

January 6, 2020

Director Chelsa Muna-Brecht  
Guam Department of Agriculture  
163 Dairy Rd.  
Mangilao, GU 96913

Dear Director Muna-Brecht,

Thank you for fulfilling our request for shipping records of birds sent to Guam from the U.S. mainland. In response to our request, we received over 2,400 pages of records from November 2016 through September 19, 2019, and we are most grateful for your attentiveness to our original and voluminous requests.

With this letter, we formally request shipping records for the remainder of 2019. We hope this request is less onerous than the first tranche of information we sought.

The main purpose of our letter, however, is to ask you to stop certifying shipments of gamefowl from the mainland often wrongly characterized as “brood fowl” or “show fowl,” unless the shipper can make a definitive and affirmative case that the birds are exchanged for fighting. The people who are trafficking in fighting birds are doing so at considerable risk to their freedom, and they are knowingly violating federal law. The Guam Department of Agriculture should be a bulwark against this illicit trade in animals and this form of malicious cruelty.

Under Section 26 of the Animal Welfare Act, 7 U.S.C. 2156, there are strict prohibitions on transporting animals across state or territorial lines, regardless of whether cockfighting is legal at the export destination. “It shall be unlawful for any person to knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture,” reads the law. And the law is specific about not using the mail service for this purpose: “It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any instrumentality of interstate commerce for commercial speech for purposes of advertising an animal, or an instrument described in subsection (d), for use in an animal fighting venture, promoting or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.”<sup>1</sup>

From our analysis of the shipping records, it is clear to us that there has been a brisk illegal trade in fighting birds destined for Guam. More than 500 shipments, consisting of over 8,800 “brood fowls,” have been transported during the almost three-year period, apparently through the U.S. Postal Service, for cockfighting. We have a strong belief based on our investigation that these

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<sup>1</sup> 7 U.S.C. 2156(g)(3) defines “States” to include any territory of the United States.

shipments were illegal, and that the shippers and receivers undoubtedly knew these transactions were illegal.

We identified major shippers of gamefowl to Guam and assembled other evidence, and the conclusion is inescapable: these birds were sent to fight. We have satellite imagery of the shippers' game fowl farms, and we have other evidence to confirm that these sellers are connected to the fighting industry. Also, there is no other legitimate business, when it comes to the importers, that would require this volume of shipments of gamefowl. They are not in the business of meat or egg production, and the show bird industry is minuscule.

Guam does not have a large agricultural industry, and the animal agriculture sector is even proportionately smaller. There is no significant broiler or laying hen industry. There are many Guamanian families with backyard birds, used for meat consumption and eggs, but these families almost certainly do not obtain birds shipped from the mainland for sustenance purposes. It would not make economic sense for them to spend hundreds or thousands of dollars on a trio of brood fowl for their small, backyard flocks. Indeed, if they did, these would be the most expensive eggs and meat on all of Guam.

Analyzing other aspects of the data also invalidate the argument that the birds are shipped for agricultural purposes. Some shippers are sending more than 100 cocks for every hen, and in every case, the ratios are extraordinarily lopsided in favor of the males. In a standard agricultural operation receiving birds for production, the ratios would be inverted, with more females used for breeding and egg production.

It's also plain that the shipments are not being made for show fowl events. These are rarely conducted and typically occur at major agricultural fairs. Again, there would be no need for this volume of shipments.

These illegal shipments were conducted to further cockfighting enterprises, and the presence of the Dome, other arenas, fights at village festivals, and other venues for staged animal battles demonstrate the past demand for the birds for this enterprise. It is also the case that many shipments originate from known hubs of illegal fighting and possession of fighting animals, with three of the top five shippers coming from Oklahoma, which was the 48<sup>th</sup> state to ban cockfighting and which still has an outspoken set of cockfighters violating state and federal laws. The top five shippers account for over 50 percent of all "brood fowl" shipped to Guam from 2016 to 2019. We'll also be addressing the shippers and their role in this illegal enterprise through separate communications with other authorities.

There is no ambiguity about the application of federal law to shipments that cross state and territorial lines. The United States has chosen to ban this activity in all forms, and it has the constitutional authority of the United States to do so. In the fall of 2019, in a U.S. District Court for the District of Puerto Rico, Judge Gustavo Gelpí granted summary judgment to the United States and ruled against the claims made by a cockfighting coalition challenging Congress' constitutional authority under the Commerce Clause to extend its ban on cockfighting to the U.S. territories. Judge Gelpí declared in his order that "[n]either the Commonwealth's political

statutes nor the Territorial Clause, impede the United States Government from enacting laws that apply to all citizens of this Nation alike, whether as a state or territory.”

In a separate proceeding advanced by a cockfighter – who hand-wrote his complaint – a Guam-based magistrate recommended to the U.S. District Court that the case be dismissed. In the U.S. District Court of Guam, Magistrate Judge Joaquin Manibusan, Jr. echoed Judge Gelpí’s analysis, stating, “[t]he court finds Judge Gelpí’s decision in Club Gallístico to be thorough and well-reasoned.” Whether it be in Guam or Puerto Rico, the arguments based on the lack of due process or infringement of “traditional cultural rights” are meritless.

Several district courts have held similarly regarding Congress’ authority under the Commerce Clause. The U.S. District Court for the Western District of Texas held that Congress is acting within the limits of the Commerce Clause by enacting laws restricting animal fighting. The U.S. Court of Appeals for the Eighth Circuit affirmed a district court’s ruling that the appellant’s Commerce Clause challenge fails because the AWA specifically covers only the interstate and foreign movement of birds. The U.S. District Court for the Southern District of Illinois found the criminal defendant’s argument that Congress lacks authority under the Commerce Clause meritless.

For these reasons, we respectfully request that you revamp your internal procedures and deny shipments of brood fowl from the mainland U.S. to recipients on Guam unless there can be an affirmative case made that the birds are not destined for activities related to cockfighting.

Thank you for your attention to this matter.

Sincerely yours,

Wayne Pacelle  
Founder  
Animal Wellness Action

W.A. Drew Edmondson  
Co-Chair, National Law Enforcement Council  
Oklahoma Attorney General (1995-2011)

cc. Anthony Babauta