

September 7, 2022

Robert M. Gibbens, D.V.M.  
Director, Animal Welfare Operations  
USDA-APHIS-Animal Care

Via email: [robert.m.gibbens@usda.gov](mailto:robert.m.gibbens@usda.gov)

Re: Request for Review of Barry R. Kirshner Wildlife Foundation's State Law and AWA Violations and Pursuit of Enforcement Action

Dear Dr. Gibbens:

I'm writing on behalf of PETA to request that the U.S. Department of Agriculture (USDA) terminate or revoke Barry R. Kirshner Wildlife Foundation's (Kirshner) Exhibitor License (No. 93-C-0504) for violations of state law and for habitually violating the Animal Welfare Act (AWA) and its regulations.

AWA regulations allow the USDA to terminate an exhibitor's license "at any time for any reason that a license application may be denied pursuant to § 2.11 . . . ." 9 C.F.R. § 2.12. Justifications for denying a license application include where an exhibitor is not in compliance with the AWA or its regulations; they would be operating in violation or circumvention of any federal, state, or local laws; or they are unfit to be licensed and licensure would be contrary to the purposes of the AWA. *Id.* § 2.11(a)(2), (6), (7). The USDA also has the authority to suspend or revoke a license where a licensee has failed to comply with the AWA or its regulations or standards. 7 U.S.C. § 2149(a); 9 C.F.R. § 2.1(d).

In just over a year, Kirshner has been cited twice by the California Division of Occupational Safety and Health (Cal/OSHA) for exposing employees to the hazards associated with its dangerous animal handling practices:

- **April 22, 2022:** [Cal/OSHA issued Kirshner a citation](#) for "fail[ing] to ensure employees were not exposed to hazards to include hands on contact with wild life contradicting policies and procedures implemented by the [e]mployer." The citation—which resulted in a \$125 penalty—came after PETA submitted a complaint to the agency alerting it to several social media posts showing Kirshner employees handling a leopard. Ex. 1, Cal/OSHA Citation (Apr. 22, 2022); Ex. 2, Settlement Order (Aug. 8, 2022).
- **August 13, 2021:** [Cal/OSHA issued Kirshner a citation for a serious violation](#) of workplace safety regulations and required it to pay a \$1,800 penalty after a leopard attacked an employee, who was inside an enclosure and required hospitalization for puncture wounds to the neck. Ex. 3, Cal/OSHA Citation (Aug. 13, 2021); Ex. 4, Settlement Order (Sept. 28, 2021); Ex. 5, Cal/OSHA Investigation Summary (Feb. 20, 2021). The leopard escaped its primary enclosure and was deemed "a threat to the community until it was back inside its primary containment[.]" according to a California Department of Forestry and Fire Protection (Cal Fire) report. Ex. 6, Cal Fire Report (Feb. 20, 2021).

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The USDA itself issued Kirshner citations for these and other incidents; the agency has issued the roadside zoo 14 citations since 2019, 13 of which were in the last 20 months alone. Indeed, the USDA has issued Kirshner at least one citation in each of the last seven inspections it conducted:

- **June 15, 2022:** The USDA issued Kirshner a citation for failing to address in its environmental enhancement plan an individual lemur, who was unable to see and hear nonhuman primates of their own or compatible species. Ex. 7, Compilation of Kirshner USDA Citations.
- **March 30, 2022:** The USDA issued Kirshner two citations for damaged den boxes in seven enclosures that could lead to injury and entrapment of the animals they contain and for failing to keep premises clean and in good repair. *Id.*
- **January 4, 2022:** The USDA cited Kirshner for failing to ensure the well-being of animals and taking a snow leopard to a detention facility and allowing a volunteer’s coworkers to hold the big cat who was “too large and too mature to be safely handled by members of the public.” *Id.*
- **November 1, 2021:** Kirshner received three citations for: (1) failing to communicate animal health problems to the attending veterinarian, including hair loss on a coati’s tail and a wolf that was seen “continuously pacing around the enclosure in a stereotypic pattern . . . [;]” (2) failing to keep up to date records of animals on hand for at least six months; and (3) failing to maintain the required effective height of the perimeter fence around an enclosure housing large carnivores, which “could allow an animal to easily escape.” *Id.*
- **August 11, 2021:** The USDA issued Kirshner a repeat citation for failing to keep animals cool on a day that was forecast to reach 106 degrees after an inspector observed leopards and tigers panting and open mouth breathing. The USDA also cited the facility for failing to establish and maintain an adequate program of veterinary care after inspecting two deer with overgrown hooves that may cause discomfort and lead to injuries or lameness. *Id.*
- **June 22, 2021:** After a leopard attacked a volunteer and exited his primary enclosure, the USDA issued Kirshner a critical noncompliance for housing a leopard in an enclosure without a lockout. It also cited Kirshner for failing to have records for inspection and keeping animals in an enclosure with a dirty water container, dried out food attracting flies, and a layer of fur and puddles. *Id.* The USDA later issued an official warning for not having a sufficient number of adequately trained employees. Ex. 8, USDA Official Warning (Oct. 7, 2021).
- **January 7, 2021:** The USDA issued Kirshner a citation for not having a valid written program of veterinary care, which is necessary to safeguard the welfare of animals. Ex. 7, Compilation of Kirshner USDA Citations.

Kirshner’s numerous and repeated citations evidence its unwillingness or inability to comply with AWA regulations or state law, and to allow this facility to maintain an AWA license would be contrary to the purposes of the AWA. Accordingly, PETA respectfully requests that the USDA closely review Kirshner’s lengthy history of violating the AWA and state laws and pursue enforcement action to terminate or revoke this facility’s AWA license.

Very truly yours,



Counsel, Captive Animal Law Enforcement

cc: Elizabeth Goldentyer, Deputy Administrator, USDA-APHIS-Animal Care  
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