

September 19, 2019

Andrew Birge, U.S. Attorney for the Western District of Michigan
 U.S. Attorney's Office, Western District of Michigan Headquarters
 P.O. Box 208
 Grand Rapids, MI 49501-0208
 Via email: Andrew.Birge@usdoj.gov

Re: Request to investigate and charge Dean and/or Jewel Oswald pursuant to 18 U.S.C. §1001 for knowingly making false statements to the USDA

Dear U.S. Attorney Birge,

I am writing on behalf of PETA to urge the U.S. Attorney's Office for the Western District of Michigan to investigate and charge Dean and/or Jewel Oswald, dba Oswald's Bear Ranch (OBR)—a Newberry, Michigan roadside zoo—for apparently making materially false statements to the U.S. Department of Agriculture (USDA). It is a federal crime to make any false or fraudulent statement in any matter within the jurisdiction of a federal agency. 18 U.S.C. § 1001. Evidence gathered by PETA indicates that on May 20, 2019, Dean and/or Jewel Oswald made materially false statements to the USDA regarding activities within the USDA's jurisdiction.¹

OBR holds approximately 40 captive bears at the roadside zoo. Public records from the Luce County Sheriff's Department state that on April 12, 2019 a regional power failure caused OBR's electrified fencing system to fail, allowing at least two bears to escape.² OBR tranquilized one bear and returned him/her to the facility. A second bear, Sophie, was at large until approximately 9 a.m. Monday, April 15 when she reportedly attempted to gain entry into a home and was shot dead by a responding officer after the homeowner called 911.

On May 20, 2019 the USDA, pursuant to their jurisdiction under the Animal Welfare Act (7 U.S.C. §2131 *et seq.*), interviewed Mr. and/or Mrs. Oswald regarding these events.³ The resulting USDA inspection report indicates that Mr. and/or Mrs. Oswald appear to have provided materially false statements to the USDA, including *but not limited to* the date and time of the power failure, and, accordingly, the date and time the bears escaped from the facility, as well as the length of time that bears were at large.. PETA respectfully requests that the U.S. Attorney's office investigate Dean and/or Jewel Oswald's false statements, and, if evidence confirms that OBR made such

¹ A May 20, 2019 USDA inspection report (Ex. A) memorialized an interview at Oswald's Bear Ranch (OBR) "with the licensee." Dean and Jewel Oswald are the USDA licensees for OBR. Ex. B. While a licensee signed the inspection report, the signature was redacted prior to publication pursuant to USDA policy, making it unclear which licensee conducted the interview.

² Ex. C.

³ Ex. A.

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materially false statements, charge the offending party[ies] for violating 18 U.S.C. § 1001.

Thank you for your attention to this matter.

Very truly yours,

[REDACTED]

Brittany Peet
Director, Captive Animal Law Enforcement

[REDACTED]

cc: Betty Goldentyer, Acting Deputy Administrator
USDA-APHIS-Animal Care
Via e-mail: betty.j.goldentyer@aphis.usda.gov

Robert Gibbens, Director
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APPENDIX

I. Background

Oswald's Bear Ranch (OBR) is a roadside zoo located in Newberry, Michigan (Luce County). OBR houses close to 40 bears on the facility's property. On Friday, April 12, 2019, Cloverland Electric Cooperative (Cloverland),⁴ experienced a region-wide power outage impacting more than 3,400 customers.⁵ According to Cloverland's social media statements and their outage map, the outage impacted Luce County (including the area where OBR is located) starting at approximately 2:30 a.m.⁶ Power was restored to Luce County on or before 11 p.m. on April 12.⁷ Cloverland made no such social media statements referring to an outage in the area on either April 14 or 15.⁸

Dean Oswald confirmed in a statement to the Luce County Sheriff's Office that OBR lost power on Friday, April 12, 2019.⁹ According to the Luce County Sheriff's Office case report (case report), Dean Oswald reported to law enforcement officials on Monday, April 15, 2019 that OBR lost power "last Friday",¹⁰ the same date of the regional power outage reported by Cloverland.¹¹ Mr. Oswald reported that "several bears" escaped "when the power went out," and that he recovered custody of one of the bears by shooting him/her with a tranquilizer.¹²

At least one bear, Sophie, was at large from April 12 until April 15, 2019 at approximately 8:57 a.m. At that time, she reportedly wandered into a yard, attempted to gain entry into a home, and climbed on a vehicle in the driveway, prompting the homeowners to call 911.¹³ The responding officer attempted to scare Sophie so that she would retreat from the property, but she instead walked towards the officer and was shot in the head and killed when she came within his 21-foot reactionary gap.¹⁴

On May 20, the U.S. Department of Agriculture (USDA) conducted an inspection of OBR, apparently in response to the bears' escape and Sophie's death.¹⁵ The USDA interviewed Dean and/or Jewel Oswald—the USDA licensees¹⁶—regarding the escape, and generated an inspection report following that interview.¹⁷ The narrative section of the report memorializes the details provided to the USDA by Mr. and/or Mrs. Oswald, which included: that the power outage occurred at OBR from approximately 9 p.m. Sunday, April 14, 2019 until 6 a.m. April 15, and that they became aware of the bears' escape at 10 a.m. on Monday, April 15.¹⁸

These purported facts contradict Cloverland's communications regarding the power outage, and statements provided by Dean Oswald to the Luce County Sheriff's Office.¹⁹ They also misrepresented to the USDA not

⁴ Cloverland is, upon information and belief, OBR's electric utility.

⁵ Ex. D.

⁶ *Id.*

⁷ *Id.*

⁸ Ex. E.

⁹ Ex. C.

¹⁰ The Friday prior to Monday, April 15 was April 12, 2019.

¹¹ Ex. C, D.

¹² Ex. C.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Ex. A.

¹⁶ Ex. B.

¹⁷ Ex. A.

¹⁸ *Id.*

¹⁹ Ex. C, D.

only the date on which the power outage occurred (and, accordingly, the date and time the bears escaped from the facility), but—significantly—the amount of time the bears were at large and posing a danger to the public.

II. Dean and/or Jewel Oswald apparently violated 18 U.S.C. § 1001 by making materially false statements to the USDA.

“It is a federal crime under 18 U.S.C. § 1001 to make any false or fraudulent statement in any matter within the jurisdiction of a federal agency.” *United States v. Yermian*, 468 U.S. 63, 64 (1984). Specifically, 18 U.S.C. § 1001(a) prohibits, in relevant part, “mak[ing] any materially false, fictitious, or fraudulent statement or representation; or mak[ing] or us[ing] any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.” 18 U.S.C. § 1001(a).

Five elements comprise a section 1001 offense: “(1) the defendant made a statement; (2) the statement is false or fraudulent; (3) the statement is material; (4) the defendant made the statement knowingly and willfully; and (5) the statement pertained to an activity within the jurisdiction of a federal agency.” *United States v. Steele*, 933 F.2d 1313, 1318–19 (6th Cir. 1991) (en banc) (citation omitted). Dean and/or Jewel Oswald’s false statements to the USDA regarding the circumstances of the bear escape satisfy each element required by the statute and warrant an investigation and criminal charges pursuant to 18 U.S.C. § 1001.

A. Dean or Jewel Oswald apparently made false statements to the USDA.

“By its terms, 18 U.S.C. § 1001 covers ‘any’ false statement—that is, a false statement ‘of whatever kind.’” *United States v. Brown*, 151 F.3d 476, 484 (6th Cir. 1998) (citing *Brogan v. United States*, 522 U.S. 398 (1998)). Public records indicate that Dean and/or Jewel Oswald made patently false statements to the USDA regarding the date and time of the power failure, and, accordingly, the date and time the bears escaped from the facility, as well as the length of time they were at large.

The May 20, 2019 USDA inspection report documents that Mr. and/or Mrs. Oswald told the USDA²⁰ that the power outage occurred at the property between 9 p.m. Sunday, April 14 and 6 a.m. Monday, April 15.²¹ This statement to the USDA was false. Cloverland’s public communications document that a regional power outage impacting Luce County—and OBR—occurred on Friday, April 12 beginning on or before 2:30 a.m. and ending on or before 11 p.m.²² Cloverland made no such communications referring to an outage in the area on either April 14 or 15.²³ The case report documents that Dean Oswald knew the power outage occurred on Friday, April 12.²⁴ However, Mr. and/or Mrs. Oswald told the USDA that the power outage began, at the earliest, at 9 p.m. on April 14.²⁵ Accordingly, Mr. and/or Mrs. Oswald’s statement to the USDA was false.

Mr. and/or Mrs. Oswald’s statement to the USDA regarding the date and time of the power failure was also a false statement because it grossly misrepresented when the bears escaped the facility, and the length of time

²⁰ Dean and Jewel Oswald are the USDA licensees for OBR. Ex. B. While the inspection report was signed, the signature was redacted prior to publication pursuant to USDA policy, making it unclear which licensee conducted the interview. Ex. A. However, because the USDA indicated that the interview was conducted with a licensee, it is clear that either Dean or Jewel Oswald made the statements memorialized in the USDA inspection report.

²¹ Ex. A.

²² Ex. D.

²³ Ex. E.

²⁴ Ex. C. (“Oswald indicated that last Friday [i.e. April 12] when the power went out he had several [b]ears escape his electrical fence enclosure.”).

²⁵ Ex. A.

the bears were at large. The case report documents that Dean Oswald told the Luce County Sheriff's Office that the bears escaped on Friday, April 12,²⁶ meaning at least one bear ran at large for between 58 to 79 hours. In contrast, Mr. and/or Mrs. Oswald told the USDA that the bears escaped, at the earliest, at 9 p.m. on April 14,²⁷ meaning that bears were at large for at most, 13 hours. Therefore, Mr. and/or Mrs. Oswald's statement to the USDA was false.

B. Dean and/or Jewel Oswald's false statements were material.

"A showing of 'materiality' is a fairly low bar for the government to meet: a statement is 'material' in this context if it has the natural tendency to influence or is capable of influencing a federal agency. A showing of actual influence, or actual agency reliance, is unnecessary." *United States v. White*, 270 F.3d 356, 365 (6th Cir. 2001) (citation omitted). "If the false statements are received by an agency, they may be material even if the receiving agent or agency knows that they are false." *Id.* The Sixth Circuit has found the materiality requirement is met where a defendant makes statements that, if not for information provided by someone else, the agency "would have accepted them as true;" or where statements are "not spontaneous, emotional disclaimers . . . to which an experienced investigator would give little credence and on which one would be unlikely to rely," but instead are "provided after a period of deliberation." *United States v. Steele*, 933 F.2d at 1319. The Sixth Circuit has also found false statements to be material where a defendant provides false information to an agency about his activities when that agency is making a determination regarding those same activities. *United States v. Hattaway*, 658 F. App'x 765, 773 (6th Cir. 2016).

Mr. and/or Mrs. Oswald's false statements to the USDA were material because they had a "natural tendency to influence" (*White*, 720 F.3d at 365) a federal agency. The USDA is charged with enforcing the federal Animal Welfare Act (AWA), which requires that licensees keep animals such as bears in enclosures that contain the animals as a means to protect both captive animals and the public. 9 C.F.R. §3.127(d). The May 20, 2019 USDA inspection at OBR was a "focused inspection," meaning the USDA was focused on a certain animal or a certain aspect of the facility's compliance with the AWA—here, the circumstances surrounding the bear escape and Sophie's subsequent appearance and death at a nearby residence.²⁸ Mr. and/or Mrs. Oswald's false statements to USDA inspectors were material to this inspection because they made significant misrepresentations regarding the date and time of the power outage, the date and time the bears escaped from the facility, and, necessarily, the length of time that bears were running at large—false statements that would certainly have a "natural tendency" to influence inspectors who were assessing the Oswalds' compliance with AWA requirements regarding the safety of captive animals and the public.

Further, Mr. and/or Mrs. Oswald's false statements to the USDA were material because they provided false information to an agency when the agency was making a determination about those same activities. *Hattaway*, 658 F. App'x at 773. In *Hattaway*, the Sixth Circuit upheld a defendant's conviction for making false statements to the USDA, finding his production of falsified information to be material where it related to the subject of the government's determination. *Id.* Here, Mr. or Mrs. Oswald provided false information to the USDA in the course of the agency's inspection—information related precisely to the investigation of activities upon which the agency was attempting to make a determination, namely, OBR's compliance (or non-compliance) with AWA requirements.

Finally, Mr. and/or Mrs. Oswald's false statements were material because they were well deliberated, and because the agency accepted them as true. *Steele*, 933 F.2d at 1319. The statements were "not spontaneous,

²⁶ Ex. C.

²⁷ Ex. A.

²⁸ Ex. A.

emotional disclaimers,” but were instead “provided after a period of deliberation” (*Id.*)—more than thirty days after the events occurred. Further, the USDA’s inclusion of the false statements as part of the inspection report demonstrate that the agency “accepted them as true” (*Id.*), leaving little doubt that these false statements exceed the low bar required by Sixth Circuit for materiality.

C. Dean and/or Jewel Oswald knowingly and willingly made false statements to the USDA.

“[T]o convict a person accused of making a false statement, the government must prove not only that the statement was false, but that the accused knew it to be false. Thus, the government is required to show that the misrepresentation was not made innocently or inadvertently.” *United States v. Brown*, 151 F.3d at 486.

Mr. and/or Mrs. Oswald made false statements to the USDA and knew those statements to be false. Mr. and/or Mrs. Oswald told the USDA that the power failure began on Sunday, April 14, but a Luce County Sheriff’s Office case report documents that Dean Oswald knew the power outage occurred on Friday, April 12.²⁹ Further, Mr. and/or Mrs. Oswald told the USDA that their bears escaped sometime between 9 p.m. April 14 and 6 a.m. April 15, but the case report documents that Dean Oswald knew the bears had escaped during the power outage that occurred on Friday, April 12.³⁰ Finally, Mr. and/or Mrs. Oswald told the USDA that one bear, Sophie was at large for, at most, around thirteen hours, but the case report documents that Dean Oswald knew that Sophie, at least, had been at large for between 57-79 hours.³¹ The Luce County case report documents that Dean Oswald told the Luce County Sheriff’s Office that the bears escaped “last Friday when the power went out,” (i.e. on Friday, April 12)—*days* before the date of escape Mr. and/or Mrs. Oswald stated to the USDA (either late Sunday, April 14 or early Monday, April 15). Thus, Mr. and/or Mrs. Oswald’s false statements to the federal agency were knowing and willful.

D. Dean and/or Jewel Oswald’s false statements pertained to an activity within the USDA’s jurisdiction.

“The term jurisdiction should not be given a narrow or technical meaning for the purposes of § 1001. The federal government has jurisdiction when it has the power to exercise authority in a particular situation.” *United States v. Ford*, 639 F.3d 718, 720 (6th Cir. 2011) (internal citations and quotation marks omitted). “The Supreme Court has noted that this language is broad—applying to any matter within any department or agency.” *United States v. Steele*, 933 F.2d at 1317. The Sixth Circuit has found defendants to have violated 18 U.S.C § 1001 for providing false documents and false statements to the USDA. *United States v. Hattaway*, 658 F. App’x at 771 (false documents); *United States v. Kraus*, 656 F. App’x 736, 737 (6th Cir. 2016) (false statements).

Mr. or Mrs. Oswald’s false statements pertained to an activity within the jurisdiction of the USDA. The USDA administers the AWA, which requires that businesses like OBR maintain an AWA license and meet certain statutory and regulatory requirements in order to exhibit captive animals. 7 U.S.C. §2131 *et seq.*; 9 C.F.R. Pt. 1-4. The USDA has issued Dean and Jewel Oswald, dba Oswald’s Bear Ranch, an AWA license (lic. no. 34-C-0123).³² Accordingly, the Oswalds are required to meet the AWA’s statutory and regulatory requirements, which include keeping their bears in enclosures that contain the animals to protect both animals and the public. 9 C.F.R. §3.127(d). The USDA has authority, pursuant to the AWA, to inspect a licensee’s property to ensure the licensee is meeting all AWA requirements. 7 U.S.C. §2147; 9 CFR §2.126.

²⁹ Ex. A, C.

³⁰ *Id.*

³² *Id.*

³² Ex. B.

On May 20, 2019, the USDA conducted an inspection of OBR pursuant to this authority. The USDA’s report from that inspection documented statements that Mr. and/or Mrs. Oswald made to the agency in the course of that inspection.³³ Mr. and/or Mrs. Oswald’s statements were regarding matters within the USDA’s authority—administration of and compliance with the AWA. Accordingly, the inspection of OBR, Mr. and/or Mrs. Oswald’s statements to the USDA, and the resulting inspection report were clearly each activities within the jurisdiction of a federal agency.

³³ Ex. B.