
**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

NO. 19-2236

NYDIA MERCEDES-HERNANDEZ-GOTAY; FAUSTINO ROSARIO-RODRIGUEZ; LUIS
JOEL BARRETO-BARRETO;
CARLOS QUINONES-FIGUEROA; LAURA GREEN,
Plaintiffs – Appellants,

CLUB GALLISTICO DE PUERTO RICO, INC.
Plaintiff,

ASOCIACION CULTURAL Y DEPORTIVA DEL GALLO FINO DE PELEA; ANGEL
MANUEL ORTIZ-DIAZ; JOHN J. OLIVARES-YACE; ANGEL LUIS NARVAEZ-
RODRIGUEZ; JOSE MIGUEL CEDEO,
Plaintiffs,

v.

UNITED STATES; DEPARTMENT OF AGRICULTURE; SONNY PURDUE, Secretary of the
Department of Agriculture; UNITED STATES DEPARTMENT OF JUSTICE; WILLIAM P.
BARR, Attorney General; DONALD J. TRUMP, President
Defendants – Appellees

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLEES' BRIEF**

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NO 20-1084

ASOCIACION CULTURAL Y DEPORTIVA DEL GALLO FINO DEL PELEA; ANGEL
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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES' BRIEF

Animal Wellness Action, a 501(c)(4) non-profit corporation; Animal Wellness Foundation, a 501(c)(3) non-profit corporation; and the Center for a Humane Economy (collectively “Animal Advocates”) have a special interest in this litigation and can offer their unique perspective to the court, as it considers whether Congress has authority to prohibit “animal fighting ventures” as instruments of interstate commerce. Specifically, Animal Advocates offers the court its perspective on the inherent cruelty of animal fighting, including cockfighting, as well as the interstate and international nature of animal fighting enterprise. Animal Advocates thus respectfully requests leave to file the accompanying proposed amicus curiae brief in support of Appellees’ Brief, pursuant to Federal Rule of Appellate Procedure 29.

I. Animal Advocates are specially interested in the prohibition of “animal fighting ventures” throughout the United States territories.

Animal Wellness Action is a 501(c)(4) non-profit corporation headquartered in Washington, D.C. Animal Wellness Action’s mission is to help animals by promoting legal standards forbidding cruelty. It champions causes that alleviate the suffering of companion animals, farm animals, and wildlife. Animal Wellness Action advocates for policies to stop animal fighting ventures, including dogfighting and cockfighting, as well as horse soring, and other forms of malicious

animal cruelty. Through its staff and extensive network of members and supporters, Animal Wellness Action confronts all systemic forms of animal exploitation by advocating for laws that shield animals from malicious cruelty, enforcing existing laws so that animals have tangible protections, exposing cruelty and abuse wherever it festers, electing candidates who care about animals, building partnerships with groups, agencies, and other stakeholders, and empowering citizens to join its cause.

Animal Wellness Foundation is a 501(c)(3) non-profit corporation headquartered in Los Angeles, California. Animal Wellness Foundation emerged from the trenches of the veterinary hospital Animal Wellness Centers in Marina del Rey, California. The veterinary hospital staff often found themselves treating patients out-of-pocket when clients lacked the necessary funds to save their pets in emergency situations. After realizing the problem was larger than the animal hospital could handle, Animal Wellness Foundation was formed. Animal Wellness Foundation helps animals in many unique ways, including by raising funds for companions of low-income families, rescuing animals found in situations of abuse, neglect, or abandonment, including rescued dogs victimized by the Southern California dogfighting enterprises, fostering animals from shelters in the Los Angeles area, and funding spay, neuter, and vaccination programs.

The National Law Enforcement Council (NLEC), an advisory group organized by the Animal Wellness Foundation and Animal Wellness Action, consists of current and former district attorneys, attorneys, general, and other law enforcement leaders. NLEC promotes appropriate enforcement of anti-cruelty statutes and works to strengthen the legal framework against animal abuse. Its work is guided by the notion that perpetrators of animal cruelty often demonstrate other socially dangerous behaviors. NLEC opposes animal fighting ventures, including cockfighting, in all forms as an inherently cruel and malicious form of animal abuse for profit. Former four-term Attorney General of Oklahoma Drew Edmondson and former Astoria, Oregon District Attorney Josh Marquis currently serve as the Co-Chairs of NLEC.

The Center for a Humane Economy is a 501(c)(3) non-profit animal welfare organization that focuses on influencing the conduct of corporations to forge a humane economic order. The first organization of its kind in the animal protection movement, the Center encourages corporations to honor their duties to social responsibility. In a culture where consumers, investors, and other key stakeholders abhor animal cruelty and the degradation of the environment, the Center sees innovation as a means of change. Animal fighting ventures, by their very nature, infect interstate and international commerce with unnecessarily cruel and barbaric animal cruelty. The Center works to eliminate global tourism for cruel spectacles

of animal cruelty-for-profit, including cockfighting, by educating consumers, championing alternatives, engaging corporations, lobbying policymakers, and working tirelessly to identify tourism alternatives to these cruel spectacles.

The Center believes that if Puerto Rico continues to operate as a last bastion for cockfighting in the United States, it will do lasting reputational damage to its image as a tourist-friendly destination, weakening the island's biggest industry of tourism and hospitality. Other Americans, Europeans, and others will choose other destinations for vacations because they do not want to contribute to the economic activity of a jurisdiction that openly allows staged animal fights that cause death and injury to the combatants.

II. The matters asserted in the amicus brief are useful and relevant to the court's review of federal authority prohibiting "animal fighting ventures" as instruments of interstate commerce.

Animal Advocates seek to file this brief to provide the court with their considered legal and cultural perspective on the application of the Animal Welfare Act to animal fighting ventures throughout the United States and its territories. The accompanying brief provides unique information and argument relative to the central issue raised by plaintiffs by addressing Congressional justification for prohibiting cockfighting as an instrumentality of interstate commerce. Specifically, Animal Advocates' proposed brief provides legislative history and factual support

regarding Congress's intent when it decided to prohibit cockfighting throughout the United States and its territories.

In addition, Animal Wellness Action founder Wayne Pacelle has specialized expertise in this area, as Mr. Pacelle was personally involved in the evolution of the Animal Welfare Act's prohibition on cockfighting in his former role as President and CEO of the Humane Society of the United States. In his role with Animal Advocates, he brings a unique perspective as a fierce defender of animals and long-time advocate for the elimination of cruel spectacles, such as cockfighting and dogfighting.

Undersigned counsel has reviewed the brief filed by the federal defendants and submits the accompanying brief, specifically with respect to the plaintiffs' erroneous argument that Congress lacks authority to prohibit cockfighting under the Commerce Clause in United States territories. Undersigned counsel certify that they were not involved in drafting the brief filed by the federal defendants and exclusively represent Animal Advocates in this matter.

CONCLUSION

For the foregoing reasons, Animal Wellness Action, Animal Wellness Foundation, and the Center for a Humane Economy respectfully ask that this Court grant the Motion for Leave to File Amicus Curiae Brief.

Respectfully submitted this 27th day of August 2020,

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**AMICUS CURIAE BRIEF FOR ANIMAL WELLNESS ACTION,
ANIMAL WELLNESS FOUNDATION, and
THE CENTER FOR A HUMANE ECONOMY IN SUPPORT OF APPELLEES**

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NO 20-1084

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TABLE OF CONTENTS

I. Introduction.....	1
II. Argument	3
A. The Animal Welfare Act, including section 2156 which prohibits animal fighting ventures, validly regulates interstate commerce.....	3
B. The AWA’s prohibitions on animal fighting apply equally to all American jurisdictions, as evidenced by recent prosecutions.....	12
III. Conclusion.....	15

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Case No. 3:20-cv-00361-BAJ-RLB (U.S. Dist. Mid. Tenn. July 13, 2020)..... 8

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of record for proposed *amicus curiae*, certifies that neither Animal Wellness Action, a 501(c)(4) non-profit corporation; Animal Wellness Foundation, a 501(c)(3) non-profit corporation; nor the Center for a Humane Economy, as of this date, has a parent corporation and that no publicly held corporation holds 10% or more of their stock.

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES' BRIEF

Animal Wellness Action, a 501(c)(4) non-profit corporation; Animal Wellness Foundation, a 501(c)(3) non-profit corporation, and the Center for a Humane Economy (collectively “Animal Advocates”) respectfully request leave to file the accompanying *amicus curiae* brief in support of Appellees’ Brief. Animal Advocates support Appellees’ Brief because the Animal Welfare Act, 7 U.S.C. § 2156 prohibits animal fighting ventures in Puerto Rico and respectfully requests that this Court uphold the District Court’s judgment.

I. Introduction

“Cockfighting” refers to fights between two birds that have been raised and trained for fighting. Prior to a fight, “trainers” strap sharpened knives or “gaffs” to the legs of the birds so that they may inflict debilitating injuries upon one another. With spectators placing bets on the outcome, the birds are placed in a fighting pit where they fight until the “referee” determines that one of the birds cannot continue fighting because of the extent of injuries sustained by one of the birds, though the “referee” sometimes calls an end to a fight after one of the birds has received a lethal injury or has actually died. Even if a bird survives a fight, “trainers” may kill the bird or discard it if they deem that the injuries are not worth treating. Injured-but-discarded birds suffer immensely, as they are not euthanized

but instead linger until they succumb to their injuries. Spectators often gamble during these fights, and cockfighting rings have been tied to other criminal activity.

In addition to the purely cruel specter of cockfighting, peer-reviewed research has linked the spread of the “highly pathogenic avian influenza (HPAI) H5N1 virus” to the cockfighting industry—which regularly involves transport across state and international borders.¹ Bird-fighting “can help maintain the virus in the environment or contribute to its further geographical spread ... [and] is suspected of spreading the highly lethal bird flu virus from poultry to humans through contact with blood, feces and droplets of fluid.”² Therefore, the World Health Organization concludes there is a “high probability” of a “correlation between fighting cocks and the spread of avian influenza.”³ More recently, the world is struggling to contain a global pandemic caused by the zoonotic transmission of a novel coronavirus known as COVID-19. The U.S. Centers for Disease Control considers the epicenter of the outbreak to be a large seafood and live animal market in Wuhan, Hubei Province, China—similar to a cockfighting

¹ See e.g., J. S. Malik Peiris, Menno D. de Jong, & Yi Guan, *Avian Influenza Virus (H5N1): a Threat to Human Health*, *Clinical Microbiology Reviews* (April 2007), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1865597/> (“Other factors that may help to spread HPAI virus include fighting cocks that are moved from place to place, even across country borders, for cockfights.”).

² Mary Finelli, *Avian Influenza and Cockfighting*, United Poultry Concerns (Feb. 23, 2006), available at https://www.upc-online.org/poultry_diseases/22306flu_cockfighting.html.

³ *Id.*

arena—where the virus was able to jump freely from animals held in close quarters to humans.⁴

Animal Advocates support the Animal Welfare Act’s (AWA) ban on cock-fighting as a critical component in their tireless campaign to end systemic animal cruelty in this country and urges this court to uphold Congress’s prohibition on animal fighting in all fifty states and every U.S. territory.

II. Argument

A. The Animal Welfare Act, including section 2156 which prohibits animal fighting ventures, validly regulates interstate commerce.

The Constitution explicitly grants Congress authority to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” U.S. Const. Art. I, § 8, cl. 3 (Commerce Clause). The Supreme Court has indicated that “Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, *even though the threat may come only from intrastate activities.*” *United States v. Lopez*, 514 U.S. 549, 558 (1995) (emphasis added).

There can be no doubt that when first conceived, the Animal Welfare Act (AWA) did not include protections for animals forced to engage in animal fighting ventures. AWA, Pub. L. No. 89-544, § 1, 80 Stat. 350 (1966) (limiting protections

⁴ Centers for Disease Control, *Coronavirus Disease 2019 (COVID-19): Situation Summary*, “COVID-19 Emergence,” (March 21, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

to animals used for research and experimentation purposes). In 1976, however, Congress recognized that animal fighting ventures inflict extraordinary harm on animals and burden interstate commerce, which justified the addition of Section 2156 to the AWA prohibiting animal fighting ventures nationally. *U.S. v. Gibert*, 677 F.3d 613, 619 (4th Cir. 2012) (quoting the House Committee on Agriculture, H.R. Rep. No. 94-801, 1976 U.S.C.C.A.N. at 762). Cockfighting, like other animal fighting ventures, results in immoral treatment of animals.

Although the AWA initially included an exemption for states and territories the permitted cockfighting locally, Congressional amendments to the AWA in 2002 removed the exemption as applied to subsection (b) of section 2156. *See* Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, 116 Stat. 134, 491–92 (2002). Thus, for over a decade, the prohibitions listed in subsection (b) of section 2156 have applied to all jurisdictions regardless of whether local laws would otherwise authorize cockfighting.⁵ Numerous cases subsequently found that the AWA is a permissible exercise of Congress’ ability to regulate interstate commerce. *See Club Gallistico de P.R. Inc. v. United States*, No. 19-1481 (GAG), 2019 U.S. Dist. LEXIS 187527 (D.P.R. Oct. 28, 2019); *U.S. v. Gilbert*, 677 F.3d 613 (4th Cir. 2012); *Slavin v. U.S.*, 403 F.3d 522 (8th Cir. 2005).

⁵ Subsection (b) reads: “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.” 7 U.S.C. § 2156(b).

Despite this near-decade old prohibition on cockfighting in the territories, the Commonwealth, some members of its legislature, and an association of mayors urge this Court to reverse Congressional intent to permit cockfighting in Puerto Rico. These officials hope to legitimize Governor Wanda Vazquez’s 2020 law authorizing cockfighting despite the AWA’s express ban on the practice. According to Hiram Figueroa, 70, who has raised and trained fighting birds since he was 16, the Governor’s overturning of the AWA’s ban made him sleep better at night because, “We can keep playing the birds.”⁶ There can be no doubt that absent a ruling from this Court, the government of the Commonwealth will continue to undermine the federal prohibition, as its political leaders did after the unambiguous ruling of the U.S. District Court for Puerto Rico, by signaling to cockfighting enthusiasts that it is acceptable to flout federal law and engage in staged animal fighting on the island.

1. Cockfighting affects interstate commerce.

Congress has determined that the regulation of animal fighting ventures is necessary in order to regulate activities that “are either in interstate or foreign commerce or substantially affect such commerce or the free and unburdened flow thereof, and that regulation of animals and activities as provided in this Act is

⁶ Patricia Mazzei, *Culture or Cruelty? Puerto Rico Says No to Federal Cockfighting Ban*, NEW YORK TIMES (Dec. 18, 2019), available at <https://www.nytimes.com/2019/12/18/us/puerto-rico-cockfighting-ban.html>.

necessary to prevent and eliminate burden[s] upon such commerce, . . . [and] to protect the human values of this great Nation from the subversion of dehumanizing activities[.]” *United States v. Gibert*, 677 F.3d 613, 619 (4th Cir. 2012) (quoting the House Committee on Agriculture, H.R. Rep. No. 94-801, 1976 U.S.C.C.A.N. at 762). In extending the bans to animal fighting ventures, Congress “emphasized the nexus between animal fighting and interstate commerce.” *Id.* at 620. For example, an animal fighting venture may impact interstate commerce if the venture “involves participants in the gambling who have crossed state lines, or advertised across state lines, or any of the animals in the entire venture have been transported across state lines.” *United States v. Thompson*, 118 F.Supp.2d 723, 725 (Dist. Ct. W.D. Texas, 1988).⁷ In addition, during the Senate’s debate over the 2007 amendment to the AWA, which prohibited the use of gaffes in all jurisdictions, Senator Maria Cantwell justified the prohibition due to the relationship between cockfighting and the spread of avian diseases,⁸ which ultimately cost millions of dollars nationally. 153 Cong. Rec. S451-52 (daily ed. Jan. 11, 2007) (Statement of Sen. Cantwell).

⁷ In *Thompson*, the defendant was charged for engaging in dogfighting. The court’s analysis of animal fighting ventures was general in nature, so it is instructive to cockfighting. *Id.*

⁸ See *supra* note 1.

According to the USDA, as of 2018, Puerto Rico was home to 181 cock farms with just over 11,000 birds⁹, yet Appellants claim that the cockfighting industry injects \$65 million annually into the Commonwealth’s economy and generates approximately 11,000 “direct, indirect, and induced jobs.” Appellants’ Brief, p. 28. The only way to generate that level of economic activity, given the number of cockfighting farms in Puerto Rico, is to import and export birds to and from other states, territories, and countries. To take an example, AWA conducted an investigation into cockfighting in the U.S. territory on Guam, and determined, based on an analysis of live-animal shipping records, that there were 8800 fighting birds exported to Guam over a three-year period between 2017 and 2019. Cockfighters generate income by selling the offspring of birds who win fights at major derbies and sell them to other cockfighters in the hopes that the birds will perform with similar fighting ability. There is no reason to believe that Puerto Rico-based cockfighters operate differently than enthusiasts from other jurisdictions where organized animal fighting occurs.

In addition, a black market exists for the exchange of fighting birds between the states and territories. In December of 2018, a cocaine distribution investigation in Pennsylvania led to the discovery of an illegal cockfighting ring “in which the

⁹ USDA 2017 Census of Agriculture – Puerto Rico (2018) Island and Data, Table 42: Poultry on Farms: 2018, pdf p. 47 (June 2020), *available at* <https://www.nass.usda.gov/Publications/AgCensus/2017/index.php>.

birds were not only fought, but also mailed to Puerto Rico[.]”¹⁰ Despite the possibility of facing criminal charges, some Californians have continued to engage in cockfighting, and numerous investigations have led to the discovery of illegal cockfighting including a 2017 seizure of 7,000 birds.¹¹ To put it another way, cockfighting necessitates interstate commercial enterprise.

2. Alleged cultural harms are not absolute and ignore changing social norms across the U.S. and in Guam.

According to Plaintiffs, cockfighting is a “cultural expression,” worthy of First Amendment protection. Appellants’ Brief, p. 16. But Appellants admit that cultural rights, though worthy of respect and “equal attention”¹² as human rights, “are not unlimited.” *Id.* at p. 15. The First Amendment’s protection of “expressive activities that produce special harms [are] distinct from their communicative impact” and are not entitled to immunity from government regulation. *See e.g., Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984); *see also Lloyd Plumbar, et al. v. Scott Perrilloux, et al.*, Ruling and Oder, Case No. 3:20-cv-

¹⁰ Pamela Lehman, *Police: 26 birds seized from Bethlehem home in cockfighting ring* (Dec. 19, 2018), THE MORNING CALL, available at <https://www.mcall.com/news/breaking/mc-pol-bethlehem-cockfighting-man-arrested-20181219-story.html>.

¹¹ Matt Hamilton, *7,000 birds seized in largest cockfighting bust in U.S. history, L.A. County authorities say* (May 16, 2017), LOS ANGELES TIMES, available at <https://www.latimes.com/local/lanow/la-me-ln-cockfighting-raid-20170516-story.html>.

¹² United Nations Educational, Scientific and Cultural Organization, *Culture for Sustainable Development*, available at <http://www.unesco.org/new/en/culture/themes/culture-and-development/the-future-we-want-the-role-of-culture/culture-and-human-rights/> (last visited Oct. 25, 2019).

00361-BAJ-RLB (U.S. Dist. Mid. Tenn. July 13, 2020) (rejecting a church’s attack on the State of Louisiana’s cockfighting ban because the state had a compelling state interest to ban cockfighting). By this standard, the District Court correctly determined that cockfighting is conduct and not an expression of speech or religion.

Plenty of evidence supports the District Court’s conclusion that cockfighting is not a particularly expressive activity, as social norms surrounding animal fighting have been shifting decisively toward prohibition for centuries. All 50 states, the U.S. Government, and Puerto Rico now recognize the immorality of dogfighting, a status that has changed over time due to evolving social norms.¹³ According to the United States Department of Agriculture’s Census of Agriculture, the number of fighting cock farms in Puerto Rico shrunk from 949 farms in 2012 to 181 in 2018. The cockfighting community has been aging and the practice falling out of favor, with the diminishing number of practitioners erroneously believing they had been exempt from all federal anti-cockfighting prohibitions until the latest amendments took effect in December 2019. As the United States convincingly argued in its brief, the Congress has for years prohibited not only

¹³ See Rohnda D. Evans and Crag J. Forsyth, *Entertainment to Outrage A Social Historical View of Dogfighting*, 27 Int. Rev. Mod. Sociol. 2 (1997) (detailing how dogfighting was part of the culture of the Europeans who settled the United States, but overtime these fights went from being part of the culture to being widely recognized as illegal activities).

imports and exports of fighting birds to or from Puerto Rico, but also possessing birds for fighting or attending or bringing a minor to a cockfight in the Commonwealth.¹⁴ More recently, dozens of Puerto Rican citizens recently answered Animal Advocates' calls for tips about illegal cockfighting on the island, signaling their own opposition to the bloody spectacles and reminding the nation that cockfighters are disrespecting the rule of law and perpetuating acts of animal cruelty.¹⁵

Cockfighting does not enjoy popular support anywhere in the United States. On Guam—where Animal Advocates recently commissioned a methodologically sound, island-wide survey of over 400 residents—60 percent of respondents voiced their opposition to cockfighting, while only 21 percent supported the practice.¹⁶ Critically, 62 percent of Chamorros agreed or strongly agreed that Congress's ban on cockfighting should be obeyed, while 65 percent of Filipinos felt similarly.

¹⁴ *Supra* note 9, Table 14: Livestock, Poultry, and Their Products – Inventory and Number Sold: 2018 and 2012, pdf p. 31 (June 2020), available at <https://www.nass.usda.gov/Publications/AgCensus/2017/index.php>.

¹⁵ Animal Wellness Action, *Caring Puerto Ricans Reporting Illegal Cockfighting*, (Feb. 12, 2020), available at <https://animalwellnessaction.org/2020/02/12/caring-puerto-ricans-reporting-illegal-cockfighting/#more-19432>.

¹⁶ PACIFIC DAILY NEWS, *Survey: 60% oppose cockfighting, want animal cruelty laws strengthened* (Dec. 19, 2019), available at <https://www.guampdn.com/story/news/local/2019/12/18/survey-opposition-cockfighting-strengthen-animal-cruelty-laws/2694417001/>.

Only 7 percent of Guamanians surveyed said they had attended a cockfighting event in the past year.¹⁷

This nationwide trend began as early as the 19th Century, when U.S. courts were finding that cockfighting violates “the plain dictates of the law of humanity[.]” *Commonwealth v. Tilton*, (1844) 49 Mass. 232, 234. In *Tilton*, the court concluded that cockfighting was:

barbarous and cruel, leading to disorder and danger, and tending to deaden the feelings of humanity, both in those who participate in it, and those who witness it, it appears to us to stand on the same footing with bull-fighting, bear-baiting, and prize-fighting with fists or dangerous weapons, all of which, we think, would be considered as unlawful games or sports.

Id. at 234-235.

In a more recent case, the Ninth Circuit Court of Appeals directed the Bureau of Indian Affairs (BIA) to analyze section 2156(a) of the AWA in order to determine the morality of cockfighting for the purposes of immigration crimes. *See In re Ortega-Lopez*, 27 I. & N. Dec. 382, 388 (B.I.A. August 6, 2018). The Board of Immigration Appeals (BIA) thoroughly analyzed the morality of cockfighting

¹⁷ Animal Advocates also point out that Guam’s current governor (while against the AWA’s prohibition) has acknowledged that cockfighting “may not be an indigenous culture,” and is instead a relatively recent cultural practice brought to Guam in the 1800s by Spanish colonizers. *See* Steve Limtiaco, *Legal cockfighting in Guam ends Friday as federal ban takes effect*, Pacific Daily News (Dec. 19, 2019), available at <https://www.guampdn.com/story/news/local/2019/12/19/guam-cockfighting-federal-ban-us-territories-legal-friday-rooster-doledo-game-club/2672182001/>.

and concluded that “the exhibition and celebration of suffering in animal fighting events [] runs contrary to basic standards of decency and humanity.” *Id.*

According to the BIA, “the fact that several territories of the United States have not updated their laws to ban some forms of animal fighting does not change our conclusion regarding the profoundly degrading nature of such conduct.” *Id.* at 390. Cockfighting “serves no utilitarian purpose, leads to the extreme suffering or death of the animals that are forced to fight for the base entertainment and enjoyment of the people involved.” *Id.* at 391. Cultural rights merit consideration, but Congress has weighed the import of cultural attachment to cockfighting against its detrimental effects on interstate commerce and concluded that no justification exists to continue permitting the abhorrent practice in the United States.

B. The AWA’s prohibitions on animal fighting apply equally to all American jurisdictions.

In its court order, the United States District Court for the District of Puerto upheld Congress’s authority to criminalize cockfighting in the territories under the Commerce Clause. *Club Gallistico de P.R. Inc. v. United States*, No. 19-1481 (GAG), 2019 U.S. Dist. LEXIS 187527 (D.P.R. Oct. 28, 2019). At the time of the lawsuit, Appellant Club Gallistico operated one of the largest, “most visited” cockfighting arenas in the island. *Id.* The court used the plaintiffs’ allegations of economic harm caused by the ban as evidence that “live-bird fights in the Commonwealth are not only considered a commercial activity but also a lucrative

one,” giving Congress authority to impose a prohibition under the Commerce Clause. *Id.* at 17—19 (citing *United States v. Lopez*, 514 U.S. 549 (1995); *United States v. Morrison*, 529 U.S. 598 (2000); 7 U.S.C. § 2156(g)(1)).

The court also correctly noted that the “nexus between . . . [the AWA’s] live-bird fighting prohibition to the Commonwealth and other territories is not attenuated. On the contrary, there exists a direct connection between the means and the end because live-bird fighting ventures are essentially commercial endeavors that encompass a substantial interstate activity that is plainly defined by the statute.” *Id.* at 18. In upholding the AWA’s criminalization of cockfighting in the territories under the Commerce Clause, the court rejected a host of constitutional claims brought by the plaintiffs. *See generally id.* This court should uphold the District Court’s decision.

As a practical matter, moreover, long before the U.S. District Court of the District of Puerto Rico upheld the AWA’s prohibition on cockfighting explicitly, the U.S. Attorney’s Office for the District of Puerto Rico charged an individual for engaging in animal fighting. *See United States v. Castro-Correa* (D.P.R. June 12, 2017, No. 16-153 (PG)) 2017 U.S.Dist.LEXIS 90966, at 1. In *Castro-Correa*, Special Agent Arturo D. Colon-Anguita, discovered that the defendant planned to transport fighting dogs to the Dominican Republic. *Id.* at *3-4. Agent Colon searched the defendant’s cell phone, found video footage of dog fights, and

obtained a confession that the defendant intended to transport the dogs for “conformation and dogfighting competitions.” *Id.* at 4-6. The defendant challenged the validity of the search and seizure, but he did not bother challenging whether the AWA applied to Puerto Rican residents, demonstrating a recognition of the AWA’s validity. Moreover, a jury ultimately convicted him of possessing dogs for the purpose of engaging in an animal fighting venture, in violation of the AWA.¹⁸

Shortly after winning Castro-Correa’s conviction, the U.S. Attorney’s Office for the District of Puerto Rico issued an official statement on its website indicating that “[i]ndividuals who attempt to profit from animal abuse crimes will be investigated, prosecuted, and punished accordingly.”¹⁹ The U.S. Attorney’s Office further clarified that “[t]he protection of animals is a priority of the U.S. Attorney’s Office for the District of Puerto Rico.”²⁰ In other words, long before Congress’s clarification to the AWA, animal fighting was illegal in the territories of the United States.

¹⁸ *Individual Found Guilty for Dogfighting* (July 31, 2018), U.S. Attorney’s Office District of Puerto Rico, *available at* <https://www.justice.gov/usao-pr/pr/individual-found-guilty-dogfighting>.

¹⁹ *Id.*

²⁰ *Id.*

III. Conclusion

Animal Advocates respectfully request that the court deny Plaintiffs' Joint-Motion for Summary Judgment and grant Defendant's Cross-Motion for Summary Judgment.

Respectfully submitted this 27th day of August 2020,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32 because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32 because it contains 3,268 words, excluding exempt material, according to the count of Microsoft Word.

Dated: August 27, 2020,

/s/ Ana Maria Hernandez Marti
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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2020, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system, and that I served counsel for plaintiffs-appellants and counsel for amici by the same means.

Dated: August 27, 2020,

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