

## ANIMAL WELFARE ACT: ENFORCEMENT

*Delcianna Winders discusses the Animal Welfare Act (AWA) and how the United States Department of Agriculture (USDA) enforces it. She also provides a critique of the USDA's enforcement of the AWA, with particular attention to its heavy reliance on warnings and discounted penalties, which in many cases fail to deter regulated entities from violating the AWA.*

*Varu Chilakamarri discusses how animal welfare issues are incorporated into the work of the Department of Justice (DOJ). She provides an overview of the AWA, noting the specific sections that provide for federal court review. Chilakamarri also discusses some of the programmatic steps the DOJ has taken within the past few years to make animal welfare a larger priority.*

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### I. DISCOUNTED PENALTIES AND WARNINGS IN AWA ENFORCEMENT

By  
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Thanks, all of you, for coming today. I should give a special thank you to Bernadette.<sup>1</sup> I think it's pretty clear at this point that I've been a frequent critic of the United States Department of Agriculture (USDA).<sup>2</sup> I've been a thorn in her side. We've been on opposing sides of

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<sup>1</sup> Bernadette Juarez is the Deputy Administrator for the Animal Care Program of the Animal and Plant Health Inspection Service (APHIS). Her talk, entitled *Animal Welfare Act Enforcement Actions*, is not included in this publication.

<sup>2</sup> See, e.g., Delcianna J. Winders, *Administrative Law Enforcement, Warnings, and Transparency*, 79 OHIO ST. L.J. 451, 487–97 (2018) [hereinafter “*Warnings*”] (documenting that the United States Department of Agriculture's (USDA) Animal Welfare Act (AWA) enforcement frequently fails to incentivize compliance and urging improvements to the USDA enforcement policies); Delcianna J. Winders, *Fulfilling the Promise of EFOIA's Affirmative Disclosure Mandate*, 95 DENV. L. REV. 909, 918–27 (2018) [hereinafter “*EFOIA*”] (detailing the USDA's failure to affirmatively disclose AWA-related

litigation,<sup>3</sup> but I'm not going to talk about that litigation today. I'm hopeful that we can have a really productive discussion today. The gist of my presentation today is as follows: In my view, the USDA's current Animal Welfare Act (AWA) enforcement approach relies too heavily on warnings and on discounted penalties.<sup>4</sup> In cases where entities fail to respond to lesser penalties like warnings or discounted penalties, the agency should more frequently be ratcheting up and seeking heightened penalties including things like license revocation.<sup>5</sup> I think that a move away from providing for formal trial-type adjudications would help facilitate this.<sup>6</sup>

First, AWA enforcement generally: The statute provides for a number of enforcement mechanisms, including license suspension and revocation.<sup>7</sup> Suspension and revocation are not enforcement options for research facilities.<sup>8</sup> For other types of regulated entities, they are.<sup>9</sup> The USDA can temporarily suspend a license for up to twenty-one days.<sup>10</sup> And then, if it provides notice and opportunity for hearing, it can suspend for longer.<sup>11</sup> It can also permanently revoke licenses after notice and opportunity for hearing.<sup>12</sup>

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records as required by the Freedom of Information Act); Delcianna J. Winders, *Administrative License Renewal and Due Process—A Case Study*, FLA. ST. U. L. REV. (forthcoming 2018) [hereinafter "*License Renewal*"] (arguing that under-enforcement of the AWA is seriously aggravated by the USDA's practice of automatically renewing AWA licenses in the face of egregious violations and making proposals to address the automatic renewal problem).

<sup>3</sup> See, e.g., PETA v. USDA, No. 18-05074 (D.C. Cir. 2018); PETA v. USDA, 861 F.3d 502 (4th Cir. 2017); Animal Legal Def. Fund v. USDA, 789 F.3d 1206 (11th Cir. 2015); PETA v. USDA, 797 F.3d 1087 (D.C. Cir. 2015); PETA v. USDA, No. 1:18-cv-01886 (D.D.C. 2018); PETA v. Perdue, No. 1:18-cv-01137 (D.D.C. 2018); PETA v. Perdue, No. 1:18-cv-00887 (D.D.C. 2018); PETA v. USDA, No. 1:18-cv-00480 (D.D.C. 2018); PETA v. USDA, 183 F. Supp. 3d 1137 (D. Colo. 2016); Ray v. Vilsack, No. 5:13-mc-00076 (E.D.N.C. 2013); PETA v. USDA, No. 1:13-cv-01605 (D.D.C. 2013); PETA v. USDA, No. 1:11-cv-00796 (D.D.C. 2011); Humane Soc'y of the U.S. v. USDA, No. 1:05-cv-00197 (D.D.C. 2005); In Def. of Animals v. USDA, No. 1:02-cv-00557 (D.D.C. 2002) (cases against USDA involving the AWA in which Ms. Winders was an amicus curiae, counsel for plaintiffs and/or a plaintiff herself).

<sup>4</sup> See *Warnings*, *supra* note 2, at 479–93 (discussing the AWA's enforcement provisions and how the USDA applies them).

<sup>5</sup> *Id.* at 493–95; see also Animal Welfare Act, 7 U.S.C. § 2149(a) (2018) (providing for license revocation).

<sup>6</sup> See *License Renewal*, *supra* note 2, at 23–24. (“[W]hile the courts became more accepting of informal hearings under the APA, Constitutional ‘Due Process hearing requirements evolving over the same period reflect a similar judicial acceptance of less formal procedures over any formulaic, across-the-board approach favoring formal hearings.”) (quoting Gary J. Edles, *An APA-Default Presumption for Administrative Hearings: Some Thoughts on “Ossifying” The Adjudication Process*, 55 ADMIN. L. REV. 787, 804–05 (2003)).

<sup>7</sup> See 7 U.S.C. § 2149(a) (providing for license revocation and suspension).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

It's important to note that this hearing requirement doesn't mandate a full on-the-record, trial-type adjudication.<sup>13</sup> This is pretty clearly established in the case law and the statutory law.<sup>14</sup> There's nothing in the AWA,<sup>15</sup> in the Constitution,<sup>16</sup> or in the Administrative Procedure Act (APA)<sup>17</sup> that requires a full hearing. That's even been acknowledged by a USDA administrative law judge.<sup>18</sup> It was also recently acknowledged by the USDA itself.<sup>19</sup>

Nonetheless, under current regulations, the agency does provide for a full on-the-record hearing.<sup>20</sup> The Office of Inspector General has, in the past, critiqued this for facilitating delays during which animals continue to suffer.<sup>21</sup> It also causes additional resources to be used.<sup>22</sup> In my view, it ultimately results in fewer cases being brought because the cases are so resource-and-time-intensive.

The other penalty options include civil monetary penalties. The statute provides for penalties of up to \$10,000 per day, per violation, per animal.<sup>23</sup> Those can add up really quickly. As I'll discuss shortly, there is a provision in the statute that authorizes reducing penalties based on certain factors.<sup>24</sup> Again, for these penalties to be assessed, there needs to be notice and an opportunity for a hearing, but the statute doesn't require a formal adjudication.<sup>25</sup> Finally, criminal penalties. The statute does make imprisonment and criminal monetary penalties available,<sup>26</sup> but outside of the animal-fighting context those are virtually unheard of.<sup>27</sup>

In addition, the statute has an injunctive provision, which mandates that whenever the USDA "has reason to believe that any dealer,

<sup>13</sup> *License Renewal*, *supra* note 2, at 14.

<sup>14</sup> *Id.*

<sup>15</sup> 7 U.S.C. §§ 2131–2159 (2018).

<sup>16</sup> U.S. CONST.

<sup>17</sup> Administrative Procedure Act of 1946, 5 U.S.C. §§ 551–596 (2018).

<sup>18</sup> *In re Jennifer Caudill*, 74 Agr. Dec. 101, 104 (2015) ("While Animal Welfare Act license termination proceedings have been determined on the record after an agency hearing," the AWA "does not require that Animal Welfare Act license termination proceedings be determined on the record after opportunity for an agency hearing.")

<sup>19</sup> See Memorandum in Support of Cross-Motion for Summary Judgment and Opposition to Plaintiff's Motion at 17, *Animal Legal Def. Fund v. Vilsack* 110 F. Supp. 3d 157 (D.D.C. 2016) (No. 16-0914) (USDA brief acknowledging that formal on-the-record hearings are not required).

<sup>20</sup> 7 C.F.R. § 1.141 (2018).

<sup>21</sup> OFFICE OF INSPECTOR GEN., USDA., AUDIT REPORT NO. 33002-0001-CH, ANIMAL & PLANT HEALTH INSPECTION SERVICE IMPLEMENTATION OF THE ANIMAL WELFARE ACT 13–15 (1992).

<sup>22</sup> *License Renewal*, *supra* note 2, at 60–62.

<sup>23</sup> 7 U.S.C. § 2149(b). That amount has since been adjusted for inflation by regulation to \$11,390. 7 C.F.R. § 3.91(b)(2)(ii) (2018).

<sup>24</sup> 7 U.S.C. § 2149(b).

<sup>25</sup> See *supra* notes 6, 13–19 and accompanying text.

<sup>26</sup> 7 U.S.C. § 2149(d).

<sup>27</sup> See *Animal Welfare: About the Animal Welfare Litigation Program*, U.S. DEP'T OF JUST., <http://www.justice.gov/enrd/animal-welfare> [<https://perma.cc/HBL3-RBF7>] (accessed Jan. 4, 2019) (showing AWA cases listed are all animal-fighting cases).

carrier, exhibitor or intermediate handler is dealing in stolen animals or is placing the health of an animal in serious danger in violation of this chapter or the regulations or standards promulgated thereunder, the secretary *shall* notify the attorney general.”<sup>28</sup> This is not precatory language. It *requires* a referral to the attorney general, who then has the option to decide whether to seek a temporary restraining order or an injunction to get that animal out of that situation. Despite this mandate, I’ve learned through responses to Freedom of Information Act requests that these referrals are *not* made to the attorney general.<sup>29</sup>

What does enforcement look like on the ground? I’ve just described what the statute provides for. On the ground, official warnings are by far the most heavily utilized enforcement mechanism.<sup>30</sup> After that, historically it has been pretty evenly divided between formal complaints—which initiate those full on-the-record hearings that I mentioned—and settlement agreements—which usually involve discounted penalties, which I mentioned and will talk about more.<sup>31</sup>

In fiscal year 2015, for example, more than 70% of enforcement actions were warnings.<sup>32</sup> What do I mean when I say “warnings”? Here is an example for you from our own Harvard University: Harvard was given a warning by the USDA after “several deer mice” died from dehydration after not having access to water.<sup>33</sup> The underlying inspection report makes clear that forty-one mice actually died.<sup>34</sup> I think that’s more than several, but the warning states “several.”

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<sup>28</sup> 7 U.S.C. § 2159 (emphasis added).

<sup>29</sup> Letter from Vanessa R. Brinkmann, Senior Counsel, Office of Info. Police, Dep’t of Just., to author (Nov. 17, 2016) (on file with author).

<sup>30</sup> *Animal Care Enforcement Summary (AWA and HPA)*, APHIS, USDA, [https://www.aphis.usda.gov/aphis/business-services/ies/ies\\_performance\\_metrics/-ies-ac\\_enforcement\\_summary](https://www.aphis.usda.gov/aphis/business-services/ies/ies_performance_metrics/-ies-ac_enforcement_summary) [<https://perma.cc/KY8T-SW9N>] (accessed Dec. 24, 2018) (showing that in fiscal year 2017 warnings comprised 157 of 173 AWA enforcement actions, or more than 90%, and that through the third quarter of fiscal year 2018, warnings comprised 39 of 48 enforcement actions, or more than 81%); see also *Warnings*, *supra* note 2 (critiquing the USDA’s heavy reliance on warnings in enforcing the AWA).

<sup>31</sup> See *Animal Care Enforcement Summary (AWA and HPA)*, APHIS, USDA, [https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies\\_performance\\_metrics/ies-ac\\_enforcement\\_summary](https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies_performance_metrics/ies-ac_enforcement_summary) [<https://perma.cc/GZX2-TUM3>] (accessed Dec. 24, 2018) (showing two formal complaints were filed and thirteen settlement agreements occurred in enforcement actions of fiscal year 2017, and that one formal complaint was filed and seven settlement agreements occurred in enforcement actions through the third quarter of fiscal year 2018).

<sup>32</sup> *Animal Care Enforcement Summary (AWA and HPA)*, APHIS, USDA, [https://web.archive.org/web/20170501165303/https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies\\_performance\\_metrics/ies-ac\\_enforcement\\_summary](https://web.archive.org/web/20170501165303/https://www.aphis.usda.gov/aphis/ourfocus/business-services/ies/ies_performance_metrics/ies-ac_enforcement_summary) [<https://perma.cc/GC3V-SNB6>] (accessed Dec. 24, 2018).

<sup>33</sup> Letter of Official Warning: Violation of Federal Regulations from Elizabeth Goldentyer, Regional Director, APHIS, USDA, to Leslie A. Kirwan, Harvard Univ. (June 29, 2012) (Case No. MA 120028) [hereinafter Letter of Official Warning] (on file with author).

<sup>34</sup> APHIS, USDA, INSPECTION REPORT OF HARVARD UNIVERSITY (May 24, 2012).

I should note—because we’ve heard about how mice used for research are not usually covered under the AWA<sup>35</sup>—that deer mice are covered because they’re not of the genus *Mus* and they’re not generally bred for research.<sup>36</sup> That’s another weird contortion under the Act. Basically, this is a typical warning. It says, we “have evidence that . . . you . . . committed the following violation of Federal regulations . . .,” and that “any further violation of these regulations may result in the assessment of a civil penalty or criminal prosecution.”<sup>37</sup>

The USDA’s purported rationale for using warnings is that they act as “an immediate deterrent” and that issuing a warning “allows” APHIS—that’s the Animal and Plant Health Inspection Service, which is a sub-agency of USDA that enforces the AWA—“to address infractions in a timely manner and facilities to improve their overall compliance before further action is necessary.”<sup>38</sup>

In a project that I’m currently working on, I am examining how much do warnings, in fact, motivate compliance, how much do they deter violations?<sup>39</sup> What I’ve found so far is that almost 40% of those who receive warnings went on to be cited for six or more violations.<sup>40</sup> Minnesota SG Kennels, operated by Glenice Viken, is one such example.<sup>41</sup> Viken got a warning in 2011 for violating veterinary care requirements and other requirements for dogs.<sup>42</sup>

After receiving that warning, she continued to repeatedly violate the veterinary care requirements and during every single one of at least eight subsequent inspections, she was cited again for failing to provide veterinary care to suffering dogs.<sup>43</sup> Photos from the inspection show things like an untreated bite wound on a dog, and excessive buildup of feces in an enclosure.

<sup>35</sup> AWA Excluded Animals at the AWA at 50 Conference (Published in Volume 25.2 of *Animal Law* 203).

<sup>36</sup> See 7 U.S.C. § 2132(g) (The AWA excludes “birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research.”); accord 9 C.F.R. § 1.1. Deer mice belong to the genus *Peromyscus*. *Deer Mouse*, BRITANNICA.COM, <https://www.britannica.com/animal/deer-mouse> [<https://perma.cc/SML7-42S4>] (accessed Dec. 24, 2018).

<sup>37</sup> Letter of Official Warning, *supra* note 32.

<sup>38</sup> OFFICE OF BUDGET & PROGRAM ANALYSIS, USDA, 2015 USDA BUDGET EXPLANATORY NOTES FOR COMMITTEE ON APPROPRIATIONS: ANIMAL AND PLANT HEALTH INSPECTION SERVICE 50, 108 (2014).

<sup>39</sup> See *Warnings*, *supra* note 2, at 487–93 (documenting that the USDA’s AWA enforcement frequently fails to incentivize compliance and urging improvements to USDA enforcement policies).

<sup>40</sup> *Id.* at 489.

<sup>41</sup> *Id.* at 489–90.

<sup>42</sup> Letter of Official Warning: Violation of Federal Regulations from Elizabeth Goldentyer, Regional Director, APHIS, USDA, to Glenice Viken, SG Kennels (2011) (Case No. MN 11037) (on file with author).

<sup>43</sup> See *Warnings*, *supra* note 2, at 489, n.211 (citing APHIS, USDA, Reports of S. Glenice Viken, S G Kennels (Sept. 21, 2016; July 6, 2016; Apr. 19, 2016; Feb. 10, 2016; Dec. 1, 2015; Sept. 9, 2015; June 16, 2015; June 15, 2015; Apr. 9, 2015; Apr. 1, 2015; Jan. 15, 2015; Oct. 6, 2014; Nov. 4, 2013)).

Other things I've found were that more than a quarter of those who receive warnings were cited for one or more direct violations after receiving the warning.<sup>44</sup> Direct violations are those defined by the agency as likely to impact the well-being of animals.<sup>45</sup> More than 40% were cited for one or more repeat violations.<sup>46</sup> That means you're violating the exact same provision of the law in subsequent inspections.<sup>47</sup>

The bottom line is a lot of people who receive warnings, which are the primary enforcement tool being used, are continuing to violate the law. Why is this? What might we do about it? I think it's directly tied to the issue of discounted penalties, which is what I'm going to get to next, and also to the policy of favoring such penalties over licensing actions—i.e., license suspension or revocation. I went on to look at what happens to people who continue to violate after getting a warning.

What I found is that many of them face no enforcement action whatsoever.<sup>48</sup> Some of them got a second warning and sometimes even a third warning after continuing to violate, rather than an heightened penalty.<sup>49</sup> Even for those who did enter into a settlement agreement and paid a penalty, those penalties were discounted on average by 96%.<sup>50</sup> That means, say, you were potentially on the hook for a penalty of \$10,000. On average, in my data set, people would have paid \$400 for the violation.

Discounting penalties—what do I mean by that? The statute, as I said, provides for a \$10,000 maximum penalty.<sup>51</sup> That can be discounted down from the maximum based on a number of factors: the size of the business, the gravity of the violation, the person's good faith, and the history of previous violations.<sup>52</sup>

The agency is, in fact, supposed to be taking these things into consideration, and not everyone should get a maximum penalty. I think that's true in just about any enforcement context. But the USDA's own Office of Inspector General (OIG) has repeatedly criticized the extent of the discounting under the Act,<sup>53</sup> noting, for example, that it has re-

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<sup>44</sup> *Warnings*, *supra* note 2, at 490.

<sup>45</sup> APHIS, USDA, ANIMAL WELFARE INSPECTION GUIDE 2–11 (May 2018), [http://www.aphis.usda.gov/animal\\_welfare/downloads/Animal-Care-Inspection-Guide.pdf](http://www.aphis.usda.gov/animal_welfare/downloads/Animal-Care-Inspection-Guide.pdf) [<https://perma.cc/QKZ7-LAWA>] (accessed Dec. 24, 2018) [hereinafter ANIMAL WELFARE INSPECTION GUIDE].

<sup>46</sup> *Warnings*, *supra* note 2, at 490–91.

<sup>47</sup> ANIMAL WELFARE INSPECTION GUIDE, *supra* note 45, at 2–9.

<sup>48</sup> *License Renewal*, *supra* note 2, at 491–92.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 492.

<sup>51</sup> See 7 U.S.C. § 2149(b) (noting the civil penalties for violations by licensees). That amount has since been adjusted for inflation by regulation to \$11,390. 7 C.F.R. § 3.91(b)(2)(ii).

<sup>52</sup> 7 U.S.C. § 2149(b).

<sup>53</sup> See OFFICE OF INSPECTOR GEN., USDA, AUDIT REPORT NO. 33601-0001-41, ANIMAL AND PLANT HEALTH INSPECTION SERVICE OVERSIGHT OF RESEARCH FACILITIES 2–3 (Dec. 2014), <https://www.usda.gov/webdocs/33601-0001-41.pdf> [<https://perma.cc/8JYQ-8FEQ>] (accessed Dec. 31, 2018) (APHIS “[i]ssued penalties that were reduced by an average of

sulted in “effective” enforcement and “minimal penalties that did not deter violators.”<sup>54</sup> The OIG has also said that, because of the discounting, the penalties are being treated as a “cost of business.”<sup>55</sup>

Most recently, the inspector general found that, specifically in cases involving animal deaths and other egregious violations—not just run-of-the-mill violations but the worst—the USDA was discounting penalties by 86% on average.<sup>56</sup> My own analysis of subsequent enforcement actions since that audit report shows that extreme penalty reductions have persisted and are even higher than that in some cases.<sup>57</sup>

Just to give you a few examples: The Alexandria Zoo in Louisiana was cited after they locked three endangered Cotton-top tamarins out in the cold and two of them died.<sup>58</sup> They faced a potential \$30,000 penalty because they violated the law with regard to three animals, two of whom died.<sup>59</sup> They paid \$1700 for that violation, so that was a 94% discount.<sup>60</sup> In June, an Iowa dog breeder paid a fine for failing to pro-

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86 percent from the AWA’s authorized maximum penalty per violation,” and “under-assessed penalties . . . by granting good faith reductions without merit or using a smaller number of violations than the actual number. . . . In 1995, an Office of Inspector General (OIG) audit of APHIS’ enforcement policies found that APHIS did not fully address problems disclosed in a prior report, and that APHIS needed to take stronger enforcement actions to correct serious or repeat violations of AWA. Dealers and other facilities had little incentive to comply with AWA because monetary penalties were, in some cases, arbitrarily reduced and often so low that violators regarded them as a cost of doing business. In 2005, OIG performed an audit on animals in research facilities and found that APHIS was not aggressively pursuing enforcement actions against violators of AWA and was assessing minimal monetary penalties. Inspectors believed the lack of enforcement action undermined their credibility and authority to enforce AWA. In addition to reducing the penalty by 75 percent, APHIS offered other concessions—making penalties basically meaningless. Violators continued to consider the monetary stipulation as a normal cost of business, rather than a deterrent for violating the law. In 2010, an OIG audit . . . found that APHIS’ enforcement process was ineffective, and the agency was misusing its own guidelines to lower penalties for AWA violators. The agency . . . did not implement an appropriate level of enforcement. At a time when Congress tripled the authorized maximum penalty to strengthen fines for violations, actual penalties were 20 percent less than previous calculations.”).

<sup>54</sup> *Id.* at 18.

<sup>55</sup> *Id.* at 3.

<sup>56</sup> *Id.* at 16.

<sup>57</sup> See *Warnings*, *supra* note 2, at 492 (documenting that the USDA’s AWA enforcement frequently fails to incentivize compliance and urging improvements to USDA enforcement policies).

<sup>58</sup> See Letter of Citation and Notification of Penalty from APHIS, USDA, to Alexandria Zoological Park (Aug. 2016) (hereinafter “Letter to Alexandria Zoological Park”) (citing the zoo for “[f]ail[ing] to take the appropriate measures to alleviate the impact of climate conditions that presented a threat to [their] animals’ health”).

<sup>59</sup> See *supra* note 23 and accompanying text.

<sup>60</sup> Letter to Alexandria Zoological Park, *supra* note 58.

vide veterinary care to nine dogs among other violations.<sup>61</sup> They faced a potential \$100,000 penalty.<sup>62</sup> They paid \$2400.<sup>63</sup>

Dog breeders Robert and Dawn Troupe got a warning in 2014 for violating the AWA<sup>64</sup> and thereafter continued to violate it by failing to provide vet care to suffering dogs.<sup>65</sup> They faced a potential \$60,000 penalty for doing so, but paid \$4500.<sup>66</sup> I can go on and on, but I think you get the picture.

The Santa Cruz Biotech case is an important one.<sup>67</sup> I think the most important thing that came out of that case is that Santa Cruz Biotech gave up their dealer license and gave up their research registration, so they're not going to continue to engage in activities with AWA-regulated animals in the United States.<sup>68</sup> They were assessed a huge penalty—\$3.5 million.<sup>69</sup> But, they were on the hook potentially for more than \$20 billion.<sup>70</sup> That was more than a 99% discount there even in that landmark case. One of the issues with the penalty discounting is the secrecy that surrounds it. The agency has worksheets that take into account those statutory factors for assessing discounting.<sup>71</sup> I requested those worksheets, and the National Association for Biomedical Research (NABR) has also requested them.

We both got similar responses. “Disclosure of the determining factors and limits in the process used in determining whether to penalize

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<sup>61</sup> Letter of Citation and Notification of Penalty from APHIS, USDA, to Fedler Ag., Inc. (June 2016). Less than a year before this discounted penalty, the facility had received another discounted penalty for repeatedly evading inspections and for failing to provide adequate veterinary care to a dog who was “found during an inspection with aborted puppies and its foot pad trapped in the enclosure flooring. The dog was shivering, lethargic, dehydrated and had shallow breathing. At the request of APHIS, the dog received veterinary care, but died overnight.” Letter of Citation and Notification of Penalty from APHIS, USDA, to Fedler Ag., Inc. (May 2016). Less than a year before that, it had received a warning for similar violations. Letter of Official Warning: Violation of Federal Regulations from Elizabeth Goldentyer, Regional Director, APHIS, USDA, to Fedler Ag., Inc. (June 2013).

<sup>62</sup> See *supra* note 23 and accompanying text.

<sup>63</sup> Letter to Felder Ag. Inc., (June 2016), *supra* note 61.

<sup>64</sup> Letter of Official Warning: Violation of Federal Regulations from Robert M. Gibbens, Director, APHIS, USDA, to Dawn and Robert Troupe (May 2014).

<sup>65</sup> Letter of Citation and Notification of Penalty from APHIS, USDA, to Robert and Dawn Troupe (Nov. 2015).

<sup>66</sup> *Id.*

<sup>67</sup> See Santa Cruz Biotechnology, Inc., AWA Docket No. 12-0536, 15-0023, 15-0165, 2016 WL 3090185 (May 19, 2016) (“[alleging that respondent Santa Cruz Biotechnology, Inc., willfully violated the regulations promulgated pursuant to the Act”).

<sup>68</sup> *Id.* at 2–3.

<sup>69</sup> *Id.* at 2.

<sup>70</sup> See *generally* Complaint, Santa Cruz Biotechnology, Inc., AWA Docket No. 15-0165 (Aug. 7, 2015) (alleging dozens of violations from 2012 to 2015); Complaint, Santa Cruz Biotechnology, Inc., AWA Docket No. 15-0023 (Nov. 4, 2014) (alleging additional violations from 2012–2014); Complaint, *Santa Cruz Biotechnology, Inc.*, AWA Docket No. 12-0536 (July 19, 2012) (alleging dozens of violations from 2007 to 2012). All told, the USDA charged Santa Cruz Biotech with more than fifty AWA violations impacting hundreds—if not thousands—of animals, some of which persisted for months.

<sup>71</sup> See USDA, *supra* note 53, at 1–2 (discussing penalty worksheets).



and how much to penalize someone who may have violated the Animal Welfare Act will provide information that could reasonably be used to circumvent enforcement of the Animal Welfare Act.<sup>72</sup> But the OIG has been telling us for a long time that we have a problem here. I don't think transparency is going to make the problem any worse—and it might actually help.

There's actually a bill pending in Congress to address this.<sup>73</sup> Like most bills currently pending in Congress, it's not likely to go anywhere,<sup>74</sup> but I think it's worth noting. It's called the Enforcement Transparency Act.<sup>75</sup> NABR actually advocated for this bill.<sup>76</sup> I think there's potential for common ground on this issue with advocates and the industry here. They're pushing for transparency. They want the guidelines to be updated regularly and available to the public.

I also have a little bit on the issue of not collecting penalties after they're assessed. The AWA says that if you don't pay a penalty, basically, the agency needs to refer that to the attorney general so that a civil action can be instituted.<sup>77</sup> Again, the USDA OIG has found in the past that they weren't always doing this.<sup>78</sup> In fact, according to the response I've received to a FOIA request, they aren't referring *any* unpaid penalties.<sup>79</sup>

It may be that everyone is paying their penalties now. I don't know. It seems unlikely.<sup>80</sup> But, in any event, they're not being referred.

I do think we can do something about all of this; I don't want to be depressing. I have some concrete recommendations, some policy recommendations. I think we need to move away from formal hearing requirements.<sup>81</sup> A lot of agencies have done that, and they don't do these

<sup>72</sup> Letter from Tonya Woods, USDA, to Delcianna Winders, Mar. 29, 2016 (on file with author); Letter from Kevin Shea, Adm'r, APHIS, USDA to Andrew D. Cardon (on file with author).

<sup>73</sup> Enforcement Transparency Act of 2015, H.R. 3136, 114th Cong. § 1 (2015).

<sup>74</sup> Indeed, the bill never got out of committee and has not been reintroduced.

<sup>75</sup> H.R. 3136.

<sup>76</sup> See, e.g., *Over 60 Institutions Sign Letter to Congress Supporting H.R. 3136*, NAT'L ASS'N FOR BIOMEDICAL RES. (Oct. 20, 2015), <https://www.nabr.org/-institutions-sign-letter-of-support-to-congress-for-h-r-3136/> [<https://perma.cc/T73N-8D3U>] (accessed Dec. 31, 2018) ("This letter, signed by over 60 universities, scientific societies, associations, and companies, urges immediate passage of this important transparency improving legislation."); *Support the ETA – Contact Your Congressman Today!*, NAT'L ASS'N FOR BIOMEDICAL RES. (Aug. 24, 2015), <https://www.nabr.org/support-the-eta-contact-your-congressman-today-2/> [<https://perma.cc/T5RH-9RQU>] (accessed Dec. 31, 2018) ("The ETA would require the USDA to release the guidelines used by Investigative and Enforcement Services (IES) at the Animal and Plant Health Inspection Service (APHIS) in the formulation of any civil penalties for violations of the Animal Welfare Act.")

<sup>77</sup> 7 U.S.C. § 2149(b).

<sup>78</sup> USDA, *supra* note 53, at 18.

<sup>79</sup> Letter from Vanessa R. Brinkmann, *supra* note 29.

<sup>80</sup> In fact, records recently obtained by the author in response to other FOIA requests indicate that penalties continue to go uncollected without apparent repercussion.

<sup>81</sup> See *License Renewal*, *supra* note 2, at 71–72 (arguing that under-enforcement of the AWA is seriously aggravated by the USDA's practice of automatically renewing AWA

trial-type hearings.<sup>82</sup> The USDA has even done it itself in other contexts.<sup>83</sup> I think that's an important step.

I also think that when warnings are disregarded, when discounted penalties are disregarded, the agency should ratchet up the penalties.<sup>84</sup> I think there's a lot of opportunity for the USDA in partnering with the Department of Justice in those cases of the worst recidivists. Penalty discounting should be transparent so that we can have a better sense of what's going on.

## II. CRIMINAL AND CIVIL ENFORCEMENT OF THE ANIMAL WELFARE ACT

By  
Varu Chilakamarri\*\*

My name is Varu Chilakamarri. I'm with the United States Department of Justice (DOJ). Today, I want to talk about the DOJ's mission in general, and our role in the judicial enforcement of the Animal Welfare Act (AWA), which you may not be as familiar with. I want to go through some of the provisions that Delci discussed as well as talk about the specific parts of the AWA that actually provide for federal court review. I will also cover some of our completed affirmative cases and, on what I hope will be a more positive note, talk about some of the programmatic steps we've taken in the Department over the last couple of years to make animal welfare a greater priority.

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licenses in the face of egregious violations and making proposals to address the automatic renewal problem).

<sup>82</sup> See *id.* at 13–14, 25–27; see, e.g., Amendments to Streamline the NPDES Program Regulations: Round Two, 61 Fed. Reg. 65,268, 65,276 (proposed Dec. 11, 1996) (to be codified at 40 C.F.R. pt. 22, 17, 122, 123, 124, 125, 144, 270, and 271); Amendments to Streamline the NPDES Program Regulations: Round Two, 65 Fed. Reg. 30,886, 30,900 (May 15, 2000) (to be codified at 40 C.F.R. pt. 22, 17, 122, 123, 124, 125, 144, 270, and 271); 10 C.F.R. §§ 2.310, 2.100–11 (2011); 50 C.F.R. §§ 13.25(b), 13.28(b) (2001) (implementing regulations that do not require formal hearing for the Environmental Protection Agency).

<sup>83</sup> See *Moore v. Madigan*, 990 F.2d 375, 378 (8th Cir. 1993) (discussing revocation of approved stockyard status under the Cattle Contagious Diseases Act); see 7 C.F.R. § 273.15 (2009) (providing information about denial or termination of Supplemental Nutrition Assistance Program benefits); see *id.* § 1530.111 (regarding suspension or revocation of a sugar re-export permit).

<sup>84</sup> See *Warnings*, *supra* note 2, at 493 (“Even in the face of repeated noncompliance and disregard of warnings, it is rare for the agency to escalate penalties. And even when the USDA escalates to monetary penalties, as the OIG has repeatedly noted, the penalties are severely discounted and sometimes go uncollected—undermining any deterrent effect they might have.”).

\*\* © Varu Chilakamarri served as Chief of Staff to the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice from 2015–2016. She is currently the Division's Counselor for Animal Welfare Matters and an attorney in the Division's Appellate Section. The views expressed by Chilakamarri are hers alone and do not necessarily reflect the views of the Department of Justice or the United States.

The DOJ, as many of you know, is a law enforcement agency. Our mission is to enforce the federal laws of the United States, including the AWA. It is to defend the interest of the United States, to ensure public safety, and to be a federal leader in crime control.<sup>85</sup> For many of us in litigation sections, our main job is to be the voice of the United States in the courtroom—and to represent federal client agencies like the United States Department of Agriculture (USDA).

The DOJ has many other roles beyond litigation, which I won't focus on today, but it's worth noting that in the animal welfare context, a number of the non-litigating components of the DOJ play an active role.<sup>86</sup> We have the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Those agencies sometimes come across evidence of animal crimes, because they're investigating organized crime, drug crimes, gun crimes, etc.<sup>87</sup> We also have grant-making agencies that work on criminal justice issues, which includes looking at violent offenders and the intersection between animal cruelty and other criminal conduct.<sup>88</sup>

Turning to our role in enforcement of the AWA.

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<sup>85</sup> See *Department of Justice Mission Statement*, U.S. DEPT. OF JUST., <https://www.justice.gov/about> [<https://perma.cc/F89D-V94W>] (accessed Dec. 1, 2018) (“To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime.”).

<sup>86</sup> See, e.g., *Department of Justice Organizational Chart*, U.S. DEPT. OF JUST., <https://www.justice.gov/agencies/chart> [<https://perma.cc/DLS2-2S9D>] (accessed Dec. 31, 2018) (showing Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms and Explosives, and Drug Enforcement Administration).

<sup>87</sup> See, e.g., U. S. Attorney's Office E. Dist. of N.C., *SIX MEN SENTENCED FOR DOG FIGHTING AND NARCOTICS CHARGES*, U.S. DEPT. OF JUST., <https://www.justice.gov/usao-ednc/pr/six-men-sentenced-dog-fighting-and-narcotics-charges> [<https://perma.cc/DF45-SXXF>] (accessed Dec. 31, 2018) (“The Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, Firearms, and Explosives, [and] the Jacksonville Police Department . . . initiated an investigation related to dog fighting and the drug trafficking in Eastern North Carolina.”); The U. S. Attorney's Office Middle Dist. of Ala., *Strong Sentences Handed Down by Alabama Court in Historic Dog Fighting Case*, U.S. DEPT. OF JUST., <https://www.justice.gov/usao-mdal/pr/strong-sentences-handed-down-alabama-court-historic-dog-fighting-case> [<https://perma.cc/H7XT-QBRG>] (accessed Dec. 31, 2018) (“The United States District Court for the Middle District of Alabama concluded sentencing today for eight individuals arrested during the second largest dog fighting raid in U.S. history in August 2013. The case was led by the United States Attorney's Office and the Federal Bureau of Investigation.”).

<sup>88</sup> See *Tracking Animal Cruelty*, FBI NEWS (Feb. 1, 2016), <https://www.fbi.gov/news/stories/-tracking-animal-cruelty> [<https://perma.cc/8UXC-B5LY>] (accessed Dec. 31, 2018) (noting the Bureau's National Incident-Based Reporting System collects data from participating law enforcement agencies on acts of animal cruelty noting that in many cases if animal cruelty is present there is a good chance of further criminality); see also Alyse Altenburg, *Increase Public Safety by Actively Working Together to Combat Animal Cruelty* U.S. DEPT OF JUST. OFFICE OF JUST. PROGRAMS DIAGNOSTIC CTR. (Dec. 15, 2016), <http://obsviolenciaanimal.org/quienes-somos/grupo-ucrnbris-del-fbi-nsa/miembros-del-grupo-nbris-del-fbi-nsa-2/> [<https://perma.cc/M4NZ-D54U>] (accessed Dec. 31, 2018).

As I mentioned, we work with our client agencies, like the USDA. It is the primary agency—the expert agency in this area. We rely on the USDA as we do with all our client agencies to provide the subject matter expertise, to come to us with the referrals, and to provide factual information, declarations, etc., to support judicial enforcement actions.

I think the statute bears this out—that Congress intended for there to be a comprehensive, administrative enforcement regime which is in the first instance managed by the USDA.<sup>89</sup> The USDA has several tools in its toolbox. It has authority to confiscate animals, suspend licenses, revoke licenses, issue cease and desist orders, and impose civil penalties.<sup>90</sup> All of that goes through the administrative process through the Administrative Law Judges and all the way up to the federal courts of appeals.<sup>91</sup> The DOJ does not and traditionally has not had a significant role in that administrative process.

So what I'm going to talk about today are the provisions—the fairly narrow provisions—in the statute that give the DOJ a role in judicial enforcement in federal courts, separate from the extensive administrative enforcement process that Bernadette is in charge of at the USDA.

Which AWA provisions provide for review in federal court?

As Delci noted, 7 U.S.C. § 2149 contains the bulk of them. There is a criminal provision in the AWA.<sup>92</sup> It's a misdemeanor provision, but it provides that a violation of the statute is a crime, and there are monetary penalties associated with that as well.<sup>93</sup> There's also a civil penalty provision.<sup>94</sup> It allows the DOJ to collect unpaid civil penalties after the USDA has assessed civil penalties and after that assessment has gone through the administrative process and a final order has been issued.<sup>95</sup>

Federal court review is also provided for under § 2159, which permits the government to seek a temporary injunctive relief in specific circumstances where you're dealing with stolen animals or where the health of an animal is in serious danger.<sup>96</sup> I have listed here a couple of other very specific provisions. Provisions that deal with, for example, dogfighting—there's a penalty provision that is keyed to that par-

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<sup>89</sup> 7 U.S.C. §§ 2146, 2149 (covering administration and enforcement by Secretary and violations by licensees).

<sup>90</sup> *Id.* §§ 2149(a), 2149(b) (covering temporary suspensions, revocation, civil penalties, and cease and desist orders); 9 C.F.R. § 2.129 (covering confiscation).

<sup>91</sup> 7 U.S.C. § 2149(c).

<sup>92</sup> *Id.* § 2149(d).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* § 2149(b).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.* § 2159(a) (providing that the Attorney General may “apply to the United States district court . . . for a temporary restraining order or injunction” to prevent a dealer, carrier, exhibitor, or intermediate handler from “placing the health of any animal in serious danger in violation of this chapter or the regulations or standards promulgated thereunder”).

ticular offense.<sup>97</sup> If you interfere with an investigation or if you interfere with the official duties of the law enforcement officers that are administering the statute, there's a specific penalty provision that's tied to that.<sup>98</sup>

Now, historically, our enforcement has been primarily under the AWA's animal fighting prohibition,<sup>99</sup> and those cases have really emerged since the Michael Vick case in 2007.<sup>100</sup> Since then, we have brought charges against hundreds of defendants, trained hundreds of federal, state and local investigators, and these actions have resulted in nearly 700 dogs being rescued from animal fighting operations.<sup>101</sup> From a prosecutorial perspective, the majority of DOJ's activity has been focused on animal fighting, under 7 U.S.C. § 2156. I think one of the reasons why most of our law enforcement has focused in this area is because this type of crime, animal fighting, is something that our law enforcement officers come across while investigating other crimes.<sup>102</sup> There's an intersection with this type of criminal activity and the other crimes that the DOJ is already investigating when it comes to organized crime, drug trafficking, and gun trafficking.<sup>103</sup>

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<sup>97</sup> *Id.* § 2156; 18 U.S.C. § 49.

<sup>98</sup> 7 U.S.C. § 2146(b).

<sup>99</sup> *Id.* § 2156.

<sup>100</sup> See Trial Motion, Memorandum and Affidavit, *U.S. v. Vick*, No. 07-cr-274 (E.D. Va. Aug. 24, 2007), 2007 WL 2571292, (concerning a former NFL Quarterback convicted in widely publicized dog fighting case); see also Michael Schmidt, *Vick Pleads Guilty in Dog-Fighting Case*, N.Y. TIMES, (Aug. 27, 2007), <https://www.nytimes.com/2007/08/27/sports/football/27cnd-vick.html> [<https://perma.cc/E5SE-7YXV>] (accessed Dec. 31, 2018) (“Vick admitted to funding the dog fighting operation and the gambling associated with it and to being complicit in the killing of at least six dogs that underperformed.”).

<sup>101</sup> See generally *The Intersection Between Animal Cruelty and Public Safety*, DOJ BLOG, <https://www.justice.gov/archives/opa/blog/intersection-between-animal-cruelty-and-public-safety> [<https://perma.cc/T6KZ-TBW5>] (accessed Dec. 31, 2018) (“We don't encounter animal cruelty every day, but the Justice Department has charged at least 190 defendants with animal cruelty offenses during the past six years, and has assisted state and local prosecutors in many others.”); see also, *Announcing the 2018 “Champions for Animals” Award Recipients*, ASPCA (Apr. 6, 2018), <https://www.aspc.org/news/announcing-2018-champion-animals-award-recipients> [<https://perma.cc/PZ4T-EVRR>] (accessed Dec. 31, 2018) (detailing ASPCA's assisting ENRD of the Justice Department in hundreds of dog fighting cases).

<sup>102</sup> See *U.S. v. Berry*, No. 09-CR-30101-MJR, 2010 WL 1882057, at \*8 (S.D. Ill. May 11, 2010), *aff'd sub nom U.S. v. Courtland*, 642 F.3d 545 (7th Cir. 2011) (“[D]og fighting is closely associated with some of the most serious crimes plaguing our society and may involve people with extensive criminal backgrounds. Because of the secretive nature of dog fighting, the events are frequently the scenes of other more dangerous crimes including illegal gambling, drug distribution, prostitution, illegal weapons exchange, and even homicide.”).

<sup>103</sup> See *id.*; U.S. Attorney's Office, S. Dist. of Ga., *Federal Agents Seize 63 Dogs from Suspected Dogfighting Ring*, U.S. DEPT. OF JUST. (Mar. 30, 2018) <https://www.justice.gov/usao-sdga/pr/federal-agents-seize-63-dogs-suspected-dogfighting-ring> [<https://perma.cc/F585-D9YV>] (accessed Dec. 31, 2018) (quoting U.S. Attorney stating “[w]e know that animal fighting ventures often entail other forms of illegal activity involving drugs, firearms, and gambling”).

Also, animal fighting is completely outlawed.<sup>104</sup> There is no room for licensing. There's no administrative process. The criminal provision is the only enforcement provision, and so that's why you see more cases in that arena. There have been other federal cases under the AWA, a handful of cases, and I think it's important to talk about them to have some understanding of how AWA enforcement can work under the current statute. I like to put these cases in three different categories.

First, we've had a few cases under the criminal provision, though it's only a misdemeanor. There have been a couple brought under AWA § 2149. Second, there has been at least one case in recent years seeking to collect civil penalties under § 2149. And finally, we also see other criminal statutes in Title 18 being used to address animal welfare-related misconduct. One reason why I think Title 18 has been used in some of these cases is because it provides for higher felony penalties than a case brought solely under the AWA. You actually have the ability to get jail time under those statutes. Just very quickly, I will run through a couple of examples of cases in each category, to give you an idea of the mechanisms in which the statute allows for judicial enforcement. Section 2149, as I mentioned, is the AWA's criminal enforcement provision. What we've seen under this provision are cases prosecuting violators of the AWA for activities such as unlicensed exhibition, unlicensed dealing and transportation, and improper marking of animals. Those are direct violations of the statute. *United States v. Mazzola*<sup>105</sup> is a more recent example of this kind of case. Bernadette actually dealt with this case extensively at the administrative level,<sup>106</sup> so she might be able to offer more detail.

Mr. Mazzola was an exotic animal dealer and he tried to get a license in his individual capacity.<sup>107</sup> The USDA denied that license, finding him unfit for a variety of reasons.<sup>108</sup> For example, he allowed people to take photographs next to tigers and bears, and allowed people to pay for and win a prize by wrestling a bear.<sup>109</sup> He wasn't given a license. Nonetheless, he continued to deal in and transport animals. In just over a year, he transported wolves, tigers, skunks, and bears across the country for exhibitions.<sup>110</sup> The USDA issued him a cease-and-desist order and issued civil penalties.<sup>111</sup> The DOJ pursued him

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<sup>104</sup> Congress has outlawed virtually all aspects of animal fighting ventures. *See, e.g.*, 7 U.S.C. §§ 2156(a)–2156(b) (prohibiting individuals from knowingly attending an animal fight, buying, selling, delivering, possessing, training, or transporting animals for participation in an animal fighting venture, sponsoring or exhibiting an animal in an animal fighting venture, or knowingly causing minors to attend a fight).

<sup>105</sup> U.S. v. Mazzola, No. 1:09-mj-08005 (N.D. Ohio Mar. 8, 2010).

<sup>106</sup> *See* Sam Mazzola, 68 Agric. Dec. 822, 824 (USDA 2009) (“Bernadette Juarez and Babak A. Rastgoufard, Office of the General Counsel, United States Department of Agriculture, Washington, D.C., represented the Administrator.”).

<sup>107</sup> *Id.* at 823.

<sup>108</sup> *Id.* at 824.

<sup>109</sup> *Id.* at 831.

<sup>110</sup> *Id.* at 833–35.

<sup>111</sup> *Id.* at 824.

as well. The United States Attorney's Office filed a criminal action directly under AWA § 2149, charging him with two counts.<sup>112</sup> One count was for unlawfully transporting an animal without a license, and another count was for selling an animal without a license.<sup>113</sup> Mr. Mazzola eventually agreed to a plea agreement and was given three years' probation and community service.<sup>114</sup> Now, this story does not end well. After the criminal case, one of the caregivers in his home who was taking care of a bear was mauled and killed by the bear.<sup>115</sup> Mr. Mazzola then died while the caregiver's death was being investigated.<sup>116</sup>

I think it's important to talk about this case, because it shows the real-world significance of the Act and the importance of the subject matter that we're dealing with here. The AWA regulates the care and treatment of animals, for the safety of the animals and the people around them.<sup>117</sup> The activities covered by the AWA can present traditional law enforcement problems, because unregulated activities can pose a danger to people as well. So this is something that the DOJ views as a law enforcement problem. And it doesn't have less weight than the other types of laws that we enforce.

Moving to the second category of judicial enforcement cases. An example of a case that falls directly in the § 2149(b)-category for the collection of civil penalties is *United States v. Felts*.<sup>118</sup> Now, in this case, we're dealing with a dog dealer.<sup>119</sup> The USDA inspectors documented numerous violations of the humane handling standards for various things, including improper flooring.<sup>120</sup> This is something that we talked about yesterday, where the confined animals' legs can fall through the grates on poor flooring, and they can suffer injuries as a result. The USDA also documented incidents of improper temperature control.<sup>121</sup>

There were numerous violations and the USDA levied an \$18,000 civil penalty, which Mr. Felts did not pay.<sup>122</sup> The U.S. Attorney's Of-

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<sup>112</sup> *Mazzola*, No. 1:09-mj-08005 at \*2.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Jeannie Nuss, *Bear Who Mauled Caretaker is Euthanized*, NBC NEWS (Aug. 22, 2010), [http://www.nbcnews.com/id/38805641/ns/us\\_news-life/t/bear-who-mauled-care-taker-euthanized/?ns=US\\_news-life#.WtI-htTwapo](http://www.nbcnews.com/id/38805641/ns/us_news-life/t/bear-who-mauled-care-taker-euthanized/?ns=US_news-life#.WtI-htTwapo) [<https://perma.cc/4SYN-RWQN>] (accessed Dec. 31, 2018).

<sup>116</sup> Leona Johnson, *Exotic-Animal Owner Sam Mazzola Died Bound in His Home During an Apparent Sex Act Gone Wrong, Coroner Says*, CLEVELAND PLAIN DEALER (July 13, 2011), [http://blog.cleveland.com/metro/2011/07/exotic\\_animal\\_owner\\_sam\\_mazzola\\_1.html](http://blog.cleveland.com/metro/2011/07/exotic_animal_owner_sam_mazzola_1.html) [<https://perma.cc/V9RD-W6CL>] (accessed Dec. 31, 2018).

<sup>117</sup> 7 U.S.C. § 2131.

<sup>118</sup> U.S. v. Felts, No. 11-4031, 2012 WL 124390, at \*1 (N.D. Iowa Jan. 17, 2012).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*; see also Gary Felts, AWA Docket No. 10-0068, 2010 WL 2800391, at \*5 (June 3, 2010) ("The Respondent is assessed a civil penalty of \$18,938.00, which shall be paid by a certified check or money order made payable to the Treasurer of the United States.").

office for the District of Iowa got involved and filed a civil action to collect those USDA penalties and got a civil judgment against Mr. Felts.<sup>123</sup> Mr. Felts then claimed that he was unable to pay. He sent in financial disclosure statements to the U.S. Attorney's Office and was put on a payment plan with a nominal amount of money to be paid every month.

The last category of judicial enforcement cases in this area has been the use of Title 18 charges. Title 18 contains general criminal provisions for things like conspiracy, mail fraud, false statements, and identity theft.<sup>124</sup> These provisions are often used by the U.S. Attorney's Offices, because when you find one crime, you sometimes see other crimes. In the *Felts* case, after further investigation, it was revealed that Mr. Felts actually did have the ability to pay—he was hiding a couple of bank accounts.<sup>125</sup> And the U.S. Attorney's Offices found out about it.<sup>126</sup> So the prosecutor filed another case against him.<sup>127</sup> This time, a criminal case for false statements because he lied on the form he submitted to the U.S. Attorney's Office.<sup>128</sup> Just last month, Mr. Felts pled out for a felony and was given three years' probation.<sup>129</sup>

The amount of time needed to build and pursue some of these cases can be significant and reveals its own difficulties. Many people have been talking about that at this conference. Even from a law enforcement standpoint, it can take many years to pursue what might seem like clear violations. Some additional illustrations of how Title 18 has been used in the animal welfare context comes from the *Martin*, *Davis*, and *Baird* cases.<sup>130</sup> These are examples where we had dog dealers who were obtaining dogs and cats—fraudulently obtaining them—from random sources and selling those animals to research labs. Now, the problem here was they were circumventing USDA regulations.

Individuals or random sources selling fewer than twenty-five dogs and cats a year are not necessarily required to have a license.<sup>131</sup> But in these cases, some of the defendants had obtained hundreds of dogs from a single source in a year and were falsifying certifications made to USDA to make it appear that each source was selling fewer than

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<sup>123</sup> See *Felts*, 2012 WL 124390, at \*5 (granting summary judgment and ordering payment of civil administrative penalties imposed by USDA).

<sup>124</sup> See 18 U.S.C. §§ 1371, 1341, 1001, 1028 (covering conspiracy, fraud, false statements, and identity fraud).

<sup>125</sup> U. S. Attorney's Office N. Dist. of Iowa, *Black Diamond Dog Kennel Owner Enters Guilty Plea for Making False Statement*, U.S. DEPT. OF JUST. (July 14, 2016), <https://www.justice.gov/usao-ndia/pr/black-diamond-dog-kennel-owner-enters-guilty-plea-making-false-statements> [<https://perma.cc/JW8E-DYMS>] (accessed Dec. 31, 2018).

<sup>126</sup> *Id.*

<sup>127</sup> U.S. v. Felts, No. 16-0049 (N.D. Iowa. July 13, 2016).

<sup>128</sup> *Id.* (Indictment).

<sup>129</sup> U.S. Attorney's Office N. Dist. of Iowa, *Supra* note 124.

<sup>130</sup> See U.S. v. Davis, No. 98-60125 (D. Or. 1998) (Indictment); U.S. v. Baird, No. 05-cr-00224 (E.D. Ark. 2005) (Felony Information); U.S. v. Martin, No. 11-cr-00054 (M.D. Pa. 2011) (Indictment).

<sup>131</sup> 9 C.F.R. § 2.132.



twenty-five animals. They used fake names, fake buyers, names of friends, and acquaintances.<sup>132</sup>

Rather than go after them for an AWA violation, the U.S. Attorney's Offices in these cases prosecuted the defendants for false statements, for conspiracy, and for identity theft and were able to get jail time.

These are just a few examples of the way in which the Department has utilized the statutory enforcement mechanisms to prosecute animal welfare and related violations under the statute as it's now written.

The last thing I want to touch on is hopefully a more positive note. It's looking ahead. I think the Department, in the last couple of years, has really done more than we ever have historically in improving our ability to handle animal welfare related cases.

In late 2014, Department leadership designated our division, the Environment and Natural Resources Division (ENRD), as the division that would be the main justice component for the judicial enforcement of federal animal welfare laws.<sup>133</sup> Not just the AWA, but the Horse Protection Act,<sup>134</sup> the Twenty-Eight-Hour Law,<sup>135</sup> the Animal Crush Video statute,<sup>136</sup> the Animal Fighting Prohibition,<sup>137</sup> and the Humane Methods of Slaughter Act.<sup>138</sup> All of those collectively were identified as being the main federal statutes in which the interest of an animal's welfare was the primary motivation and purpose.

The Department recognized that these laws shouldn't be treated as general crimes which are handled solely by the U.S. Attorney's Offices. This area was ill-suited to be handled in that manner, because the sporadic nature of these actions makes it difficult for every office to build institutional knowledge and expertise. Therefore, DOJ wanted to have a central component to develop the expertise, to work with the ninety-four U.S. Attorney's Offices, to provide the sample pleadings, and to work with client agency. Our office— ENRD—was designated to be that central litigating resource for DOJ.<sup>139</sup> So these animal wel-

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<sup>132</sup> *Baird*, No. 05-cr-0224 (Felony Information).

<sup>133</sup> See ENVIRONMENT & NATURAL RESOURCES DIVISION, U.S. DEP'T OF JUST., ACCOMPLISHMENTS REPORT FISCAL YEAR 2016, 68–69 (2016) <https://www.justice.gov/enrd/page/file/925411/download> [<https://perma.cc/T2ZB-8QCY>] (accessed Dec. 31, 2018) (“[t]he Department designated ENRD as . . . responsible for coordinating enforcement efforts under the six major federal animal welfare statutes, including the Animal Welfare Act”).

<sup>134</sup> Horse Protection Act of 1970, 15 U.S.C. §§ 1821–1832 (2018).

<sup>135</sup> 49 U.S.C. § 80502 (2018).

<sup>136</sup> Animal Crushing Video Prohibition Statute of 2010, Pub. L. No. 111-294, 124 Stat. 3177 (2010) (codified at 18 U.S.C. § 48 (2018)).

<sup>137</sup> Animal Fighting Prohibition Enforcement Act of 2007, Pub. L. No. 110-22, 212 Stat. 88 (2007) (codified at 18 U.S.C. § 49 (2018)).

<sup>138</sup> Humane Methods of Slaughter Act of 1978, Pub. L. No. 95-445, 92 Stat. 1069 (1978) (codified at 7 U.S.C. §§ 1901–1906 (2018)).

<sup>139</sup> See *Animal Cruelty Prevention Month*, U.S. DEPT. OF JUST., (Apr. 29, 2015), <https://www.justice.gov/archives/opa/blog/animal-cruelty-prevention-month> [<https://perma.cc/S652-LEZY>] (accessed Dec. 31, 2018) (“As part of DOJ's law enforcement mission, we

fare laws have now joined the family of environmental laws, such as the Endangered Species Act and the federal pollution control statutes, in which ENRD has developed a rich expertise. We've begun. It's only been about a year and a half since we've added this new portfolio to our mission. We now have our first few cases underway. We filed three criminal cases for animal fighting violations in a multidistrict dogfighting case.<sup>140</sup> We've rescued over seventy dogs in that case.<sup>141</sup>

Harkening back to a presentation that was given earlier, we've started to better coordinate in these cases. The use of civil forfeiture to seize animals from animal fighting operations is a good illustration of that improved coordination. The U.S. Attorney's Offices had not been consistently using civil forfeiture in the animal fighting context. One thing that we're able to do from Main Justice is provide formal uniform guidance to prosecutors around the country and share examples of what's worked in prior enforcement cases in other districts. And if one office doesn't have the resources, we can step in. For part of the case, we can file a civil forfeiture action to try to get the animals adopted out sooner if that is warranted.

We've also been able to step into the legal policy role a little bit. One example is that, for the first time, ENRD testified before the U.S. Sentencing Commission and recommended increasing the penalties under the sentencing guidelines for animal fighting.<sup>142</sup> We were successful in that effort, along with a number of organizations in this room. We've also begun bringing together state and local law enforcement to talk about these issues. In 2013, we had the third-ranking leader of the DOJ, the Associate Attorney General, who convened for the first time in history a panel at the DOJ to talk about the intersection between animal welfare and public safety.<sup>143</sup> It was the first time that the DOJ had convened people across disciplines and governments on this topic.<sup>144</sup> We did so again a few months ago and we were fortunate enough to have Chris Green from Harvard's Animal Law program

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play a role in the enforcement of a number of federal animal welfare laws, along with key partners such as the U.S. Department of Agriculture.”)

<sup>140</sup> *Nine People Charged in Multi-State Dog Fighting Conspiracy*, U.S. DEPT. OF JUST. (June 1, 2016), <https://www.justice.gov/opa/pr/nine-people-charged-multi-state-dog-fighting-conspiracy> [https://perma.cc/QRY3-5F2P] (accessed Dec. 31, 2018).

<sup>141</sup> *Five Plead Guilty in Multi-State Dog Fighting Prosecution*, U.S. DEPT. OF JUST. (Aug. 11, 2017), <https://www.justice.gov/opa/pr/five-plead-guilty-multi-state-dog-fighting-prosecution> [https://perma.cc/KM3T-Z58E] (accessed Dec. 31, 2018) (“To date, 98 dogs have been rescued as part of Operation Grand Champion, and either surrendered or forfeited to the government.”).

<sup>142</sup> See *Public Hearing on the Proposed Amendments to the Federal Sentencing Guidelines Before U.S. Sentencing Comm'n*, 224–26 (2016) (showing Deputy Assistant Attorney of ENRD Jean Williams's statements requesting for greater penalties for animal fighting).

<sup>143</sup> *The Intersection Between Animal Cruelty and Public Safety*, U.S. DEPT. OF JUST. (Apr. 30, 2013), <https://www.justice.gov/archives/opa/blog/intersection-between-animal-cruelty-and-public-safety> [https://perma.cc/HR2C-YE7Q] (accessed Dec. 31, 2018).

<sup>144</sup> *Id.* (“Today's listening session also drew wide interest across the department – from our own research and policy advisors, to our criminal prosecutors and civil liti-

come to that as well, where we invited state and local law enforcement to talk about federal and state cooperation in animal welfare enforcement.<sup>145</sup>

Having high-level officials at DOJ and USDA talk about these issues for the first time, having them conduct training sessions,<sup>146</sup> and having a dialogue with experts from various related disciplines to think strategically about how we can improve our law enforcement efforts in this arena—all of this reflects a change in how these agencies are looking at the issue of animal welfare. I hope it conveys the seriousness with which the Department views these issues. Thank you.

[Animal Welfare Act Enforcement Actions by Bernadette Juarez has been omitted from this publication]

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gators. Both in scale and scope, this conversation was the first of its kind in the department.”).

<sup>145</sup> *Federal-State-Local Cooperation in Animal Welfare Enforcement*, U.S. DEPT. OF JUST. (Aug. 15, 2016), <https://www.justice.gov/archives/opa/blog/federal-state-local-cooperation-animal-welfare-enforcement> [<https://perma.cc/2ECQ-ZAAR>] (accessed Dec. 26, 2018).

<sup>146</sup> *Justice Department Conducts Animal Fighting Investigations Training*, U.S. DEPT. OF JUST., OFF. OF PUB. AFFAIRS (June 21, 2017), <https://www.justice.gov/opa/pr/justice-department-conducts-animal-fighting-investigations-training> [<https://perma.cc/YSZ6-7WTY>] (accessed Dec. 31, 2018).