



**RECOMMENDATIONS RESPECTFULLY SUBMITTED TO  
THE TRUMP ADMINISTRATION  
REGARDING ANIMAL WELFARE**

The New York City Bar Association (“City Bar”) Committee on Animal Law (“Committee”) welcomes the opportunity to submit recommendations for you to consider as you continue to develop your Administration’s objectives.

The City Bar is a private, non-profit organization of more than 24,000 attorneys, judges and law professors and is one of the oldest bar associations in the United States. The Committee regularly addresses legal issues involving non-human animals on local, state, national, and international levels.

**I. INTRODUCTION**

This report summarizes positions that the City Bar has recently taken on Federal bills and in letters written to federal agencies. We hope that the Administration will adopt our recommendations on the specific issues discussed herein and, in regard to animal-related issues not mentioned in this letter, require executive agencies to give serious consideration to the interests of non-human animals whenever human activities have the potential to affect their lives.

**II. COMMITTEE POSITIONS AND RECOMMENDATIONS**

**a. Require the USDA to Promulgate Regulations Concerning the Humane Treatment of Birds Under the Animal Welfare Act**

We urge you to direct the United States Department of Agriculture (USDA) to promptly issue regulations concerning the transportation, purchase, sale, housing, handling, humane care, and treatment of birds covered by the Animal Welfare Act (AWA) (7 U.S.C. §§ 2131- 2159) and to enforce the AWA with respect to birds. The USDA’s failure to issue regulations covering birds for over 12 years affects roughly 5 million birds that are sold as pets at the wholesale level, transported in commerce, or used for exhibition, research, teaching, testing, or experimentation purposes.<sup>1</sup> The Committee wrote the USDA about this issue in April 2016, and the USDA has not yet responded.<sup>2</sup>

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<sup>1</sup> USDA, APHIS Fact Sheet 2 (Aug. 2011), *available at* [https://www.aphis.usda.gov/publications/animal\\_welfare/2011/FS\\_QArmb.pdf](https://www.aphis.usda.gov/publications/animal_welfare/2011/FS_QArmb.pdf). (All websites last visited Feb. 12, 2017.)

<sup>2</sup> Letter from Lori Barrett, Chair, City Bar Animal Law Committee to Thomas J. Vilsack, Secretary, USDA, regarding AWA Regulations for Birds (Apr. 6, 2016), *at* <http://www2.nycbar.org/pdf/report/uploads/20073070-LetterurgingUSDA-humanetreatmentofbirdsunderAnimalWelfareActANIMALS4.6.16.pdf>.

The USDA's failure to issue regulations covering birds has led to confusion by researchers, universities, and animal welfare organizations, causing many to believe that the AWA does not cover birds.<sup>3</sup> And there have been several well-publicized allegations of cruelty and neglect against bird dealers and exhibitors in the past decade that may have been avoided had the USDA acted. For example, in 2008, an undercover investigation of a pet dealer that supplies birds to a large, well-known pet store found that birds were treated inhumanely and were deprived of veterinary care;<sup>4</sup> in 2010, another private investigation of a pet dealer exposed an employee roughly handling small birds;<sup>5</sup> and there are documented instances of birds suffering and dying in zoos.<sup>6</sup> The birds in these cases were animals covered by AWA.

It has been 12 years since the USDA began the rulemaking process to amend the Animal Welfare Regulations (9 CFR §§ 1.1 - 4.11) to provide bird-specific standards of care, yet it has still not proposed amendments. In 2002, Congress amended the AWA's definition of "animal" to expressly include birds, except such birds that are bred for use in research and poultry birds used or intended for use as food or fiber, or used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. In 2004, the USDA amended the definition of "animal" in the Animal Welfare Regulations to reflect the AWA's new definition and released an advanced notice of proposed rulemaking. The comment period for the advanced notice of proposed rulemaking ended on November 1, 2004, and the USDA has still not proposed or promulgated regulations covering birds.

The USDA has erroneously claimed that bird-specific regulations are a condition precedent to enforcing the AWA with respect to birds.<sup>7</sup> Although the Committee agrees that bird-specific standards of care are important, until they are issued, the USDA can enforce the AWA with respect to birds under Subpart F of Part 3 of the Animal Welfare Regulations entitled "Specifications for the Humane Handling, Care, Treatment, and Transportation of Warmblooded Animals Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Marine Mammals."

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<sup>3</sup> For example, the National Association for Biomedical Research's website (*at* <http://www.nabr.org/biomedical-research/oversight/animal-welfare-act>) incorrectly says that the "definition of animals covered by the AWA excludes rats, mice, and birds used in research." Carleton College's website (*at* <https://apps.carleton.edu/curricular/psyc/AnimalCare/faculty/review>) says, "Currently, rats and birds (and mice) are exempt from review by the USDA because they are not protected by the AWA."

<sup>4</sup> Letter from Dephna Nahminovitch, Director, Cruelty Investigations Department, PETA, to Philip L. Francis, Chair and CEO, Petsmart Inc. (Jan 23, 2008), *available at* [http://media.corporate-ir.net/media\\_files/irol/93/93506/2\\_11\\_Scan001.PDF](http://media.corporate-ir.net/media_files/irol/93/93506/2_11_Scan001.PDF).

<sup>5</sup> PETA, *Sun Pet Undercover Investigation*, *at* <https://youtu.be/bHU9T70YFJU>.

<sup>6</sup> Michelle Kretzer, PETA, *PETA Sues USDA for Years of Bird Neglect* (June 27, 2013), *available at* <http://www.peta.org/blog/peta-sues-usda-years-bird-neglect>.

<sup>7</sup> Animal Welfare; Regulations and Standards for Birds, Rats, and Mice, 69 Fed. Reg. 31537 (proposed June 4, 2004), *available at* <https://federalregister.gov/a/04-12692>; *see also* USDA, Animal and Plant Health Inspection Service webpage, *Animal Welfare Act* (last modified Oct. 3, 2016) ("Birds are covered under the AWA but the regulatory standards have not yet been established.")

## **b. Support the Animal Welfare in Agricultural Research Endeavors Act**

We ask you to support the Animal Welfare in Agricultural Research Endeavors Act (the AWARE Act),<sup>8</sup> a law that would help protect some farmed animals in the care of the federal government from inhumane treatment.

In 2015, the *New York Times* published an exposé revealing that many animals housed at a Federal research facility, the U.S. Meat Animal Research Center (MARC), were subjected to neglect, illness, premature death, and painful and fatal experiments.<sup>9</sup> Some of the experiments at MARC included those designed “to increase the number of twin births in cows and expand the litter size of pigs, without consideration of animal health impacts, and trying to breed ‘easy care’ lambs that are born in open fields without human assistance.”<sup>10</sup> In other experiments, “pregnant ewes were injected with so much of the male hormone testosterone that it began to deform their babies’ genitals, making urination difficult.”<sup>11</sup> Additionally, due to lack of appropriate care, 625 animals died from mastitis, a treatable infection of the udder; at least 6,500 animals have starved to death;<sup>12</sup> and “[u]nknown numbers have died from negligence such as easily treatable infections, exposure to bad weather, or attacks by predators.”<sup>13</sup>

The AWARE Act would amend the Animal Welfare Act (“AWA”) (7 U.S.C. §§ 2131-2159) to ensure that, for farm animals, certain minimum standards of humane care are adhered to in any federal research facility “having laboratory animal facilities.” Specifically, the proposed legislation would amend 7 U.S.C. section 2144: first, by expanding the reach of the AWA protections and requirements regarding humane care to include “any federal research facility . . . having laboratory animal facilities,” and second, by removing the exclusions for farm animals used in agricultural research at those federal facilities. The AWARE act would not cover non-federal research facilities.

The AWARE Act addresses an arbitrary distinction in the current AWA, which treats farm animals in research facilities (currently excluded from protection under the AWA) differently from non-farm animals at research facilities (which are covered under the AWA), even though they all are capable of experiencing pain and suffering to the same extent and degree. Furthermore, under the AWA, whether an animal is a “farm animal” depends not just on its species but also on its intended use, such as for food or fiber, and, therefore, the same type of animal may be subject to the protections of the AWA in certain contexts but not others. Currently, federal research facilities conducting non-agricultural research on farm animals are

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<sup>8</sup> S.388 and H.R. 746 (114<sup>th</sup> Congress). These bills have not yet been reintroduced.

<sup>9</sup> Michael Moss, *U.S. Research Lab Lets Livestock Suffer in Quest for Profit*, N.Y. TIMES (Jan. 29, 2015), available at <http://www.nytimes.com/2015/01/20/dining/animal-welfare-at-risk-in-experiments-for-meat-industry.html>.

<sup>10</sup> 161 CONG. REC. E170 (Feb. 5, 2015) (statement of Rep. Blumenauer), available at <http://www.gpo.gov/fdsys/pkg/CREC-2015-02-05/html/CREC-2015-02-05-pt1-PgE170-4.htm>.

<sup>11</sup> Moss, *supra* note 8.

<sup>12</sup> Moss, *supra* note 8.

<sup>13</sup> Blumenauer, *supra* note 9.

required to comply with the AWA, while federal research facilities conducting agricultural research on farm animals are not so required. Such inconsistencies are arbitrary and irrational.

Since the *New York Times* expose, the USDA has taken some action, but it is insufficient and we believe that the AWARE Act is needed to better ensure that animals be treated humanely going forward. The USDA established the Agricultural Research Service (ARS) Animal Handling and Welfare Review Panel (ARS-AHWRP), and directed it to conduct a review of MARC and evaluate its animal care and use program. ARS-AHWRP conducted a pre-announced, three-day site visit and found that there was “no evidence of poor animal handling, animal abuse, or inadequate veterinary care”<sup>14</sup> contrary to the evidence uncovered by the *New York Times*. ARS-AHWRP also provided recommendations, which MARC claims to have addressed.<sup>15</sup> There were several critical responses to the ARS-AHWRP investigation and report by organizations such as the New England Anti-Vivisection Society (NEAVS),<sup>16</sup> Animal Legal Defense Fund (ALDF),<sup>17</sup> American Anti-Vivisection Society (AAVS),<sup>18</sup> Animal Welfare Institute (AWI),<sup>19</sup> Animal Defenders International (ADI),<sup>20</sup> and the Humane Society of the United States (HSUS).<sup>21</sup> As noted by NEAVS, the ARS-AHWRP report did not rely on any review of MARC’s past research practices, interviews with employees regarding the allegations in the article, internal records indicating past neglect and abuse, mortality statistics in research protocols, or personnel records.<sup>22</sup> Therefore, despite MARC’s stated compliance with the ARS-AHWRP recommendations, we think that legislation is necessary to ensure the American public that animals in federal research facilities will be treated humanely going forward.

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<sup>14</sup> ARS-AHWRP, USDA, Findings and Recommendations on the Animal Care and Well-Being at the U.S. Meat Animal Research Center to the Secretary of Agriculture and the REE Under Secretary 11 (Mar. 9, 2015), available at [https://www.ree.usda.gov/ree/news/USMARC\\_AWHR\\_Panel\\_Report\\_PrePublic\\_Hearing\\_030602015.pdf](https://www.ree.usda.gov/ree/news/USMARC_AWHR_Panel_Report_PrePublic_Hearing_030602015.pdf).

<sup>15</sup> Nicholas Bergin, *Meat Animal Research Center says it has addressed animal care concerns*, LINCOLN JOURNAL STAR (June 1, 2015), available at [http://journalstar.com/business/agriculture/meat-animal-research-center-says-it-has-addressed-animal-care/article\\_da4f96d8-4383-55da-b40b-af27719bf827.html](http://journalstar.com/business/agriculture/meat-animal-research-center-says-it-has-addressed-animal-care/article_da4f96d8-4383-55da-b40b-af27719bf827.html).

<sup>16</sup> Letter from Jaclyn Leeds, Esq. and Theodora Capaldo, Ed.D., New England Anti-Vivisection Society, to USDA (Mar. 13, 2015), available at <https://www.ree.usda.gov/ree/news/NEAVS.pdf>.

<sup>17</sup> Letter from Kelsey Eberly, Esq. Animal Legal Defense Fund, to USDA (Mar. 18, 2015), available at <https://www.ree.usda.gov/ree/news/2015-03-18-ALDF-MARC-Comment.pdf>.

<sup>18</sup> Letter from Vicki Katrinak, Senior Policy Analyst of the American Anti-Vivisection Society, to USDA (Mar. 18, 2015), available at <https://www.ree.usda.gov/ree/news/AAVS-comments-to-USDA-re-US-MARC.pdf>.

<sup>19</sup> Letter from Christopher J. Heyde, Deputy Director, Government and Legal Affairs of the Animal Welfare Institute, to USDA (Mar. 18, 2015), available at <https://www.ree.usda.gov/ree/news/AWIComments.pdf>.

<sup>20</sup> Letter From Christina Scaringe, General Counsel, Animal Defenders International, to USDA (Mar. 18, 2015), available at <https://www.ree.usda.gov/ree/news/ADI-response-to-UMARC-Panel-Report.pdf>.

<sup>21</sup> Letter From Kathleen Conlee, Vice President, Animal Research Issues of the Humane Society of the United States to USDA (Mar. 18, 2015), available at <https://www.ree.usda.gov/ree/news/HSUS.pdf>.

<sup>22</sup> Letter from Jaclyn Leeds, Esq. and Theodora Capaldo, Ed.D., *supra* note 16, at 3-4.

### **c. Improve the USDA's Enforcement Relating to Licensing Dealers and Exhibitors**

The Committee asks you to direct the USDA to decline to renew and to suspend or revoke the licenses of those dealers or exhibitors that are guilty of repeated violations of the AWA or who fail to cure cited violations of the AWA. Far too often, the USDA has renewed the licenses of dealers or exhibitors that have repeatedly violated the AWA. This results in animal suffering and discourages licensees' compliance with the AWA because they can merely pay fines as a cost of doing business without correcting serious, continuing violations as a condition of keeping their licenses. The Committee wrote to the USDA about this issue on July 31, 2015.<sup>23</sup>

The AWA directs the USDA not to grant licenses "until the dealer or exhibitor shall have demonstrated that his facilities comply with the standards promulgated by the Secretary."<sup>24</sup> It appears, however, that under current practices the application for an initial license is the first and last time the USDA makes a meaningful inquiry into the conditions and lawfulness of the operations of an exhibitor or dealer. Applicants for license renewal must certify that they are in compliance with the law, but the USDA's review of renewal applications does not appear to implement substantive standards or include an inquiry into the compliance history of applicants. One court has even characterized the USDA's license renewal practice as "an automatic, 'rubberstamping' type transaction."<sup>25</sup> This failure to meaningfully assess whether applicants for license renewal have complied with the AWA works against the clear intent of the AWA and its public policy goals of keeping both humans and animals safe.

The USDA has not vigorously exercised its powers to suspend and revoke licenses as a means of addressing AWA violations. The USDA may suspend or revoke a dealer's license based on a single AWA violation, even if it is not willful, where the agency has "reason to believe" that a violation has occurred or learns of a past or prospective "threatened physical harm to animals."<sup>26</sup> These penalties are an essential but underutilized deterrent to licensees who might otherwise violate the AWA, including the large number of exhibitors who have a history of citations for non-compliance with the AWA.

Another essential—but underutilized—enforcement mechanism at the USDA's disposal is the authority to confiscate from licensees animals "found to be suffering as a result of a failure to comply with any provision of [the AWA]."<sup>27</sup> Congress enacted the AWA in part to protect the public's interest in ensuring "that animals intended . . . for exhibition purposes . . . are provided humane care and treatment."<sup>28</sup> However, the USDA appears to exercise its confiscation power only infrequently.

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<sup>23</sup> Letter from Christine Mott, Chair of the City Bar Animal Law Committee, to Thomas J. Vilsack, Secretary, USDA (July 31, 2015), available at <http://www2.nycbar.org/pdf/report/uploads/20072948-USDAAWAEnforcementAnimalReportFINAL7.31.15.pdf>.

<sup>24</sup> 7 U.S.C. § 2133; *see also* 9 C.F.R. § 2.2(b).

<sup>25</sup> *Ray v. Vilsack*, No. 5:12-CV-212-BO (E.D.N.C. Oct. 7, 2013).

<sup>26</sup> 9 C.F.R. §§ 2.1(e), 4.10.

<sup>27</sup> 7 U.S.C. § 2146(a); *accord* 9 C.F.R. § 2.2129(a).

<sup>28</sup> 7 U.S.C. § 2131(1).

The Committee has recommended that the USDA establish objective standards for the implementation of these enforcement mechanisms. For example, the USDA might consider revoking the license of anyone who would not be eligible for an initial license and remains noncompliant for a period of time. We have also recommended unannounced inspections of traveling circuses and other animal exhibitions, particularly during times when animals are being handled or trained, to identify appropriate occasions for confiscation of animals. We ask you to support these recommendations and we hope that you will direct the USDA to undertake greater measures to enforce the AWA against animal dealers and exhibitors who violate the law.

#### **d. Horse Soring Rule**

The Committee urges you to support the USDA's horse soring rule.<sup>29</sup> The rule would prohibit soring, which is the intentional infliction of pain to a horse's legs or hooves in order to force the horse to perform an artificial, exaggerated gait that is valued in certain show horse competitions and exhibitions. Soring involves applying chemical agents (such as kerosene) to a horse's leg and then applying bracelet-like chains or rollers to rub against the leg, causing intense pain.<sup>30</sup> Soring continues to be a widespread practice.<sup>31</sup> The Horse Protection Act (HPA) was enacted in 1970 to prohibit the showing, sale, or transportation of sored horses, but many horses continue to be subjected to the painful practice of soring because soring itself is not yet prohibited.

We further recommend that the funding for enforcing the HPA be increased, as the authorized funding maximum has not been increased in nearly four decades and additional funding is required for the effective enforcement of the HPA.

#### **e. Support the Pet and Women Safety Act**

We ask you to support the Pet and Women Safety Act,<sup>32</sup> amending certain sections of the Violence Against Women Act, 18 USC §§ 2241 *et seq.* ("VAWA"), to extend protection and support for the pets<sup>33</sup> of victims of domestic violence, sexual assault, stalking and dating violence.<sup>34</sup>

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<sup>29</sup> The Committee's report concerning the PAST Act, a bill that addresses horse soring, is available at <http://www2.nycbar.org/pdf/report/uploads/20072903-ActtoPreventAllSoringTactics.pdf>.

<sup>30</sup> *See, e.g.*, THE AMERICAN VETERINARY MEDICAL ASSOCIATION, HORSE SORING AND THE PAST ACT AND H.R. 1518 & S. 1406, 1 (May 2015) ("Despite enactment of the HPA, soring has continued in the South and is widely practiced by trainers, owners and farriers. It is used on horses entered in local 'fun' shows, as well as in large competitions."), available at <https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Documents/Soring-Bookiet-March-2014.pdf>.

<sup>31</sup> *Id.* at 4.

<sup>32</sup> H.R. 1258 (114<sup>th</sup> Congress). The bill has not yet been reintroduced.

<sup>33</sup> The term "pet" as used in the proposed legislation is defined to mean "a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, horse, or other animal that is kept for pleasure rather than for commercial purposes."

<sup>34</sup> The City Bar's report co-authored by the Animal Law Committee, Children and the Law Committee, and Domestic Violence Committee that supports the bill is available at <http://www2.nycbar.org/pdf/report/uploads/20072862-PetandWomenSafetyAct.pdf>.

Research demonstrates that perpetrators of domestic violence and child abuse often use animals as a tool to control and harm victims. Perpetrators may threaten or abuse a victim's pet to take away one of the victim's sources of comfort, or to terrorize or intimidate the victim by suggesting that whatever harm they cause the animal, they are equally capable of causing to the victim.<sup>35</sup> Up to 48% of domestic violence victims have delayed leaving a dangerous situation or have returned to their abuser because they feared for their pets' safety.<sup>36</sup> Even when domestic violence victims seek shelter services, 71% of such victims who were pet owners have reported that abusers had threatened, harmed, or killed their pet.<sup>37</sup>

In recognition of the link between animal cruelty and family violence, nearly half of all states have implemented laws including animals in orders of protection.<sup>38</sup> However, only 70 co-sheltering programs exist nationwide for victims of domestic violence and their pets, and only one such program—the Urban Resource Institute's PALS Program (People and Animals Living Safely)—exists in New York City.<sup>39</sup>

The proposed legislation would amend VAWA to prohibit threats and acts of violence against a victim's pet by: (1) prohibiting conduct that places a person in reasonable fear of the death of, or serious bodily injury to, that person's pet; (2) prohibiting interstate violations of protective orders for pets; (3) including restitution for veterinary services relating to physical care for the victim's pet; and (4) establishing an emergency and transitional pet shelter and housing assistance grant program under which the Secretary of Agriculture, acting with the Department of Justice, the Secretary of Housing and Urban Development, and the Secretary of Health and Human Services, shall grant awards to eligible entities to carry out programs to provide assistance to victims of domestic violence with pets.

In light of the serious needs of domestic violence victims with pets, and the general lack of state and local support services for such persons and their pets, in addition to supporting this bill, we recommend that your Administration explore the expansion of federal protections, programs, and resources for family violence victims with pets to ensure that all victims of domestic violence—including those with pets—have access to sheltering and support for their family.

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<sup>35</sup> Cynthia Hodges, *The Link Between Animal Cruelty and Violence Toward People*, 2007, available at <https://www.animallaw.info/article/link-cruelty-animals-and-violence-towards-people>.

<sup>36</sup> Sherry Ramsey, et al., *Protecting Domestic Violence Victims by Protecting their Pets*, TODAY: A PUBLICATION OF THE NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES 16 (Spring 2010), available at <http://www.ahimsahouse.org/sites/default/files/spring2010feature.pdf>; Frank R. Ascione, et al., *Battered pets and domestic violence: Animal abuse reported by women Experiencing intimate violence and by non-abused women*, VIOLENCE AGAINST WOMEN 354 (Apr. 2007), available at <https://goo.gl/tb4wci>.

<sup>37</sup> Frank R. Ascione, et al., *Animal Welfare and Domestic Violence* (Apr. 25, 1997), available at [http://www.vachss.com/guest\\_dispatches/ascione\\_2.html](http://www.vachss.com/guest_dispatches/ascione_2.html).

<sup>38</sup> See e.g., justification memo for NYS Assembly Bill No. 10767-2006/Senate Bill No. 7691-2006, codified at NY FAM CT §842 (i) (noting that “often abusers, in an effort to control and threaten their partners, harm or kill their pets”).

<sup>39</sup> See URI People and Animals Living Safely (URIPALS), Urban Resource Institute, available at <http://urinyc.org/domestic-violence/pals/>.

### **III. CONCLUSION**

The City Bar appreciates your consideration of our Committee's recommendations. We believe that our recommendations, if adopted, would advance animal welfare, environmental protection, public health, and consumer protection.

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