



IN DEFENSE OF ANIMALS

June 23, 2009

The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture
Washington, DC 20250
Via Facsimile (202-720-2166) - 4 pages - and email

Re: USDA's 6/11/09 Response to IDA's 5/6/09 Complaint

Dear Secretary Vilsack,

I am in receipt of Ms. Cindy Smith's June 11, 2009 response to our May 6, 2009 letter to you concerning the elephants Tina, Jewel and Queenie and their licensed exhibitor Will Davenport, d/b/a Maximus Tons of Fun (USDA Lic. No. # 74-C-0761).

Ms. Smith's response indicates that she has apparently been misinformed with regard to virtually every factual element of this matter. Her statement that this situation does not meet the legal criteria for confiscation, i.e. an "animal is suffering and action is not and will not be taken to alleviate this suffering" is simply not supported by the evidence, including USDA's own documents.

The licensee¹ has a nearly two and a half year record of chronic and repeated violations of the Animal Welfare Act (AWA). During this time, Davenport has consistently demonstrated that he is unwilling or unable to provide the care necessary to protect the health of the elephants and alleviate their suffering. **Most disturbingly, he has routinely failed to comply with every order given to him by the USDA, yet has faced no consequences for his continued violations of federal law.**

- In April 2007, your department ordered Davenport to take Tina and Jewel off the road due to the elephants' severe weight loss. In response, he moved the elephants to an unapproved and unlicensed facility in Leggett, Texas where adequate veterinary care was not available and, according to your department's report, *"the lack of a permanent long term housing facility that provides adequate shelter and enclosures jeopardizes the health of the animals and hinders their ability to gain weight."*² Despite this, the USDA allowed Davenport to keep the elephants at this facility for six months with no penalty for this non-compliance.
- Your department has noted that Davenport consistently failed to provide adequate veterinary care to his elephants (See inspection reports from March, 2008, April, 2008, November, 2008 and April, 2009.)³

¹ In 2007, Will Davenport exhibited the elephants under the exhibitor's license of his mother, Gigi Davenport, aka "Gigi's Exotics" (USDA Lic. No. 74C-0358). In early 2008 he began exhibiting under his own license under the name "Maximus Tons of Fun."

² May 15, 2007 USDA inspection report.

³ Some inspection reports have not been disclosed to IDA pursuant to FOIA because they relate to pending investigations. It is therefore likely that Davenport has received citations for AWA violations of which IDA is not yet aware; since these

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- All three elephants are losing far too much weight - Tina and Jewel for the second time in two years. **Together the elephants have lost a shocking 1,800 pounds in less than a year.** Jewel has lost over 700 pounds and is described in your department's inspection report as in "poor body condition and very underweight". Tina and Queenie have lost over 500 pounds each.⁴
- Davenport has routinely failed to take regular weights on the elephants, violating a USDA requirement that he weigh them every two weeks in the presence of APHIS inspectors. (See November 22, 2008 inspection report.)
- Tina and Jewel are "below the target weights for traveling exhibition" (according to a USDA-commissioned veterinary report April 23, 2007) and are therefore in a condition that is not "adequate for travel." Yet the USDA has allowed these elephants to log as many as 6,000 miles (or more) of travel through June 22.
- Davenport has remained untrained and incompetent in handling the elephants, posing a clear safety threat to elephants and people. In March 2009, the three elephants were involved in an incident that injured a dozen children and several adults. The USDA has repeatedly cited Davenport for training, handling and safety transgressions, yet allows him to continue to a publicly exhibit the elephants and give elephant rides to children.

An additional concern is that one or more of the elephants may be infected with Tuberculosis.

Ms. Smith's statement that these elephants have "never tested positive for tuberculosis" is misleading. Although the results of "trunk wash" tests have been negative, Jewel has had three positive reactions on more reliable blood tests for TB. According to experts, this indicates that she has been exposed to this contagious disease and could sero-convert to a positive, infectious stage at any point.⁵

Based on these results, the USDA's TB guidelines require that the elephant be "*considered at increased risk of having TB*" and that precautions such as "*minimizing or eliminating contact with the public that would result in exposure by contact or aerosol transmission*" must be considered. Yet the USDA has taken no action to limit public contact with Jewel or any of the elephants, nor has it taken any action to ensure that that Jewel receives accurate culture-testing by trunk wash every 2-3 months.⁶

It is time for the USDA to start enforcing the Animal Welfare Act.

Your agency's failure to uphold its Congressionally-mandated responsibility to enforce the Animal Welfare Act is longstanding and well-documented. Three separate USDA Inspector General (IG) reports and at least two federal court cases have found the agency's AWA enforcement activities

violations are the subjects of active investigations they are presumably among the most egregious of Davenport's violations.

⁴ April 4, 2009 USDA inspection report.

⁵ Jewel has exhibited a "faint shadow" on three consecutive MAPIA (multiple antigen print immunoassay) test. Experts familiar with these tests state that this result indicates that, not only that Jewel has been exposed to TB, but also there is an increased likelihood that she is actually infected with the mycobacterium that causes the disease.

⁶ One must question the reliability of these trunk wash tests, since they are presumably administered by Mr. Davenport, who has repeatedly been found to be inadequately trained to handle the normal daily routines of the elephants.

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severely deficient. For example, the USDA IG found that the agency “is not aggressively pursuing enforcement actions against violators of the AWA,” and has generally imposed “minimal” fines that “violators consider . . . a normal cost of conducting business rather than a deterrent for violating the law.”⁷

An April 2009 federal court case found that the USDA's AWA enforcement actions were "not above reproach. . . . **In fact, they were virtually glacial and hardly represent “best practice” by a government agency.**”⁸

As noted in our May 6 letter to you, the USDA's failure to enforce the AWA has cost numerous elephants their lives. It is long past time for the USDA to correct these deficiencies and act to protect animals as Congress intended when it passed the AWA 40 years ago.

Conclusion

One has only to read the USDA’s own inspection reports and look at the enclosed photographs (much clearer through email than FAX) to conclude that Tina, Jewel and Queenie are suffering right now, and that licensee Davenport is unable and unwilling to alleviate this suffering. The USDA has ample evidence on which to base a confiscation of these elephants. The Elephant Sanctuary stands ready to transport and permanently house these elephants at its USDA-approved site (with a certified TB quarantine facility) at no cost to the government or the licensee.

It is time to take action to confiscate Tina, Jewel and Queenie before it is too late.

Sincerely,



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Cc: Cindy Smith, Acting Under Secretary, Marketing and Regulatory Programs

⁷ USDA Office of Inspector General, Report No. 33002 3 SF, Audit Report, APHIS Animal Care Program Inspection and Enforcement Activities, Exec. Summ. (Sept. 2005).

⁸Lancelot Kollman Ramos v. Unite States Dep't of Agric., No. 08-10236, UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, April 7, 2009, Decided, April 7, 2009, Filed

**PHOTOS OF TINA, JEWEL AND QUEENIE
JUNE 5-7, 2009, LOVES PARK, ILLINOIS**



Tina, depressed and underweight



Jewel favoring her right front leg



Jewel with wounds on her head



Jewel, obviously emaciated, performing



Tina and Jewel



Queenie straining on short leg chain