



IN DEFENSE OF ANIMALS

May 6, 2009

Secretary Tom Vilsack
U.S. Department of Agriculture
1400 Independence Ave. S.W.
Washington, DC 20250

Via Email and Fax

Dear Secretary Vilsack:

I am writing to you on behalf of In Defense of Animals, an international animal rescue and protection organization based in California, to urge your intervention in a now-critical situation regarding three endangered Asian elephants, Tina Jewel and Queenie (aka "Boo"). The elephants are traveling under the license of Will Davenport dba Maximus "Tons of Fun" (USDA Lic. No. 74-C-0762). IDA is gravely concerned at the failure of the USDA's Animal and Plant Health Inspection Service (APHIS) to enforce the Animal Welfare Act (AWA) by allowing the ongoing exhibition of Tina, Jewel and Queenie by Will Davenport, despite mounting violations of the AWA and clear evidence of threats to public safety and to the health and safety of the elephants themselves.

We fear that this threat has reached a point that mandates **your immediate intervention to order that APHIS finally confiscate these suffering and abused elephants.**

Ailing elephants; severe weight loss

The elephant Jewel is in emaciated condition and so obviously ailing that this past weekend, the Massachusetts SPCA advised the Shrine Circus to prohibit her from performing. (This photo of Jewel was taken on Saturday May 2, 2009 in Springfield, Massachusetts. The photo is much clearer in the email of this letter that we sent to you, and we would be happy to email it again.)



Jewel's severely debilitated condition is obvious and was confirmed in an April 4, 2009 USDA inspection report noting that the elephant was ***"in poor body condition and very underweight such that her hip bones and dorsal vertebrae were prominent and the area around her temples and facial bones appeared sunken."***

In fact, all three elephants have experienced serious weight loss -- Jewel: 740 pounds, Tina: 540 and Queenie: 520 -- in less than a year. This is the second time in as many years that Jewel and Tina have experienced severe weight loss under Davenport's care. The first time, in April 2007, the USDA ordered Jewel and Tina to stop traveling and performing due to severe weight loss and concerns about infection with Tuberculosis (TB). (See more detailed chronology below.)

The cause of the elephants' weight loss was never diagnosed, yet APHIS authorized Davenport to take the elephants back on the road in October 2007. In doing so, APHIS relied on an opinion by a veterinary expert, who noted that the elephants had reached target traveling weights. Both elephants are now below these target weights, and Queenie has lost weight as well, but APHIS continues to allow the elephants to be exhibited.

Just last week, in fact, the elephants were trucked over 1,700 miles from Leggett, Texas to Springfield, Massachusetts, causing untold stress and additional suffering for all three elephants, , particularly the gaunt, sickly and skeletal Jewel. Alarmingly, Jewel spent the last weekend chained inside the tent, where she was frequently left unattended. The tent was freely accessible to the public, leaving Jewel vulnerable and endangering any person or child who might wander in. (Davenport has been repeatedly cited for leaving the elephants unattended and inadequately secured from the public.)

Possible infection with Tuberculosis

At least one elephant may be infected with Tuberculosis (TB). (See chronology below.) The concern about exposing the public to TB was a consideration in USDA's original order to remove the elephants from the road in April 2007. The agency explained that this action was necessary **"to ensure the health of both elephants and the public by minimizing the potential spread of tuberculosis."**

The fact that now all three are losing weight certainly again raises the specter of contagion and concern about infected elephants being in regular and close contact with the public, including large numbers of children.

Elephants are a known public safety threat

The USDA has repeatedly cited Davenport for lack of training and control of the elephants, along with safety transgressions committed by the handler. Among the transgressions: repeatedly leaving elephants unattended and poorly secured in close proximity to the public, including children. As noted above, this dangerous scenario was again repeated in Springfield, Mass., when Jewel was left unattended inside the tent, which was freely accessible to the public, for extended periods of time. Not surprisingly, on March 9, 2009, the elephants were involved in an incident that injured a dozen children in Indianapolis while performing for the Shrine Circus. (See chronology below).

APHIS has allowed handler to violate the AWA with impunity

The handler, Will Davenport, has chronically and repeatedly violated the AWA for years, including constant and ongoing failure to provide adequate veterinary care and safe and humane handling of elephants. (See chronology below.)

APHIS's failure to take any significant enforcement action is inexplicable in light of the serious welfare and safety transgressions of this handler and his virtually unprecedented record of AWA violations.

Time and time again, Davenport has demonstrated that he is unwilling or unable to provide the care necessary to protect the health and welfare of the elephants. He has chronically failed to keep records of their weight, failed to perform fecal exams and necessary vaccinations, and to establish or maintain programs of adequate veterinary care; he continues to be cited for these failures. He continues to be untrained and incompetent in handling the elephants, posing a clear safety threat. In short, he defies virtually every order given to him by USDA/APHIS to protect the welfare of Tina, Jewel and Queenie, and repeated citations for noncompliance have had no impact whatsoever on his behavior. Despite this, APHIS continues to allow Davenport to hold a valid USDA exhibitor's license and travel with the elephants, perform and give elephant rides.

APHIS history of tolerating AWA flagrant and chronic violations by Davenport family

APHIS has a history of failure to enforce the AWA when it comes to the Davenport family. Will Davenport's mother, Gigi originally "leased" Tina and Jewel from Cole Brothers Circus, and has a long history of violations chronicled in USDA inspection reports. The father, John Davenport, is alleged to have purchased the elephants from Cole Brothers in violation of the Endangered Species Act. His case is particularly egregious.

In 1999, John Davenport's USDA exhibitor's license was revoked after a baby elephant traveling with his circus died from overheating in the back of an unventilated truck that was left in the Albuquerque sun. The city of Albuquerque filed criminal charges and confiscated the surviving animals (including 2 elephants), and the USDA levied a \$200,000 fine against Davenport, in addition to permanently revoking his exhibitor's license. Davenport reportedly never paid the \$200,000 fine and has continued business as usual for a decade by operating through the licenses of his wife, sons, niece and sister. The USDA has ample evidence of the senior Davenport's illegal activities yet has failed to take action to stop them.

USDA must confiscate Tina, Jewel and Queenie now

While Will Davenport's disregard for the AWA might be expected, given APHIS's history of non-enforcement with regard to the chronic legal violations of other members of his family, it should not be tolerated under your new Administration.

Will Davenport has demonstrated repeatedly and beyond dispute that he cannot and will not provide for the health and welfare of these elephants and that he will continue to disregard the safety of the public, as well. Multiple federal investigations and continuing citations have no effect on his behavior and have done nothing to help the elephants who continue to suffer sickness, abuse and neglect on a daily basis.

The only way to prevent and restrain further violations of the AWA, to end the abuse of these long-suffering elephants, and to prevent a tragedy waiting to happen, whether it is the death of an elephant or the injury or death of an innocent bystander, is to end once and for all the Davenport "family

business” of abuse, neglect and violations of law. Given APHIS's history of recording violations on paper but taking no significant action to enforce its own findings, we strongly believe that this can be achieved only by intervention from your office.

We therefore request that you order your agency to immediately confiscate Tina, Jewel and Queenie and send them to the USDA-certified Elephant Sanctuary in Tennessee, where they will have the care and attention needed to bring them back to health, and where their welfare will finally become a priority. The USDA has the clear authority to take this action under Section 2.129 of the AWA regulations, and it is our strong opinion that the time to do so has more than arrived.

We are happy to provide any additional information or answer any questions for you. This is a matter of considerable importance to us, as evidenced by our years of effort on these elephants’ behalf; we expect to pursue this and look forward to your prompt response.

Sincerely,



Suzanne Roy
Program Director
919-697-9389

Chronology of Davenport Animal Welfare Act Violations Prepared May 2009

This chronology was compiled on the basis of documents, including correspondence and inspection reports, obtained through the Freedom of Information Act (FOIA) from the USDA. The USDA FOIA office has informed us that a number of documents have been withheld as part of ongoing investigations into the Davenport licensees. Presumably these documents include inspection reports that document additional, and potentially, more serious violations than are included in this chronology. For this reason, this chronology should be viewed as a partial list of the Davenports' Animal Welfare Act violations.

July 30, 2004 - "Gigi's Exotics," operated by Gigi Davenport, wife of John Davenport, pays \$1,100 USDA fine in settlement agreement for Animal Welfare Act (AWA) violations in 2002, 2003 and 2004. Many of the violations are related to the failure to provide appropriate veterinary care, handling and transportation for an elephant named "Boo." This elephant is also known as Queenie, one of the elephants involved in the March 2009 Indianapolis incident that injured 12 children.

January 17, 2006: Gigi’s Exotics signs a five-year lease for elephants named Tina and Jewel, who were also involved in the Indianapolis incident. In Defense of Animals (IDA) receives tip that the Davenports had actually purchased the endangered Asian elephants in violation of the Endangered Species Act (ESA) and the lease was put in place to cover this illegal move. After investigation prompted by IDA complaint, U.S. Fish and Wildlife Service confirms ESA violations but to date has taken no enforcement action.

Summer 2006: Tina and Jewel travel with Cole Brothers Circus, accompanied by trainer Will Jacobs Davenport, son of Gigi and John Davenport.

October 24, 2006: The USDA inspects Gigi's Exotics and cites them for inadequate veterinary care: "I observed two Asian elephants, Tina (40 yrs.) and Jewell (42 yrs.). Jewel appears to be underweight. **The muscling along both sides of her spine appears sunken or hollowed out. Her spine is very prominent.** The handler states that he has 'not noted any weight loss and that she had an injury several years ago.' In addition, there appears to be very little muscling over the eyes. Although the handler stated that this is her 'normal' conformation there are no records other than the health certificate and TB results available for me to review documenting her past or current health status." (emphasis added)
February 16, 2007: The USDA inspects Gigi's Exotics where Tina, Jewel and Boo are performing with the L.E. Barnes and Bailey Circus.

The inspectors note numerous violations, including:

Inadequate veterinary care – According to the report, Jewel is "noticeably thin." Comparison of photographs taken by the USDA between October 2006 and February 2007 indicated that she was "**chronically thin.**" Although handler was instructed in November 2006 by the USDA to weigh Jewel, no weight is available until February 2007. "The animal's weight must be monitored at least monthly to assess her progress" **TB records outdated**– The most recent trunk wash results are dated November 29, 2005. "Because TB can be a cause of chronic weight loss, it is imperative that the elephants are tested in timely manner."

Failure to handle animals properly to insure minimal risk of harm to animals and people – Boo is placed in a corral and the public is allowed to walk up to the edge and toss in carrots. Small children are noted in the open area of the corral while the handler is distracted.

March 14, 2007: The USDA upholds findings of the February 16 inspection, noting the trunk wash samples for TB testing were unacceptable and that the only TB test results are from 2005. The USDA's letter also stated, "**Considering Jewel's unthrifty condition and chronic weight loss, the failure to obtain a weight in a timely manner jeopardized her health and indicated a clear failure to provide adequate veterinary care and monitoring of her condition.**" *Note: Just over two years later, the elephants have again lost weight and Davenport continues to fail to regularly monitor their weights, despite being required to do so by USDA.*

March 17, 2007: The USDA inspection notes Gigi's Exotics continued violation for inadequate veterinary care. Jewel remains "noticeably thin." Her weight was taken only twice (she weighed between 6,600 and 6,800 pounds). The weight loss remains undiagnosed. Current TB trunk wash results are still unavailable. "**Travel restrictions and prohibiting public contact with these elephants is necessary to ensure the health of both the elephants and the public by minimizing the potential spread of tuberculosis. In the absence of a clear diagnosis of Jewel's weight loss, and the potential for tuberculosis or some other unknown disease being present, it would be inappropriate for her to travel.**"

March 30, 2007: Gigi's Exotics receives a damning USDA inspection in Pueblo, Colo. Numerous violations are noted, including inadequate veterinary care (e.g., no program for appropriate skin and foot care); inadequate training of elephant handler; failure to handle elephant in manner that does not cause excessive trauma, stress, physical harm, and unnecessary discomfort; inadequate record keeping; and failure to maintain appropriate primary enclosures for transport. The elephant described in this report is not identified.

The USDA finds an elephant with **"excessive dead skin over most of her body and doesn't show evidence of proper bathing for quite some time. She has urine staining and what appears to be urine scalds on her back legs. The pads on this elephant had excessive growth and there were numerous flaps of skin that had trapped debris in them. The cuticles were also excessively long."** The elephant also has **"multiple wounds draining yellowish exudates inside the left ear"** that handlers had not reported. Wounds would be **"consistent with the improper use of an ankus in the ear."**

The handler is found to be **"not properly trained or experienced."** He was trained in November/December 2006 by a handler who had "worked with horses a little but had no animal handling, husbandry experience or training. Back-up handler had no elephant experience. Previously did construction work. He feeds, waters, handles the elephants and is the loader for rides." The handler **"had trouble getting [the elephant] to consistently do basic things like pick her feet up for exam. He had to prod her excessively with the ankus (bullhook) to get the desired behavior and sometimes could not get the behavior completed. The handler was not able to demonstrate adequate control of elephant."**

The USDA also documents physical abuse. **"The handler had to continuously rely on excessive and inappropriate use of the ankus to get the elephant to perform the behaviors he was asking for during the rides and performances. . . during the rides and performances, the handler was observed repeatedly jabbing and hitting the elephant with the ankus. Several times during the elephant ride, the handler used the ankus to hit the elephant and she reacted by throwing her head and changing her gait demonstrating irritation at the action of the handler. . . This is inappropriate and abusive use of the ankus and such use is likely to cause trauma, behavioral stress, physical harm or unnecessary discomfort . . . This type of inappropriate use can cause the elephants to become more aggressive."**

The USDA also reports reported public endangerment through abusive bullhook (ankus) use, lack of control over elephant, and allowing children to sit on the floor in front of an elephant who was confined behind an inadequate barrier with a handler who was distracted. At one point, a child was actually let into the elephant's enclosure to retrieve a balloon. No handler was present at that time. Other transgressions included: No one on staff being able tell the USDA inspector where the licensee (Gigi Davenport) was at time of inspection; no health records were on hand; immobilization drugs for emergency restraint of elephants were labeled for "yellow cats," and handler had no idea how to use the dart gun to administer the drugs.

April 10, 2007: USDA inspects Gigi's Exotics at New Bern, N.C. and again cites the operation for **inadequate veterinary care.** Jewel is still thin, weighing 220 lbs. less on April 8 than when her last weight was taken on March 11. "TB cultures were taken and were negative. Jewel is not gaining weight despite an apparently adequate diet. The cause of her being underweight is still undiagnosed. She was last seen by the attending vet at the end of Jan. 2007. Because of the stress of traveling, a second opinion from another veterinarian who specialized in elephants is needed at this time. . ."

April 12, 2007: -- USDA orders Jewel off the road, warning, "continued travel by Jewel for exhibition, including travel with the circus, even if not performing, would constitute a violation of Sec. 2.40 until such time as her condition has been adequately evaluated and/or there is measurable improvement in her weight and overall health. Travel to a facility appropriate for long-term holding, or to a facility suited to evaluation and diagnosis of her health issues would be appropriate."

April 16, 2007: USDA inspects Gigi's Exotics at New Ulm, Minn. One elephant (Boo) and two camels are present. The circus is cited again for failure to handle animals in a manner that would minimize potential harm to animals and the public. No elephant handler "with appropriate training and experience traveling with this group. . . Safe public exhibition and handling cannot take place without a knowledgeable individual or individuals present."

May 15, 2007: USDA again cites Gigi's for inadequate veterinary care, and reports findings of specialist in elephant health called in by Cole Brothers to examine Tina and Jewel in Greenville, N.C. on April 23, 2007. **"The expert determined that both elephants showed an alarming amount of weight loss and that Jewel was not fit to continue traveling with the circus. The expert felt that both elephants should be kept together and should be moved to the winter quarters for Cole Brothers in Deland, Fla. where they could be closely monitored and have access to veterinarians experienced in elephant health.** Expert recommended switch in diet to gain weight and advised that feeding amounts provided and eaten should be recorded."

In early May the elephants were moved to Leggett, Texas instead of Florida – **"Not an approved site location,"** according to the USDA. Inspection of the Leggett site reveals that no daily logs of feed are being maintained. **The health of the elephants is further jeopardized because the facility does not meet minimum standards for long-term housing due to its incompleteness of the primary enclosure and shelter.** Animals must be housed in a trailer during inclement weather. Moving to Texas instead of Florida "added additional stress due to the longer transit time." Weights taken on May 14: Jewel 6,880 lbs. and Tina 7,620 lbs. These are slight weight gains, but it is too early to tell if they are significant. Management states that the attending veterinarian had visited, but no records were available to document this claim. Immobilization drugs are stored in a lock box filled with water from a leak. The USDA states that **"At this time there is no valid home site for this license."**

June 5, 2007: USDA again cites Gigi's for inadequate veterinary care and facilities violations. "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. Lack of sufficient ventilation in the barn housing the elephants can contribute to heat related stress that would also adversely affect their health."

Elephants are restrained through hotwires and chaining. Facility lacks "adequate permanent enclosures for elephants." It also lacks adequate shade, and the barn lacks sufficient ventilation. Gigi's Exotics is given until July 5, 2007 to correct the violations.

July 25, 2007: IDA obtains photographic evidence of elephants living in squalid conditions at the Davenport facility in Leggett, Tex. **There is no indication that the violations cited by USDA have been corrected, despite the fact that the corrections deadline has passed 20 days before.**

October 2007: USDA lifts travel restrictions on Tina and Jewel despite apparent fact that their "alarming" weight loss has never been diagnosed.

A plan of care is imposed by the USDA as a condition of the return to travel: "Compliance with the plan outlined on page 15 of this report will constitute provision of adequate veterinary care. Any deviation from this plan will constitute cause for concern...As a reminder, any failure to identify a health issue or any failure to provide rapid and appropriate care to these elephants will be considered a violation." **The plan (by veterinarian James Oosterhuis) includes daily monitoring and record keeping of all activities including food intake, water intake activity level, exercise, etc. Collect blood samples once a month. Repeat the RT and MAPIA tests at the end of the 4 month trial period. Weigh every 2 weeks on a certified scale at the same time every day.**

Note: This plan of care is routinely ignored by Will Davenport over the next 18 months, all three elephants again experience significant weight loss, yet USDA continues to allow the licensee to exhibit the elephants, perform with them and give elephant rides.

Despite stated concerns about the possibility that TB was the cause of Tina and Jewel's weight loss, the USDA chooses to take no steps in response to suspicious results on three separate TB blood tests on Jewel.

January 2008: IDA receives word that Will Davenport has signed a 44-week contract with Circus Vasquez for his elephant "act."

February 22, 2008: Circus Vasquez arrives in El Paso, TX with Will Davenport and the three elephants – Tina, Jewel and Queenie. USDA receives complaint from a citizen and eyewitness to a dangerous fight between the elephants. The elephants were charging at each other, vocalizing loudly and nearly pulled over the semi-trailer to which they were chained, while a crowd of onlookers was in close proximity.

March 17, 2008 USDA inspects the elephants, now traveling under the license of Will Davenport, aka Maximus "Tons of Fun." USDA cites Davenport for failing to provide adequate veterinary care to the elephants, notes concern about Jewel's weight loss and orders regular weighing of the elephants. USDA also cites Davenport for failing to handle the elephants safely. The inspector writes;

"Three female Asian Elephants (Tina, Jewel, Boo) were housed in the parking lot of a shopping center with a large volume of car traffic and public stopping to observe the animals. The only barriers present are temporary, moveable metal barriers (ranging from -2.5-4 feet high and ~8 feet long) and a single-strand electric wire surrounding the three elephants at -4-5 feet from the ground, with a distance between the metal fence and the electric fence of -10 feet. Upon arrival at this location for inspection on 3/16 at 12:00 PM, no attendant was visible and numerous public spectators were observing the animals from the metal fence (up to 21 spectators at the time were present with 13 of those being children estimated to be under the age of 10). . . . Sufficient distance and/or barriers must be between the animals and the viewing public so as to assure the safety of the animals and the public. The barriers and distance between the barriers would not be sufficient to limit access to these elephants by the public and no responsible trained handler was present or responsive to prevent such access."

April 9, 2008 USDA inspects elephants in Panorama City, Calif. and cites Will Davenport again for **failing to provide adequate veterinary care to the elephants.**

April 10, 2008 City of Los Angeles shuts Davenport elephant act down and escorts Davenport and the three elephants out of the city limits, revoking his license to perform after learning of the long history of AWA violations by this exhibitor.

May 15, 2008 IDA writes to Dr. Robert Gibbens, Western Regional Director of USDA/APHIS Animal Care seeking an explanation for the USDA allowing an apparently TB exposed elephant, who – given Jewels TB blood test results -- may actually HAVE the virus – to be traveling the country. Dr. Gibbens responds with a letter assigning a complaint number and informing IDA that the results of this "Complaint" will be available only through a Freedom of Information Act request.

September 17, 2008 Elephants inspected by USDA but no non-compliances cited, despite the fact that elephants are observed in exactly the same conditions as reported in March 17 inspection, i.e.

unattended and being watched by the public, including at least three young children, who were separated from the elephants by a single wire and a moveable, temporary metal barrier

October 6, 2008 IDA writes to Dr. Chester Gipson, Deputy Administrator of USDA/APHIS/Animal Care expressing concern over the lack of enforcement action against Will Davenport despite chronic AWA violations. Concern also expressed over the series of suspicious TB test results on Jewel. IDA requests information as to the results of the USDA's supposed investigation into the test results and as to the results of further testing, if any, and APHIS's plans with regard to the situation. Dr. Gipson responds with a phone call, stating in essence that the case is under investigation and he can not say anything further on the matter.

November 19, 2008 IDA files complaint with USDA regarding the elephants' exposure to cold weather in New York City.

November 22, 2008 USDA Inspection in New York City finds problems with **food storage, housekeeping, failure to insure ambient temperature was compatible with the health and comfort of the animals (below 30 degrees not including wind chill) and failure to provide adequate veterinary care.**

March 9, 2009 In Indianapolis, IN, Davenport and the three elephants are with the Murat Shrine Circus. One of the elephants knocked over a scaffolding while giving rides to the public before a performance. All three elephants were being used to give rides and, according to eyewitness reports at the time, one elephant pushed another one into the scaffolding, causing injuries to 12 children. **The accident follows repeated USDA citations for unsafe and inhumane elephant handling and housing.**

April 2, 2009 IDA files complaint with USDA based on the March 9 incident. "All of this considered, this incident is yet another clear demonstration that Will Davenport's license to exhibit elephants should be terminated and the elephants confiscated for their safety and for the safety of the public."

April 4, 2009 Elephants inspected at Shrine Circus in Greenville, S.C. and Davenport *again* cited for failure to provide adequate veterinary care. According to the report, all three elephants have lost significant amounts of weight. Tina looks thin and has lost over 500 pounds, while Jewel has lost 860 pounds and appears "in poor body condition and very underweight such that her hip bones and dorsal vertebrae were prominent and the area around her temples and facial bones appeared sunken." Even Queenie has lost weight this time, dropping over 500 pounds.

Both Tina and Jewel are below the weights recommended for traveling by the veterinarian on whose expertise the USDA relied when re-authorizing travel for the elephants in October 2007.

Despite the requirement for obtaining more frequent weights on the elephants, Davenport has not weighed them for two months, a violation cited on the USDA inspection report.