the trailer, and the opening being approximately one to one and one-half feet. She observed two doors that were on the sides of the trailer, with one door toward the front of the trailer and one door toward the back of the trailer (Tr. at 47). Those doors were open when Mr. Ramos moved the trailer (Tr. at 50).

James Finn has worked as an APHIS investigator for 36 years, and, in the ordinary course of his duties, he investigated the exhibition of Ned (Tr. at 76). As part of his investigation, Mr. Finn interviewed Serge Landkas, who recalled exhibiting Ned at an event in Georgia on September 13-14, 2008, under contract with Mr. Ramos. Mr. Landkas informed Mr. Finn that Ned gave at least five performances and gave elephant rides during the event (Tr. at 77).

Dr. Gaj is a supervisory animal care specialist for APHIS (Tr. at 81). He has been in this position for 12 years and is responsible for supervising APHIS inspectors who conduct animal welfare inspections in Florida, Georgia, Mississippi, and Puerto Rico (Tr. at 82). Before he became a supervisor, Dr. Gaj was an APHIS veterinary medical officer in Arkansas for over 11 years (Tr. at 83). Prior to joining APHIS, Dr. Gaj practiced veterinary medicine at Companion Animal Medicine and Emergency Medicine in Texas (Tr. at 83-84).

During 2008 and 2009, Dr. Gaj supervised Carol Porter, who was the APHIS inspector assigned to inspect Mr. Ramos' facility (Tr. at 84). Dr. Gaj recalled accompanying Ms. Porter on inspections of Mr. Ramos' facility on two occasions, the first of which occurred on January 10, 2008. *Id.* During that inspection, Dr. Gaj observed that the elephant identified as "Ned" appeared thin and he discussed the issue with Mr. Ramos (Tr. at 85). Dr. Gaj told Mr. Ramos he should try to get a baseline weight for Ned at a truck weight facility, so that Mr. Ramos could assess Ned's weight changes (Tr. at 86-87). Mr. Ramos did not believe

weighing Ned was necessary because he was able to gauge whether Ned lost or gained weight by visual inspection (Tr. at 372-73). Mr. Ramos told Dr. Gaj that he visually assessed Ned's weight (Tr. at 87).

Dr. Gaj attended another inspection of Mr. Ramos' facility on October 29, 2008, and, after that inspection, he contacted Mr. Ramos' veterinarian, Dr. Schotman, to share his concerns that Ned had lost significant weight since the January 10, 2008, inspection and that Ned seemed subdued and lethargic (Tr. at 88-89, 101-02). Dr. Gaj asked Dr. Schotman about diagnostics and treatment for Ned. Dr. Schotman advised that routine blood work and fecal studies had been performed (Tr. at 90). In Dr. Gaj's opinion, no attempt had been made to determine the cause of Ned's weight loss. *Id.* Dr. Schotman confirmed that Ned's weight had been assessed only visually (Tr. at 91). Dr. Schotman also advised that Mr. Ramos had exhibited Ned and that he had provided a health certificate in prior months to Mr. Ramos. *Id.* Dr. Gaj believed Ned should not have been exhibited and explained that subjecting Ned to excessive exercise, working, and travel would make Ned more susceptible to additional problems (Tr. at 92). At the second inspection on October 29, 2008, Ms. Porter drafted an inspection report with input from Dr. Gaj that documented Dr. Gaj's observations and concerns about Ned's condition (Tr. at 92-94; CX 44).

Dr. Gaj testified that Ms. Porter spoke with Mr. Ramos about Ned's diet, and Mr. Ramos told Ms. Porter he was feeding Ned about 15 pounds of Mazuri, a pellet ration specifically formulated for elephants (Tr. at 99). Dr. Gaj asked Mr. Ramos to demonstrate how much he was feeding Ned, and Mr. Ramos used scoops to show the amount of feed (Tr. at 100). When asked to weigh the feed, Mr. Ramos used a bathroom scale that showed the pellets weighed closer to 11 pounds than 15 pounds. *Id.* Mr. Ramos also reported leaving timothy hay for Ned to eat in

whatever amount he wished and feeding Ned different vegetables (Tr. at 100-01). Mr. Ramos disclosed that Ned was eating a large amount of sand and dirt, but Dr. Gaj did not discuss that with Dr. Schotman (Tr. at 101). Dr. Gaj could not determine why Ned had lost weight (Tr. at 158).

Dr. Gaj acknowledged that he did not identify any noncompliant items during his January 10, 2008, inspection of Mr. Ramos' facility (Tr. at 117; RX 8 at 1). Dr. Gaj received a letter dated January 14, 2008, from Dr. Schotman which states Dr. Schotman had observed that, in the previous two years, Ned began to eat dirt and exhibited symptoms of colic and anorexia (Tr. at 122; RX 7 at 53). Dr. Schotman reported that, when Ned ate grain, he developed "protein bumps" on his abdomen, "which would precipitate more episodes of colic and anorexia." (Tr. at 126-27; RX 7 at 53). Dr. Gaj admitted that, as of Dr. Schotman's January 14, 2008, letter, he was aware that Ned periodically lost weight and ate dirt, but denied that Dr. Schotman's January 14, 2008, letter put him on notice that Ned had medical problems because Dr. Schotman stated in the letter that Ned's problem was an "enigma" (Tr. at 128-29).

Dr. Gaj was aware that APHIS confiscated Ned from Mr. Ramos and sent Ned to the Elephant Sanctuary in Tennessee, but Dr. Gaj was not involved in the confiscation (Tr. at 139). Dr. Gaj also knew Ned died at the Elephant Sanctuary and a necropsy was performed, but Dr. Gaj did not remember if he ever saw the necropsy results (Tr. at 139-40).

Dr. Gaj and Ms. Porter inspected other animals at Mr. Ramos' facility on October 29, 2008, including lions, tigers, and capuchin monkeys (Tr. at 94-95). Dr. Gaj noticed that a tiger appeared lame on the right front paw and observed a lion that appeared to have a stumbling gait, known as "ataxia" (Tr. at 95-96; CX 45). Mr. Ramos told Dr. Gaj and Ms. Porter that he had not consulted his veterinarian immediately about the condition of the tiger, but had contacted him at some point (Tr. at 159). Dr. Gaj did not confirm with Dr. Schotman whether Mr. Ramos



consulted him about the lion or tiger (Tr. at 159). Dr. Gaj testified that Mr. Ramos had environmental enhancements for his nonhuman primates, but that Mr. Ramos did not have an environmental enhancement plan (Tr. at 98, 159).

Dr. Genevieve Dumonceaux is a veterinarian who has been employed at the Palm Beach Zoo for three and a half years (Tr. at 171). She graduated from veterinary medical school in 1988 and has since worked primarily in zoos and has consulted nationally and internationally on issues involving elephants (Tr. at 171-73). At the request of APHIS personnel, Dr. Dumonceaux examined Ned in early November 2008 at Mr. Ramos' facility (Tr. at 173-74). Dr. Dumonceaux's examination was primarily visual, and she observed that Ned appeared thin and emaciated, with a calm and quiet demeanor (Tr. at 175). Ned had a sunken body, and his backbone, the bones of his front legs, skull, and face, tail bones, and shoulder bones were prominent and visible (Tr. at 176). In Dr. Dumonceaux's opinion, Ned's condition was not normal for a 20-year-old elephant (Tr. at 176). Ned was underweight and appeared to lack normal muscular development (Tr. at 177). Dr. Dumonceaux assigned Ned a body condition score of "3" on a scale of 1 to 11, which is considered "emaciated" on that scale (Tr. at 182-83). Dr. Dumonceaux testified she would have recommended that Ned not perform until his condition improved (Tr. at 177-78). Dr. Dumonceaux was familiar with elephants used to give rides and with the equipment used for elephant rides (Tr. at 178). Ned's spine was prominent and there was little musculature to support the equipment (Tr. at 179). Dr. Dumonceaux summarized her findings in an affidavit (Tr. at 181-82; CX 42).

Dr. Dumonceaux would have started treatment of Ned's emaciation by trying to diagnose a cause for the condition, by collecting blood for a complete blood count and a serum chemistry evaluation, collecting urine for a urinalysis, and collecting feces for a

parasite exam (Tr. at 186). She would have recommended that Ned have hay and water available at all times (Tr. at 186-87). Dr. Dumonceaux did not recall knowing Ned's diet (Tr. at 187). Dr. Dumonceaux had observed some abnormality in Ned's feces that she would have investigated, and she saw evidence of some separation on the heels of his back feet and some pad separation and smoothness that she considered "less than ideal" (Tr. at 189).

Dr. Dumonceaux did not observe Ned for a long time out of the trailer that was used to transport him to the Elephant Sanctuary in Tennessee, but she administered some medication to protect him during the trip because she had some concern about his ability to travel (Tr. at 184-85, 190). Dr. Dumonceaux recommended frequent rest stops to allow Ned to relax. Dr. Dumonceaux did not see Ned again after November 2008, and she did not speak with Mr. Ramos or Dr. Schotman (Tr. at 191, 193). She did not review Ned's treatment records (Tr. at 192).

Dr. Denise Sofranko has worked for APHIS since 1988 and has been APHIS' field specialist for elephants since 2003 (Tr. at 198-99). She accompanied APHIS inspectors during two inspections of Mr. Ramos' facility, and, at the first inspection in 2004, Dr. Sofranko observed Ned and found he was in good physical shape (Tr. at 201). She next saw Ned on November 7, 2008, when she accompanied APHIS inspector Carol Porter to Mr. Ramos' facility. Dr. Sofranko observed that Ned was emaciated and lethargic (Tr. at 202). Dr. Sofranko spoke with Mr. Ramos, who became agitated and questioned Dr. Sofranko's presence (Tr. at 203; CX 35). Dr. Sofranko did not recall what Mr. Ramos said other than that he yelled at her, used profanity, and called her names (Tr. at 204-05).

Dr. Sofranko moved away from Mr. Ramos in order to better observe Ned and Mr. Ramos continued to speak loudly to Ms. Porter (Tr. at 207).

Dr. Sofranko did not recall seeing any food in Ned's enclosure during her visit on November 7, 2008, but she saw Mazuri in a food storage bin that was not immediately available to Ned (Tr. at 208-10). Dr. Sofranko viewed photographs taken at the inspection and confirmed the photographs were consistent with her observations of Ned at that time (Tr. at 211; CX 49). Dr. Sofranko acknowledged that hay appeared in one of the photographs, but she did not recall seeing the hay upon arrival at Mr. Ramos' facility (Tr. at 211). Dr. Sofranko was aware that Ms. Porter drafted an inspection report, but Dr. Sofranko did not consult with Ms. Porter about the report (Tr. at 212-13; CX 48). Ms. Porter also prepared a second report and a notice of confiscation that she delivered to Mr. Ramos (Tr. at 213).

APHIS weighed Ned on November 7, 2008, after confiscating him from Mr. Ramos (Tr. at 215). Dr. Sofranko was present when Ned was weighed, and she saw the certificate of his weight at that time, which she believed indicated that Ned weighed 7,260 pounds (Tr. at 216-18; CX 50).

APHIS personnel concluded the Elephant Sanctuary was an appropriate place for Ned because they wanted to minimize Ned's time in transit (Tr. at 220). Dr. Sofranko followed the trailer containing Ned to the Elephant Sanctuary and was present when Ned was unloaded (Tr. at 222-23). Dr. Sofranko had no conversations with Ned's veterinarian, and she did not arrange for Ned's treatment records to be sent to the Elephant Sanctuary. *Id.* Dr. Sofranko did not communicate with the Elephant Sanctuary about Ned's well-being after she left him there, but was aware he had died and a necropsy had been performed (Tr. at 224-25). Dr. Sofranko did not recall the results of the necropsy, although she believed Dr. Brunkhorst, who is the

APHIS inspector for the Elephant Sanctuary, gave her the results (Tr. at 225). Dr. Sofranko testified that any information about Ned's condition would have been verbally communicated to her, and she did not recall any reports about Ned's eating difficulties. Id. Dr. Sofranko did not know if Ned was weighed when he was at the Elephant Sanctuary and did not know whether Ned had gained or lost weight while at the Elephant Sanctuary (Tr. at 226).

Brian Franzen is licensed by the Secretary of Agriculture to exhibit animals, and he currently owns three elephants (Tr. at 297). Mr. Franzen has known Mr. Ramos for 25 years and was familiar with Ned (Tr. at 298). Mr. Franzen knew Ned when Mr. Woodcock owned him and he noticed that Ned was tall, but had not "filled out." Id. In Mr. Franzen's opinion, a large bull elephant, such as Ned, should have been husky and not lanky (Tr. at 298-99). Mr. Franzen was aware that Ned had trouble gaining weight even before Mr. Ramos owned him and that all of Ned's owners had tried different kinds of food in efforts to put weight on Ned (Tr. at 299).

Mr. Ramos discussed Ned's condition many times with Mr. Franzen and other elephant owners (Tr. at 300-01). Mr. Ramos spoke with Mr. Franzen's veterinarian, Dr. Mark Wilson, as well as veterinarians Dr. Schotman and Dr. Dennis Schmidt (Tr. at 301). Mr. Franzen and others discussed worming techniques, and Mr. Franzen brought hay from Wisconsin because it is of better quality than hay from Florida (Tr. at 302). Ned was not interested in the hay, though Mr. Franzen's elephants were enthusiastic about it. Id. In Mr. Franzen's opinion, Mr. Ramos was very committed to Ned and actively tried to solve Ned's weight problem (Tr. at 302-03). Everyone in the elephant industry was concerned about Ned and discussed what could be done for Ned (Tr. at 304-05).

Mr. Franzen did not know exactly what Mr. Ramos fed Ned, but every time Mr. Franzen visited Mr. Ramos' facility, he saw that hay, grain, fruits, and vegetables were available for Ned

(Tr. at 300, 309). Mr. Franzen was aware that Ned was eating dirt, and he testified his own elephants often eat dirt (Tr. at 309-10). Mr. Franzen did not think Ned needed to be weighed because an elephant's weight can vary greatly, and the process of weighing an elephant creates safety and liability issues (Tr. at 306-07). He explained, "unless you have your own scale right in your yard, [it] is very difficult. You've got to go to a truck stop or somewhere, you have to keep the public away, which is very difficult. And it becomes a liability and a safety issue." (Tr. at 306-07). Mr. Franzen explained that elephants benefit from the stimulation and variety of travel (Tr. at 313). He denied that transporting elephants is stressful to them and cited to a study completed by a team of veterinarians, which measured the effects of travel on elephants' health (Tr. at 314-15).

Terry Frisco has been an elephant trainer for over 30 years and has known Mr. Ramos for 20 years (Tr. at 322). He knew Ned well and was aware that Ned had trouble keeping on weight (Tr. at 323). Mr. Frisco lives close to Mr. Ramos and visited him frequently (Tr. at 335). Mr. Frisco was familiar with Mr. Ramos' care for Ned, and he knew Mr. Ramos had traveled far to get hay for Ned (Tr. at 323). Mr. Frisco thought it was ill advised of Mr. Ramos to acquire Ned because of how thin Ned was, and he advised Mr. Ramos to give Ned a variety of different foods (Tr. at 324). Mr. Ramos tried many things to keep Ned from eating dirt, which was Ned's habit before Mr. Ramos acquired him (Tr. at 325).

Mr. Frisco talked with Dr. Schotman about Ned's weight and they speculated whether Ned had eaten something that was stuck in his intestines or if he had ulcers (Tr. at 326). Dr. Schotman was the veterinarian for Mr. Frisco's elephants for more than 20 years, and Mr. Frisco considered Dr. Schotman a well-qualified veterinarian experienced with elephants

(Tr. at 328). Other veterinarians consult Dr. Schotman, and elephant owners consult him even when they have other veterinarians (Tr. at 329).

Before Ned was confiscated, Mr. Ramos called Mr. Frisco frequently to express concern about Ned's health and weight (Tr. at 336). Mr. Frisco did not know Ned's weight, but he observed that elephants that do not feel well could lose weight by not drinking water. *Id.*

## V. Discussion

### A. Non-Interference with APHIS Inspectors - 9 C.F.R. § 2.4

The Administrator alleges, on November 7, 2008, Mr. Ramos verbally abused and harassed APHIS inspectors in the course of their duties, in violation of 9 C.F.R. § 2.4.<sup>22</sup> The ALJ found the Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. § 2.4, as alleged in paragraph 4 of the Complaint.<sup>23</sup> The Administrator contends the ALJ's failure to find that Mr. Ramos verbally abused and harassed APHIS inspectors, is error (Administrator's Appeal Pet. ¶ IIA at 5-10).

In a memorandum dated November 18, 2008, Ms. Porter summarized the events of November 7, 2008, when APHIS inspectors inspected Mr. Ramos' facility (CX 18). Ms. Porter reported Mr. Ramos became "agitated" about the inspection and became "verbally abusive." *Id.* Dr. Sofranko testified Mr. Ramos used profanities and was hostile to her (Tr. at 204-05). Mr. Ramos admitted he was upset and probably owed Dr. Sofranko an apology (Tr. at 376).

The Administrator cites Dr. Sofranko's testimony (Tr. at 203-08, 228), Ms. Porter's November 18, 2008, memorandum (CX 18), and Dr. Sofranko's April 9, 2009, affidavit (CX 35), as support for the Administrator's contention that a preponderance of the evidence

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<sup>22</sup>Compl. ¶ 4 at 2.

<sup>23</sup>ALJ's Decision and Order at 22, 32.

establishes Mr. Ramos verbally abused and harassed Dr. Sofranko and Ms. Porter while they inspected Mr. Ramos' facility on November 7, 2008. However, Ms. Porter completed two inspection reports on November 7, 2008, following the inspection of Mr. Ramos' facility (CX 43, CX 48). Ms. Porter identifies and describes Mr. Ramos' purported violations of 9 C.F.R. §§ 2.40(b)(2), 2.131(b)(1), and 3.129(a), but does not mention verbal abuse, harassment, or any violation of 9 C.F.R. § 2.4. Based upon the record and particularly the inspection reports completed by Ms. Porter on the day the verbal abuse and harassment are alleged to have occurred, I decline to disturb the ALJ's finding that the Administrator failed to prove Mr. Ramos violated 9 C.F.R. § 2.4, on November 7, 2008.

B. Operating as a Dealer Without a License - 7 U.S.C. § 2134,  
9 C.F.R. §§ 2.1(a), 2.10(c)

The Administrator alleges, from October 19, 2009, through November 8, 2010, Mr. Ramos operated as a dealer without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c).<sup>24</sup> The ALJ found, during the period October 19, 2009, through November 8, 2009, Mr. Ramos operated as a dealer by transporting and selling 33 animals without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c), as alleged in paragraph 5 of the Complaint.<sup>25</sup> Mr. Ramos contends, while he sold 33 animals to Jennifer Caudill after the effective date of the Secretary of Agriculture's order revoking his Animal Welfare Act license, at the time of the sale, he believed he had a "grace period" within which to sell his animals (Mr. Ramos' Response to Appeal Pet. ¶ D at 6-7).

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<sup>24</sup>Compl. ¶ 5 at 2-3.

<sup>25</sup>ALJ's Decision and Order at 23, 33.

Mr. Ramos admits that, in *Octagon Sequence of Eight, Inc.*, AWA Docket No. 05-0016, 66 Agric. Dec. 1093 (U.S.D.A. Oct. 2, 2007), the Secretary of Agriculture issued an order revoking his Animal Welfare Act license and the Secretary of Agriculture's order became effective on October 19, 2009.<sup>26</sup> The parties stipulated that, on or about November 5, 2009, Mr. Ramos transported, sold, and/or negotiated the sale of 33 animals to Ms. Caudill.<sup>27</sup> Mr. Ramos' admissions and the parties' stipulation establish that Mr. Ramos operated as a dealer without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c). I find no evidence that Mr. Ramos had a grace period within which to sell his animals after the Secretary of Agriculture's order revoking his Animal Welfare Act license became effective. Accordingly, I agree with the ALJ that the record supports the conclusion that, during the period October 19, 2009, through November 8, 2009, Mr. Ramos operated as a dealer without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c), when he transported and sold 33 animals to Ms. Caudill.

#### C. Handling Animals - 9 C.F.R. § 2.131(b)(1)

The Administrator alleges, from June 1, 2008, through October 29, 2008, Mr. Ramos failed to handle an elephant named "Ned" as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort, when Mr. Ramos exhibited Ned while Ned was visibly emaciated and in compromised health, in violation of 9 C.F.R. § 2.131(b)(1).<sup>28</sup> The ALJ found, by exhibiting Ned at an event in Georgia on September 13-14,

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<sup>26</sup>Compl. ¶ 1 at 1; Answer ¶ 1 at 1.

<sup>27</sup>ALJX 1.

<sup>28</sup>Compl. ¶ 6 at 3.



2008, Mr. Ramos failed to handle Ned as required by 9 C.F.R. § 2.131(b)(1).<sup>29</sup> Neither the Administrator nor Mr. Ramos appealed the ALJ's finding that Mr. Ramos violated 9 C.F.R. § 2.131(b)(1), as alleged in paragraph 6 of the Complaint, but both the Administrator and Mr. Ramos appealed the amount of the civil penalty the ALJ assessed for Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1). I address the Administrator's appeal and Mr. Ramos' appeal of the civil penalty assessed by the ALJ for Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) in this Decision and Order, *infra*.

#### D. Veterinary Care for an Elephant - 9 C.F.R. § 2.40(b)(2)

The Administrator alleges, between January 10, 2008, and November 7, 2008, Mr. Ramos failed to provide adequate veterinary care to an elephant named "Ned," in violation of 9 C.F.R. § 2.40(b)(2).<sup>30</sup> The ALJ found the Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 7 of the Complaint.<sup>31</sup> The Administrator contends the ALJ's failure to find Mr. Ramos did not provide adequate veterinary care to Ned, is error (Administrator's Appeal Pet. ¶ IIB2 at 13-20). Mr. Ramos contends there is no reason to depart from the ALJ's finding that the Administrator did not prove that Mr. Ramos failed to provide adequate veterinary care to Ned (Mr. Ramos' Response to Appeal Pet. ¶ A at 1-5).

Ned's attending veterinarian, Dr. Schotman, was aware of Ned's eating disorder and Ned's trouble gaining weight. Dr. Schotman's clinical records document that he attempted to

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<sup>29</sup>ALJ's Decision and Order at 23-24, 33.

<sup>30</sup>Compl. ¶ 7 at 3.

<sup>31</sup>ALJ's Decision and Order at 25-26, 33.

address Ned's problems by, among other things, giving Ned deworming medicine, antibiotics, banamine for pain, Pepto-Bismol, mineral oil, and electrolytes (RX 7). Dr. Gaj conceded Dr. Schotman was qualified to serve as attending veterinarian and his treatment of Ned appeared reasonable at the time (Tr. at 132).

Although the Administrator's witnesses asserted additional diagnostic tests could have been performed to assess Ned's condition and find a cure, Dr. Gaj did not suggest a specific test. The diagnostic tools Dr. Dumonceaux recommended (blood count, serum chemistry evaluation, and urine and fecal analysis) were the tests Dr. Schotman had conducted (Tr. at 186). Dr. Dumonceaux's recommended diagnostic tests and diet were consistent with how Ned was treated and fed. The ALJ accorded substantial weight to Dr. Schotman's explanation, corroborated by elephant expert, Mr. Frisco, that no scan or other test was available to make a definite diagnosis of Ned's condition. Dr. Schotman's conclusion, bolstered by Dr. Schmidt and Dr. Weidner, that Ned suffered from an ulcerative condition of the intestines proved correct, as necropsy revealed.

The record establishes that Mr. Ramos sought the opinions of other elephant experts and veterinarians about the cause of Ned's chronic digestive problem. Dr. Schotman consulted elephant veterinarians, Drs. Schmidt and Weidner, who suspected that ulcers caused Ned's problems (Tr. at 439). Neither Ms. Porter nor Dr. Gaj provided specific suggestions to treat Ned's condition other than to recommend that Mr. Ramos weigh Ned. Dr. Gaj believed a baseline weight would have been helpful in assessing Ned's progress. Mr. Ramos, Mr. Franzen, and Dr. Schotman testified that an elephant's weight changes could be visually determined. Ms. Porter and Dr. Gaj were able to assess Ned's weight based upon a physical inspection alone (Tr. at 86, 88, 143). Ned was finally weighed on November 7, 2008, when APHIS confiscated

him from Mr. Ramos (CX 50). Weighing Ned did not improve Ned's health, as demonstrated by the statements of a veterinarian who examined Ned on December 26, 2008, at the Elephant Sanctuary and assigned him a body score of "2," "indicating an emaciated animal" (CX 40). The most compelling evidence that weighing Ned had no impact on his condition is Ned's death after APHIS confiscated Ned from Mr. Ramos and weighed Ned.

Based upon my review of the record, I affirm the ALJ's finding that the Administrator did not prove that Mr. Ramos failed to provide adequate veterinary care to Ned, in violation of 9 C.F.R. § 2.40(b)(2).

#### E. Veterinary Care for a Tiger - 9 C.F.R. § 2.40(b)(2)

The Administrator alleges, on October 29, 2008, Mr. Ramos failed to provide adequate veterinary care to a tiger named "India," in violation of 9 C.F.R. § 2.40(b)(2).<sup>32</sup> The ALJ found the Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 8 of the Complaint.<sup>33</sup> The parties did not appeal the ALJ's finding that the Administrator failed to prove that Mr. Ramos did not provide adequate veterinary care to India, in violation of 9 C.F.R. § 2.40(b)(2) (Administrator's Appeal Pet.; Mr. Ramos' Response to Appeal Pet.).

#### F. Veterinary Care for a Lion - 9 C.F.R. § 2.40(b)(2)

The Administrator alleges, on October 29, 2008, Mr. Ramos failed to provide adequate veterinary care to a lion named "Saby," in violation of 9 C.F.R. § 2.40(b)(2).<sup>34</sup> The ALJ found the

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<sup>32</sup>Compl. ¶ 8 at 3-4.

<sup>33</sup>ALJ's Decision and Order at 26.

<sup>34</sup>Compl. ¶ 9 at 4.

Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 9 of the Complaint.<sup>35</sup> The Administrator contends the ALJ's failure to find that, on October 29, 2008, Mr. Ramos did not provide adequate veterinary care to a lion, is error (Administrator's Appeal Pet. ¶ IIB1 at 10-13). Mr. Ramos contends he sought veterinary treatment for Saby and, thereby, committed no violation of 9 C.F.R. § 2.40(b)(2) (Mr. Ramos' Response to Appeal Pet. ¶ C at 5-6).

The ALJ, citing testimony by Dr. Gaj and Dr. Schotman, found the evidence related to Mr. Ramos' failure to provide adequate veterinary care to Saby on October 29, 2008, insufficient to establish a violation, as follows:

Respondent has further been charged with failing to provide adequate care to a lion with an uncoordinated gait. Dr. Gaj testified that lions with similar symptoms could have been treated if the condition was due to a Vitamin A deficiency. Tr. at 151. However, Dr. Schotman credibly testified that he believed the condition was congenital and ultimately untreatable. Tr. at 427. The evidence is in equipoise and insufficient to establish that Respondent failed to provide adequate veterinary care to his lions.

ALJ's Decision and Order at 27.

The Administrator, referencing CX 7, contends Dr. Schotman's own records do not support the testimony relied upon by the ALJ (Administrator's Appeal Pet. ¶ IIB1 at 12); however, CX 7 is not a record prepared by Dr. Schotman, but rather Ms. Caudill's February 13, 2010, affidavit, which has no relevance to Mr. Ramos' purported failure to provide adequate veterinary care to Saby.

The Administrator also contends the record contains no evidence Dr. Schotman conducted any examination to determine whether Saby was suffering from wobble syndrome

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<sup>35</sup>ALJ's Decision and Order at 27, 33.

caused by vitamin A deficiency. Contrary to the Administrator's contention, the record supports a finding that, prior to the October 29, 2008, APHIS inspection of Mr. Ramos' facility, Dr. Schotman examined Saby to determine the cause of, and prescribe a treatment for, Saby's uncoordinated gait:

[BY MR. COOK:]

Q. .... Had you consulted with Dr. Schotman about these symptoms prior to the day this picture, which is October 29, 2008?

....

[BY MR. RAMOS:]

A. So this, the US, I took this lion to doc, to Dr. Schotman and they did everything you can think of. We, nobody knew, still to today, nobody knows what this, why these lions have this. Why lions did that.

Q. So the, the point is that this lion was receiving veterinary treatment as of the day of this picture?

A. This lion was receiving veterinary treatment. We had him on like, a different diet, different vitamins, trying to figure out. More calcium, Vitamin A, Vitamin C. We were giving him Vitamin C because we, the Vitamin C we thought would bring out, help another vitamin work faster. This lion actually, as time went by, Dr. Schotman came out and had to euthanize him.

Tr. at 384-86. Therefore, I reject the Administrator's contention that the ALJ erred by failing to find that, on October 29, 2008, Mr. Ramos did not provide adequate veterinary care to a lion, in violation of 9 C.F.R. § 2.40(b)(2).

#### G. Environment Enhancement - 9 C.F.R. §§ 2.100(a) and 3.81

The Administrator alleges, on October 29, 2008, Mr. Ramos failed to have a written plan for environmental enrichment of two nonhuman primates, in violation of 9 C.F.R. §§ 2.100(a) and 3.81.<sup>36</sup> The ALJ found the evidence is uncontroverted that Mr. Ramos did not have an

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<sup>36</sup>Compl. ¶ 10 at 4.

environmental enrichment plan for two capuchin monkeys on October 29, 2008, in violation of 9 C.F.R. §§ 2.100(a) and 3.81.<sup>37</sup> Mr. Ramos contends he obtained the nonhuman primates just prior to the October 29, 2008, inspection and Dr. Schotman prepared an environmental enrichment plan for Mr. Ramos immediately after the October 29, 2008, inspection; therefore, no factual basis for finding he violated 9 C.F.R. §§ 2.100(a) and 3.81, exists (Mr. Ramos' Response to Appeal Pet. ¶ E at 7).

The correction of a violation of the Animal Welfare Act or the Regulations is to be encouraged and may be taken into account when determining the sanction to be imposed for the violation. However, each Animal Welfare Act licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations and the correction of a violation does not eliminate the fact that the violation occurred.<sup>38</sup> Therefore, I reject Mr. Ramos' contention that, based upon his subsequent correction of the violation, there is no factual basis for finding he violated 9 C.F.R. §§ 2.100(a) and 3.81 on October 29, 2008. I affirm the ALJ finding that Mr. Ramos did not have an environmental enrichment plan for two capuchin monkeys on October 29, 2008, in violation of 9 C.F.R. §§ 2.100(a) and 3.81.

#### H. Feeding - 9 C.F.R. §§ 2.100(a) and 3.129

The Administrator alleges, between October 29, 2008, and November 7, 2008, Mr. Ramos failed to feed an elephant named "Ned" wholesome, palatable food free of contamination and of sufficient quantity and nutritive value to maintain Ned in good health and failed to prepare a diet

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<sup>37</sup>ALJ's Decision and Order at 27, 34.

<sup>38</sup>White, AWA Docket No. 12-0277, 2014 WL 4311058, at \*25 (U.S.D.A. May 13, 2014); Greenly (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), AWA Docket No. 11-0072, 2013 WL 8213615, at \*12 (U.S.D.A. Aug. 5, 2013), *aff'd per curiam*, 576 F. App'x 649 (8th Cir. 2014); Tri-State Zoological Park of Western Maryland, Inc., AWA Docket No. 11-0222, 2013 WL 8214620, at \*29 (U.S.D.A. Mar. 22, 2013).

with consideration for Ned's condition and size, in violation of 9 C.F.R. §§ 2.100(a) and 3.129.<sup>39</sup> The ALJ found the Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.129, as alleged in paragraph 11 of the Complaint.<sup>40</sup> The Administrator contends the ALJ's failure to find that, between October 29, 2008, and November 7, 2008, Mr. Ramos did not feed Ned, as required by 9 C.F.R. §§ 2.100(a) and 3.129, is error (Administrator's Appeal Pet. ¶ IID at 20-24).

The record is replete with evidence of Ned's chronic digestive problems and the efforts to find a palatable diet appropriate for Ned. The ALJ thoroughly discussed the evidence supporting the Administrator's contention that Mr. Ramos violated 9 C.F.R. § 3.129 and the evidence supporting Mr. Ramos' contention that he complied with 9 C.F.R. § 3.129,<sup>41</sup> and no purpose would be served by repeating the ALJ's thorough discussion here. I have carefully reviewed the evidence, and, based on this review, I agree with the ALJ's finding that the Administrator failed to prove that, between October 29, 2008, and November 7, 2008, Mr. Ramos did not feed Ned, as required by 9 C.F.R. § 3.129.

#### I. Animal Cargo Space - 9 C.F.R. §§ 2.100(a) and 3.138

The Administrator alleges, on September 11, 2009, Mr. Ramos failed to design and construct animal cargo space on his primary conveyance to protect the health and ensure the safety of four lions and two tigers contained in the animal cargo space, in violation of 9 C.F.R. §§ 2.100(a) and 3.128.<sup>42</sup> The ALJ found the Administrator failed to prove by a preponderance of

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<sup>39</sup>Compl. ¶ 11 at 4.

<sup>40</sup>ALJ's Decision and Order at 33.

<sup>41</sup>ALJ's Decision and Order at 27-29.

<sup>42</sup>Compl. ¶ 12 at 4; Notice of Correction to Complaint.

the evidence that Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.128, as alleged in paragraph 12 of the Complaint and the Notice of Correction to Complaint.<sup>43</sup> The Administrator contends the ALJ's failure to find that, on September 11, 2009, Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.128, is error (Administrator's Appeal Pet. ¶ IIE at 24-31).

The Regulations require the animal cargo space of each primary conveyance to be designed and constructed to protect the health and ensure the safety and comfort of the live animals contained in the animal cargo space (9 C.F.R. § 3.138(a)). The record establishes that, on September 11, 2009, Dr. Brunkhorst, an APHIS veterinary medical officer, conducted an inspection of Mr. Ramos' primary conveyance used to transport four tigers and two lions. Dr. Brunkhorst prepared an inspection report which sets forth her finding that the animal cargo space of the primary conveyance was not designed and constructed to protect the health and ensure the safety and comfort of the animals contained in the animal cargo space (CX 26 at 1). The Administrator called Dr. Brunkhorst as a witness and she described her observations of Mr. Ramos' primary conveyance on September 11, 2009 (Tr. at 37-40, 243-45). In addition, the Administrator introduced pictures of Mr. Ramos' primary conveyance taken by Dr. Brunkhorst on September 11, 2009 (CX 51). Both Dr. Brunkhorst's testimony and the pictures of Mr. Ramos' primary conveyance corroborate Dr. Brunkhorst's September 11, 2009, inspection report. Mr. Ramos testified, when the doors to his primary conveyance are open, the animal cargo space is adequately ventilated for the animals contained in the animal cargo space (Tr. at 342-47).

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<sup>43</sup>ALJ's Decision and Order at 33.



The ALJ found the evidence regarding Mr. Ramos' September 11, 2009, violation of 9 C.F.R. § 3.138 is in equipoise and fails to establish a violation of 9 C.F.R. § 3.138, as follows:

Dr. Brunkhorst believed that the trailer that Respondent used to transport felids in Tennessee did not provide enough ventilation unless doors were open, in which case the animals did not have sufficient protection. She was concerned that the animals would be exposed to road debris when the trailer was in motion. Respondent acknowledged that the under half of the doors on the trailer were kept open while traveling and when stationery [sic]. Tr. at 341. Respondent has used similar trailers to transport animals "hundreds, even thousands" of times. Tr. at 342.

I accord equal weight to the testimony of Dr. Brunkhorst and Mr. Kollman. Dr. Brunkhorst explained her concerns for the well-being of the animals during transport in Respondent's vehicle. Respondent explained that he had transported animals numerous times without being charged with a violation of the Act or regulations. The inspections of record of Respondent's facilities did not disclose a violation of transportation regulations. I find that the evidence is in equipoise and fails to establish a violation of 9 C.F.R. § 3.138.

ALJ's Decision and Order at 29-30.

I conclude the ALJ's finding that the Administrator failed to prove by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.138 on September 11, 2009, is error. Specifically, the ALJ erroneously found the evidence is in equipoise based on Mr. Ramos' testimony that, prior to September 11, 2009, he had transported animals in a similar manner without being charged with a violation of 9 C.F.R. § 3.138. Mr. Ramos' prior uncharged violations of 9 C.F.R. § 3.138 are not relevant to the issue of whether Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.138 on September 11, 2009.<sup>44</sup> Therefore, I find the Administrator

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<sup>44</sup>Pearson, AWA Docket Nos. 02-0020, D-06-0002, 68 Agric. Dec. 685, 726 (U.S.D.A. July 13, 2009) (stating APHIS' failure to cite the respondent for previous violations of the Animal Welfare Act and the Regulations does not absolve the respondent from being held accountable for current violations of the Animal Welfare Act and the Regulations), *aff'd*, 411 F. App'x 866 (6th Cir. 2011); The International Siberian Tiger Foundation, AWA Docket No. 01-0017, 61 Agric. Dec. 53, 94 (U.S.D.A. Feb. 15, 2002) (stating a failure to cite the respondents during a routine facility inspection does not constitute approval of the respondents' methods of exhibition

proved by a preponderance of the evidence that Mr. Ramos violated 9 C.F.R. §§ 2.100(a) and 3.138.

J. Sanctions for Violations of the Animal Welfare Act and the Regulations

The ALJ assessed Mr. Ramos a \$5,000 civil penalty for his violations of 9 C.F.R. § 2.131(b)(1).<sup>45</sup> The Administrator contends the ALJ found Mr. Ramos mishandled an elephant in violation of 9 C.F.R. § 2.131(b)(1) over a two-day period, but erroneously assessed only a single civil penalty.<sup>46</sup> The Administrator correctly states the Animal Welfare Act provides that each violation and each day during which a violation continues shall be a separate offense and correctly concludes Mr. Ramos committed two violations of 9 C.F.R. § 2.131(b)(1) (Administrator's Appeal Pet. ¶ IIIA3 at 38). However, the ALJ does not state that Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) over a two-day period constitute a single violation of the Regulations or that she assessed the \$5,000 civil penalty for a single violation of 9 C.F.R. § 2.131(b)(1). Therefore, I reject the Administrator's contentions that the ALJ erroneously concluded Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) over a two-day period constitute a single violation of the Regulations and that the ALJ erroneously assessed Mr. Ramos a civil penalty for a single violation of 9 C.F.R. § 2.131(b)(1).

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on other occasions); Davenport, AWA Docket No. 97-0046, 57 Agric. Dec. 189, 209 (U.S.D.A. May 18, 1998) (stating, while the respondent escaped citation for a previous violation of the Regulations, he cannot use that mistake to avoid being held accountable for later violations of the Regulations), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998).

<sup>45</sup>ALJ's Decision and Order at 32.

<sup>46</sup>The Administrator asserts the ALJ found Mr. Ramos violated 9 C.F.R. § 2.131(b)(1) on November 13-14, 2008 (Administrator's Appeal Pet. ¶ IIIA3 at 38); however, the ALJ found Mr. Ramos violated 9 C.F.R. § 2.131(b)(1) on September 13-14, 2008 (ALJ's Decision and Order at 33).

The ALJ considered APHIS' confiscation of Mr. Ramos' elephant when determining the amount of the civil penalty she would assess Mr. Ramos.<sup>47</sup> The Administrator contends the ALJ's consideration of APHIS' confiscation of Mr. Ramos' elephant, when determining the amount of the civil penalty to assess Mr. Ramos, is error (Administrator's Appeal Pet. ¶ IIIA3 at 38-40).

The Animal Welfare Act provides that the factors to be considered when determining the amount of the civil penalty to be assessed are: (1) the size of the business of the person involved, (2) the gravity of the violation, (3) the person's good faith, and (4) the history of previous violations.<sup>48</sup> Therefore, I agree with the Administrator's contention that the ALJ's consideration of APHIS' confiscation of Mr. Ramos' elephant, when determining the amount of the civil penalty to assess Mr. Ramos, is error. However, the ALJ did not indicate the amount by which she reduced the civil penalty based upon APHIS' confiscation of Mr. Ramos' elephant, and I decline to remand this proceeding to the ALJ in order to adjust the civil penalty assessed against Mr. Ramos.

The Administrator further contends the ALJ did not give appropriate weight to the Administrator's recommendation that the ALJ assess Mr. Ramos a \$35,500 civil penalty (Administrator's Appeal Pet. ¶ IIIB at 40-41). The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of a statute are highly relevant to any sanction to be imposed and are generally entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. However, the recommendations of administrative officials as to the sanction are not

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<sup>47</sup>ALJ's Decision and Order at 32.

<sup>48</sup>7 U.S.C. § 2149(b).

controlling, and, in appropriate circumstances, the sanction imposed may be considerably less than, or different from, that recommended by administrative officials.<sup>49</sup>

The Administrator did not recommend that the ALJ assess Mr. Ramos a \$35,500 civil penalty. Instead, the Administrator recommended that the ALJ assess Mr. Ramos a \$33,500 civil penalty.<sup>50</sup> The first time the Administrator recommended the assessment of a \$35,500 civil penalty is in the Administrator's appeal to the Judicial Officer. Moreover, the Administrator appears to base his recommendation that the ALJ assess Mr. Ramos a \$33,500 civil penalty upon the Administrator's contention that Mr. Ramos committed all of the violations alleged in the Complaint. In light of the Administrator's failure to prove all of the violations upon which the Administrator bases his \$33,500 civil penalty recommendation, I agree with the ALJ's rejection of the Administrator's civil penalty recommendation.

Mr. Ramos asserts the \$5,000 civil penalty assessed by the ALJ for Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) is excessive in light of Mr. Ramos' belief that Ned's exhibition on September 13-14, 2008, would be beneficial to Ned and Dr. Schotman's approval of Ned's exhibition (Mr. Ramos' Response to Appeal Pet. ¶ G at 8).

The record establishes that Mr. Ramos' belief that Ned would benefit from exhibition on September 13-14, 2008, was unfounded. Mr. Ramos should have realized Ned was in poor

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<sup>49</sup> Perry (Decision as to Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc.), AWA Docket No. 05-0026, 2013 WL 8213618, at \*9 (U.S.D.A. Sept. 6, 2013); Greenly (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), AWA Docket No. 11-0072, 2013 WL 8213615, at \*14 (U.S.D.A. Aug. 5, 2013), *aff'd per curiam*, No. 13-2882 (8th Cir. Aug. 22, 2014); Mazzola, AWA Docket No. 07-0064, 68 Agric. Dec. 822, 849 (U.S.D.A. Nov. 24, 2009), *dismissed*, 2010 WL 2988903 (6th Cir. Oct. 27, 2010); Pearson, AWA Docket Nos. 02-0020, D-06-0002, 68 Agric. Dec. 685, 731 (U.S.D.A. July 13, 2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011).

<sup>50</sup>Complainant's Post Hearing Brief ¶ III B at 5.

condition and should not be used to give rides and perform in a circus. Ned had experienced recurring symptoms of eating dirt, refusing to eat or drink, and obvious loss of weight, and Mr. Ramos should have recognized that Ned's exhibition in April 2008 in Bangor, Maine, had not enhanced Ned's condition. Moreover, Dr. Schotman's approval of Ned's exhibition does not absolve Mr. Ramos of responsibility for his violations of 9 C.F.R. § 2.131(b)(1).

The ALJ could have assessed Mr. Ramos a \$20,000 civil penalty for his violations of 9 C.F.R. § 2.131(b)(1) on September 13-14, 2008.<sup>51</sup> I reject Mr. Ramos' contention that the ALJ's assessment of a \$5,000 civil penalty for Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) on September 13-14, 2008, is excessive. I conclude the \$5,000 civil penalty assessed by the ALJ for Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) is justified by the facts and warranted in law.

The ALJ did not assess Mr. Ramos a civil penalty for operating as a dealer without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c), and failing to have an environmental enrichment plan for nonhuman primates, in violation of 9 C.F.R. §§ 2.100(a) and 3.81. Operation as a dealer without an Animal Welfare Act license is a serious violation because enforcement of the Animal Welfare Act and the Regulations depends upon the identification of persons operating as dealers. Nonetheless, based upon the limited period of time during which Mr. Ramos operated as a dealer without an Animal Welfare Act license, Mr. Ramos' belief that he had a grace period in which to dispose of his animals after the effective date of the revocation of his Animal Welfare Act license, and Mr. Ramos' transportation and sale of his animals to only one person, I decline to reverse the ALJ and assess Mr. Ramos a civil penalty for his violations of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c). Further, I find

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<sup>51</sup>7 U.S.C. § 2149(b) provides that the Secretary of Agriculture may assess a violator not more than \$10,000 for each violation of the Regulations and provides that each violation and each day during which a violation continues shall be a separate offense.

assessment of a civil monetary penalty for Mr. Ramos' violations of 9 C.F.R. §§ 2.100(a), 3.81, and 3.138 is not justified by the facts.

After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy,<sup>52</sup> and taking into account the factors required to be considered in 7 U.S.C. § 2149(b) and the remedial purposes of the Animal Welfare Act, I conclude a \$5,000 civil penalty for Mr. Ramos' violations of 9 C.F.R. § 2.131(b)(1) is appropriate and necessary to ensure Mr. Ramos' compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act.

K. Sanctions for Violations of the Secretary of Agriculture's  
May 10, 2001, Cease and Desist Order<sup>53</sup>

The Animal Welfare Act requires the Secretary of Agriculture to assess any person who knowingly fails to obey a cease and desist order issued by the Secretary of Agriculture a \$1,500

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<sup>52</sup>The United States Department of Agriculture's sanction policy is set forth in *S.S. Farms, Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), AWA Docket No. 89-03, 50 Agric. Dec. 476, 497 (U.S.D.A. Feb. 8, 1991): The sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

<sup>53</sup>On October 2, 2007, and May 10, 2001, the Secretary of Agriculture ordered Mr. Ramos to cease and desist from violating the Animal Welfare Act and the Regulations (Octagon Sequence of Eight, Inc., AWA Docket No. 05-0016, 66 Agric. Dec. 1093 (U.S.D.A. Oct. 2, 2007); Ramos (Consent Decision), AWA Docket No. 01-0012, 60 Agric. Dec. 291 (U.S.D.A. May 10, 2001) (CX 1)). The Administrator alleges only that Mr. Ramos knowingly failed to obey the Secretary of Agriculture's May 10, 2001, cease and desist order (Compl. ¶ 3 at 2); therefore, Mr. Ramos' failures to obey the Secretary of Agriculture's October 2, 2007, cease and desist order are not at issue in this proceeding.

civil penalty for each offense.<sup>54</sup> Effective September 2, 1997, pursuant to Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture increased the civil penalty for a knowing failure to obey a cease and desist order from \$1,500 to \$1,650.<sup>55</sup> The ALJ found imposition of a \$1,650 civil penalty for Mr. Ramos' knowing failures to obey the Secretary of Agriculture's May 10, 2001, cease and desist order "appropriate."<sup>56</sup> The Administrator contends the ALJ's assessment of a \$1,650 civil penalty, is error (Administrator's Appeal Pet. ¶ IIC at 45-48). Mr. Ramos contends no basis for assessment of a civil penalty exists, as he did not knowingly fail to obey the Secretary of Agriculture's May 10, 2001, cease and desist order (Mr. Ramos' Response to Appeal Pet. ¶ G at 8).

Mr. Ramos committed 37 violations of the Animal Welfare Act and the Regulations.<sup>57</sup> The record establishes Mr. Ramos knew of the existence of the Secretary of Agriculture's May 10, 2001, order that he cease and desist from violations of the Animal Welfare Act and the Regulations when he committed the violations of the Animal Welfare Act and the Regulations found in this proceeding.<sup>58</sup> Further, Mr. Ramos knew of facts that constituted the violations of

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<sup>54</sup>U.S.C. § 2149(b). Each day during which a knowing failure to obey a cease and desist order continues is a separate offense.

<sup>55</sup>7 C.F.R. § 3.91(b)(2)(v) (2005); 7 C.F.R. § 3.91(b)(2)(ii) (2006).

<sup>56</sup>ALJ's Decision and Order at 32.

<sup>57</sup>Specifically, Mr. Ramos committed 33 violations of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c), as alleged in paragraph 5 of the Complaint; two violations of 9 C.F.R. § 2.131(b)(1), as alleged in paragraph 6 of the Complaint; one violation of 9 C.F.R. §§ 2.100(a) and 3.81, as alleged in paragraph 10 of the Complaint; and one violation of 9 C.F.R. §§ 2.100(a) and 3.138, as alleged in paragraph 12 of the Complaint and the Notice of Correction to Complaint.

<sup>58</sup>Mr. Ramos signed Ramos (Consent Decision), AWA Docket No. 01-0012, 60 Agric. Dec. 291 (U.S.D.A. May 10, 2001) (CX 1 at 5).

the Animal Welfare Act and the Regulations found in this proceeding.<sup>59</sup> Therefore, I conclude Mr. Ramos “knowingly” failed to obey the Secretary of Agriculture’s May 10, 2001, cease and desist order.

The Animal Welfare Act provides that the Secretary of Agriculture “shall” assess a civil penalty against any person who knowingly fails to obey a cease and desist order. The word “shall” is ordinarily the language of command and leaves no room for discretion,<sup>60</sup> and I have consistently interpreted the word “shall” in 7 U.S.C. § 2149(b) as requiring the assessment of a civil penalty for each knowing violation of a cease and desist order issued by the Secretary of Agriculture. The United States Court of Appeals for the Fifth Circuit addressed my interpretation, as follows:

Because the Judicial Officer’s interpretation of the AWA is entitled to *Chevron* deference, we consider, first, whether the statute is ambiguous, and, second, whether the Judicial Officer’s interpretation is reasonable. *Chevron, U.S.A., Inc.*, 467 U.S. at 843. The word “shall” in statutory language defining agency authority often contemplates permission, not obligation. *See, e.g., Heckler v. Chaney*, 470

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<sup>59</sup>See *Knapp v. U.S. Dep’t of Agric.*, 796 F.3d 445, 467 (5th Cir. 2015) (holding, for the purposes of 7 U.S.C. § 2149(b), “knowingly” requires only that the respondent knew the facts that constituted the unlawful conduct), *remanded on other grounds*.

<sup>60</sup>See generally, *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (stating the word “shall” normally creates an obligation impervious to judicial discretion); *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) (stating the word “shall” is ordinarily the language of command); *Escoe v. Zerbst*, 295 U.S. 490, 493 (1935) (same); *Ex parte Jordan*, 94 U.S. 248, 251 (1876) (indicating the word “shall” means “must”); *Lion Raisin, Inc. (Remand Order)*, 2002 AMA Docket No. F&V 989-1, 62 Agric. Dec. 149, 151-52 (U.S.D.A. May 12, 2003) (stating the word “shall” is ordinarily the language of command and leaves no room for discretion); *PMD Produce Brokerage Corp. (Order Denying Pet. to Reopen Hearing and Remand Order)*, PACA Docket No. D-99-0004, 60 Agric. Dec. 364, 369-70 (U.S.D.A. Apr. 6, 2001) (same); *Borden, Inc.*, 46 Agric. Dec. 1315, 1460 (U.S.D.A. Sept. 30, 1987) (same), *aff’d*, No. H-88-1863 (S.D. Tex. Feb. 13, 1990), *printed in* 50 Agric. Dec. 1135 (1991); *Haring Meats and Delicatessen, Inc.*, 44 Agric. Dec. 1886, 1899 (U.S.D.A. Oct. 17, 1985) (same); *Great Western Packing Co.*, 39 Agric. Dec. 1358, 1366 (U.S.D.A. Nov. 5, 1980) (same), *aff’d*, No. CV 81-0534 (C.D. Cal. Sept. 30, 1981); *Ben Gatz Co.*, 38 Agric. Dec. 1038, 1043 (U.S.D.A. June 29, 1979) (same).



U.S. 821, 835 (1985) (finding precatory a statutory provision stating that violators “shall be imprisoned . . . or fined,” and listing other statutes that use “shall” to convey executive discretion). However, we do not focus on the word “shall” in isolation, but rather “follow the cardinal rule that statutory language must be read in context [since] a phrase gathers meaning from the words around it.” *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (alteration in original) (internal quotation marks and citation omitted). The penalty provision regarding knowing violations of cease and desist orders may be contrasted with other language in the same statutory section, which provides that violators of the statute or regulations “*may* be assessed a civil penalty by the Secretary of not more than \$10,000.” 7 U.S.C. § 2149(b) (emphasis added). The contrast suggests a deliberate choice by Congress to make one penalty precatory and the other mandatory. *See Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” (alteration in original) (internal quotation marks omitted)). The statute is at most silent on the question of whether Congress intended to allow executive discretion to impose lighter penalties for violations of cease and desist orders, and the Judicial Officer’s contrary interpretation has ample basis to be reasonable. Indeed, that interpretation is consistent with Department regulations, which state: “Civil penalty for a violation of the Animal Welfare Act . . . *has a maximum of* \$10,000, and knowing failure to obey a cease and desist order *has a civil penalty of* \$1,650.” 7 C.F.R. § 3.91(b)(2)(ii) (emphasis added). We defer to the Secretary’s reasonable interpretation of the AWA to require a penalty of \$1,650 per violation[.]

*Knapp v. U.S. Dep’t of Agric.*, 796 F.3d 445, 465-66 (5th Cir. 2015), *remanded on other grounds*. Thus, I am required to assess Mr. Ramos a \$1,650 civil penalty for each of his 37 knowing failures to obey the Secretary of Agriculture’s May 10, 2001, cease and desist order. Accordingly, I assess Mr. Ramos a \$61,050 civil penalty for his knowing failures to obey the Secretary of Agriculture’s May 10, 2001, cease and desist order.

## **VI. Findings of Fact**

1. Mr. Ramos’ business is located in Balm, Florida.
2. At all times material to this proceeding, Mr. Ramos operated as an “exhibitor” and/or “dealer,” as those terms are defined in the Animal Welfare Act and the Regulations.

3. The Secretary of Agriculture revoked Mr. Ramos' Animal Welfare Act license (license number 58-C-0816), in *Octagon Sequence of Eight, Inc.*, AWA Docket No. 05-0016, 66 Agric. Dec. 1093 (U.S.D.A. Oct. 2, 2007). The Secretary of Agriculture's October 2, 2007, order revoking Mr. Ramos' Animal Welfare Act license became effective on October 19, 2009.

4. The Secretary of Agriculture ordered Mr. Ramos to cease and desist from violations of the Animal Welfare Act and the Regulations on May 10, 2001, in *Ramos* (Consent Decision), AWA Docket No. 01-0012, 60 Agric. Dec. 291 (U.S.D.A. May 10, 2001). The Secretary of Agriculture's May 10, 2001, order that Mr. Ramos cease and desist from violations of the Animal Welfare Act and the Regulations became effective the first day after Mr. Ramos was served with *Ramos* (Consent Decision), AWA Docket No. 01-0012, 60 Agric. Dec. 291 (U.S.D.A. May 10, 2001).

5. Mr. Ramos did not verbally abuse and harass APHIS inspectors while they performed their duties on November 7, 2008.

6. During the period October 19, 2009, through November 8, 2009, Mr. Ramos operated as a dealer without an Animal Welfare Act license.

7. On or about September 13-14, 2008, Mr. Ramos exhibited an elephant named "Ned," while Ned was in poor physical condition and health.

8. Mr. Ramos did not fail to provide adequate veterinary care to an elephant named "Ned," during the period January 10, 2008, through November 7, 2008.

9. Mr. Ramos did not fail to provide adequate veterinary care to a tiger named "India," on October 29, 2008.

10. Mr. Ramos did not fail to provide adequate veterinary care to a lion named “Saby,” on October 29, 2008.

11. On October 29, 2008, Mr. Ramos failed to have a written plan of environment enhancement to promote the psychological well-being of nonhuman primates.

12. Mr. Ramos did not fail to feed an elephant named “Ned” wholesome, palatable food of sufficient quantity and nutritive value, during the period October 29, 2008, through November 7, 2008.

13. On September 11, 2009, Mr. Ramos failed to design and construct the animal cargo space of his primary conveyance to protect the health and ensure the safety and comfort of four tigers and two lions contained in the animal cargo space.

14. Mr. Ramos knowingly failed to obey the Secretary of Agriculture’s May 10, 2001, cease and desist order when he violated 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a), 2.10(c), 2.100(a), 3.81, and 3.138, as found in this proceeding.

15. An order requiring Mr. Ramos to cease and desist from violations of the Animal Welfare Act and the Regulations is justified by the facts.

16. An order assessing Mr. Ramos a \$5,000 civil penalty for his September 13-14, 2008, violations of 9 C.F.R. § 2.131(b)(1) is justified by the facts.

17. An order assessing Mr. Ramos a \$61,050 civil penalty for his 37 knowing failures to obey the Secretary of Agriculture’s May 10, 2001, cease and desist order is justified by the facts.

## VII. Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The Administrator failed to prove by a preponderance of the evidence that, on November 7, 2008, Mr. Ramos verbally abused and harassed APHIS inspectors in the course of their duties, in violation of 9 C.F.R. § 2.4, as alleged in paragraph 4 of the Complaint.
3. The Administrator proved by a preponderance of the evidence that, during the period October 19, 2009, through November 8, 2009, Mr. Ramos operated as a dealer without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a) and 2.10(c), when Mr. Ramos transported and sold 33 animals, as alleged in paragraph 5 of the Complaint.
4. The Administrator proved by a preponderance of the evidence that, on September 13-14, 2008, Mr. Ramos exhibited an elephant named “Ned,” while Ned was in poor physical condition and health, in violation of 9 C.F.R. § 2.131(b)(1), as alleged in paragraph 6 of the Complaint.
5. The Administrator failed to prove by a preponderance of the evidence that, between January 10, 2008, and November 7, 2008, Mr. Ramos did not provide adequate veterinary care to an elephant named “Ned,” in violation of 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 7 of the Complaint.
6. The Administrator failed to prove by a preponderance of the evidence that, on October 29, 2008, Mr. Ramos did not provide adequate veterinary care to a tiger named “India,” in violation of 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 8 of the Complaint.

7. The Administrator failed to prove by a preponderance of the evidence that, on October 29, 2008, Mr. Ramos did not provide adequate veterinary care to a lion named “Saby,” in violation of 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 9 of the Complaint.

8. The Administrator proved by a preponderance of the evidence that, on October 29, 2008, Mr. Ramos failed to have a written plan of environment enhancement to promote the psychological well-being of nonhuman primates, in violation of 9 C.F.R. §§ 2.100(a) and 3.81, as alleged in paragraph 10 of the Complaint.

9. The Administrator failed to prove by a preponderance of the evidence that, during the period October 29, 2008, through November 7, 2008, Mr. Ramos did not feed an elephant named “Ned” wholesome, palatable food of sufficient quantity and nutritive value, in violation of 9 C.F.R. §§ 2.100(a) and 3.129, as alleged in paragraph 11 of the Complaint.

10. The Administrator proved by a preponderance of the evidence that, on September 11, 2009, Mr. Ramos failed to design and construct the animal cargo space of his primary conveyance to protect the health and ensure the safety and comfort of four tigers and two lions contained in the animal cargo space, in violation of 9 C.F.R. §§ 2.100(a) and 3.138, as alleged in paragraph 12 of the Complaint and the Notice of Correction to Complaint.

11. Mr. Ramos knowingly failed to obey the Secretary of Agriculture’s May 10, 2001, cease and desist order when Mr. Ramos violated 7 U.S.C. § 2134 and 9 C.F.R. §§ 2.1(a), 2.10(c), 2.100(a), 3.81, and 3.138, as found in this proceeding.

12. An order requiring Mr. Ramos to cease and desist from violations of the Animal Welfare Act and the Regulations is warranted in law.

13. An order assessing Mr. Ramos a \$5,000 civil penalty for his September 13-14, 2008, violations of 9 C.F.R. § 2.131(b)(1) is warranted in law.

14. An order assessing Mr. Ramos a \$61,050 civil penalty for his 37 knowing failures to obey the Secretary of Agriculture's May 10, 2001, cease and desist order is warranted in law.

For the foregoing reasons, the following Order is issued.

### **ORDER**

1. Mr. Ramos and his agents, employees, successors and assigns, directly or indirectly through any individual, corporate or other device, are ordered to cease and desist from violations of the Animal Welfare Act and the Regulations, and, in particular, shall cease and desist from:

- a. operating as a "dealer," as that term is defined in the Animal Welfare Act and the Regulations, without an Animal Welfare Act license issued by the Secretary of Agriculture;
- b. failing to handle animals as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort to the animals;
- c. failing to have a written plan for environment enhancement adequate to promote the physiological well-being of nonhuman primates; and
- d. failing to design and construct animal cargo space in primary conveyances to protect the health and ensure the safety and comfort of live animals contained in the animal cargo space.

Paragraph 1 of this Order shall become effective upon service of this Order on Mr. Ramos.

2. Mr. Ramos is assessed a \$66,050 civil penalty. Mr. Ramos shall pay the civil penalty by certified check or money order made payable to the Treasurer of the United States and sent to the following address:

USDA APHIS GENERAL  
P.O. Box 979043  
USDA APHIS GENERAL  
St. Louis, MO 63197-9000

Payment of the civil penalty shall be sent to, and received by, USDA APHIS GENERAL within 60 days after service of this Order on Mr. Ramos. Mr. Ramos shall state on the certified check or money order that payment is in reference to AWA Docket No. 13-0342.

**RIGHT TO SEEK JUDICIAL REVIEW**

Mr. Ramos has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Mr. Ramos must seek judicial review within 60 days after entry of the Order in this Decision and Order.<sup>61</sup> The date of entry of the Order in this Decision and Order is April 18, 2016.

Done at Washington, DC

April 18, 2016

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William G. Jenson  
Judicial Officer

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<sup>61</sup>7 U.S.C. § 2149(c).