

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	Case No. 4:21-cv-00283-SMR-SHL
)	
Plaintiff,)	<i>EX PARTE</i> ORDER GRANTING
)	PLAINTIFF’S MOTION FOR A
v.)	TEMPORARY RESTRAINING ORDER
)	
DANIEL GINGERICH,)	
)	
Defendant.)	

Before the Court is a Motion for a Temporary Restraining Order (“TRO”) by the United States of America requesting expedited relief against Defendant Daniel Gingerich. [ECF No. 2]. For the reasons described in this Order, the Motion for a Temporary Restraining Order is GRANTED.

I. BACKGROUND¹

The Animal Welfare Act (“AWA”) regulates the transportation, handling, and treatment of animals. 7 U.S.C. §§ 2131–2159. The Secretary of the United States Department of Agriculture (“USDA”) is delegated with the authority to enforce the AWA’s provisions related to humane handling, care, treatment, and transportation of animals by regulated dealers, research facilities, and exhibitors. *See id.* §§ 2140; 2143. Among the powers retained by the Secretary to regulate is to issue licenses to dealers and exhibitors. *Id.* § 2133.

Defendant Daniel Gingerich holds a Class “A” dealer license issued in October 2019. [ECF No. 2-3 ¶ 3] (Maxwell Decl.). Plaintiff alleges that Defendant “has in his possession, control, or

¹ The Court’s factual findings are derived from the affidavits submitted in support of Plaintiff’s motion for temporary restraining order and accompanying exhibits. *See generally* [ECF No. 2].

care” over 250 dogs across at least three, USDA-approved sites. *Id.* ¶ 8–9. Despite only holding a Class A license for under two years, Defendant has repeatedly evaded, or attempted to evade, inspection by the USDA’s Animal and Plant Health Inspection Service (“APHIS”). This evasion includes denial of access to his sites upon unannounced inspections.² *Id.* ¶ 4; 18; 41. Inspectors did, however, obtain access to some sites beginning in March 2021.

Inspections have yielded numerous violations and instances of non-compliance. *See* [ECF Nos. 2-22; 2-23; 2-24; 2-25; 2-28]. Defendant’s license was suspended for 21 days on September 8, 2021. *See* [ECF No. 2-2]. The Official Notice of Suspension sent to Defendant identified violations for, among other things, failure to: (i) provide a program of adequate veterinary care; (ii) properly identify animals; (iii) maintain proper records; (iv) alleviate the impact of climatic conditions on the animals; (v) allow proper access and inspection of records and property; (vi) maintain structurally sound housing facilities; (vii) provide continuous potable water, (viii) provide proper cleaning and sanitization; (ix) provide appropriate shelter and maintain minimum requirements set out for primary enclosures of animals. *Id.* at 2.

II. ANALYSIS

A. *Standard for TRO under the AWA*

Typically, to obtain emergency injunctive relief without providing notice to the opposing party, a plaintiff must demonstrate “specific facts in an affidavit or a verified complaint clearly show[ing] that immediate and irreparable injury, loss, or damage will result to the [movant] before the adverse party can be heard in opposition” and certify “any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

² Specifically, APHIS inspectors were denied access to Defendant’s facility in Seymour, Iowa on March 11, 2020, October 6, 2020, and December 9, 2020. [ECF No. 2-3 ¶ 4].

But the governing law in this case, the Animal Welfare Act (“AWA”), provides that the Secretary of Agriculture may apply for a temporary restraining order “[w]henver the Secretary has reason to believe that any dealer, carrier exhibitor, or intermediate handler . . . is placing the health of any animal in serious danger in violation of [the AWA].” 7 U.S.C. § 2159(a). Section 2159 continues, “[t]he court shall, upon proper showing, issue a temporary restraining order.” *Id.* § 2159(b). Because the AWA mandates injunctive relief as a remedy for violation, “courts’ traditional discretion to determine” injunctive relief under traditional equitable principles is “constrained.” *First W. Cap. Mgmt. Co. v. Malamed*, 874 F.3d 1136, 1141 (10th Cir. 2017).

An important distinction between preliminary relief issued pursuant to equitable principles and a statutorily-authorized TRO or injunction is a plaintiff “does not need to demonstrate irreparable harm.” *Burlington N R.R. Co. v. Bair*, 957 F.2d 599, 601–02 (8th Cir. 1992). Rather than applying the traditional four-factor test³, the Court’s role here “is simply to determine whether a violation of the statute has or is about to occur.” *Id.* Under the AWA, the Court must decide if a “proper showing” has been made to issue a TRO. 7 U.S.C. § 2159(b).

B. Proper Showing for TRO

First, Defendant is clearly a “dealer” for purposes of the AWA, currently possessing a suspended Class “A” license. [ECF No. 2-13]. Defendant “buys, or sells, or negotiates the

³ The four-factor test to obtain preliminary relief ordinarily requires a plaintiff demonstrate:

- (1) probability or likelihood of success on the merits, (2) the threat of irreparable harm or injury to the movant absent the injunction, (3) the balance between the harm to the movant and the harm that the injunction's issuance would inflict on other interested parties, and (4) the public interest.

Dataphase Sys., Inc. v. C L Systems, Inc., 640 F.2d 109, 113 (8th Cir. 1981) (en banc).

purchase or sale of: [a]ny dog . . . for . . . use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes.” 9 C.F.R. § 1.1.

The next consideration is whether Defendant is putting the health of his dogs “in serious danger.” 9 U.S.C. § 2159(a). Plaintiff alleges Defendant is doing exactly that by failing to provide the dogs with adequate veterinary care; provide them with potable water or food of sufficient quantity and quality; and failing to house them in safe and sanitary facilities. Plaintiff’s showing on these elements is not only “proper,” it is substantial.

1. Medical care

The record reflects that many of the dogs at Defendant’s facilities are in “dire” need of veterinary care. *See, e.g.*, [ECF No. 2-14] (describing numerous dogs with “abnormal” eye and nose conditions but had been under no veterinary care). Many animals have severe illnesses, such as parvovirus and distemper, which are “easily prevented using common and widely available vaccines, given at appropriate timeframes, combined with proper cleaning, sanitizing, and husbandry practices.” [ECF No. 2-4 ¶ 8]. APHIS inspectors have reported dogs with severe skin conditions, lesions, and matted hair. [ECF No. 2-16 at 2–5]. They have found dogs that are emaciated, [ECF No. 2-14 at 2–3], in “severe heat stress,” [ECF No. 2-17 at 2], and non-responsive, [ECF No. 2-15 at 2].

AWA regulations require that Defendant maintain medical records for a minimum of one year. 9 C.F.R. § 3.13(c). However, Plaintiff claims he “fails to follow *any* program of veterinary care for the animals.” [ECF No. 2-1 at 11] (emphasis added). One inspection turned up three puppies who had never been seen by a veterinarian and each had a variety of serious conditions. [ECF No. 2-19 at 2–3].

Not only are the medical records deficient, the medical care the dogs receive appear to be shockingly inadequate.⁴ Exhibits submitted in support of the motion for the TRO demonstrate that after a rescue organization from Minnesota purchased thirteen dogs—ten puppies and three adult dogs—several dogs required emergency veterinary care. [ECF Nos. 2-7; 2-9; 2-10; 2-11; 2-12]. One of the dogs died from parvovirus, but only after surviving on oxygen support and a feeding tube during an eight-day hospitalization before succumbing to the “easily prevented” parvovirus. [ECF Nos. 2-8; 2-4 ¶ 8]. The rescue organization has accumulated veterinary care expenses exceeding \$20,000 in the three weeks since they took possession of the 13 dogs. [ECF Nos. 2-9; 2-10; 2-11; 2-12].

2. Food and water

The food and water provided to the dogs at Defendant’s facilities, appear to be no better than the medical care they receive. Federal regulations require that the dogs receive food that is “wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health.” 9 C.F.R. § 3.129(a). Food must be stored “so as to minimize contamination by excreta and pests, and protected from rain and snow.” *Id.* § 3.9(b). Water is likewise required to be “potable” and “continuously available to the dogs unless restricted by the attending veterinarian.” *Id.* § 3.10(a).

Despite these clear, sensible, and humane requirements to provide dogs under his care with appropriate food and water, on multiple occasions APHIS inspectors have cited Defendant for the poor quality of the food fed to the dogs. The Court will not belabor the revolting quality of the food inspectors described in their citations but among some of the violations are food that is

⁴ Plaintiff’s brief describes the care as “wholly inadequate” but the Court believes “shocking” is a more apt description after review of the record.

“moldy,” “deteriorating,” or “excessive amount of wood shavings.” [ECF No. 2-19]. Inspectors discovered that many dogs do not have potable water available to drink. [ECF Nos. 2-14; 2-15; 2-20; 2-21]. Kelly Maxwell, an inspector for APHIS, wrote that a former employee told her that one location operated by Defendant in Redding, Iowa had puppies that “had not been fed or watered for three days.”⁵ [ECF No. 2-3 ¶ 33].

3. Safe and sanitary facilities

Plaintiff also argues that the dogs are in serious danger from the facilities in which Defendant houses them. Facilities must be structurally sound, in good repair, and protect the dogs from injuries and prevent their escape. 9 C.F.R. § 3.125(a). Cleaning and sanitation are required to maintain a proper facility which includes sanitation of food and water receptacles, removal of excreta, and removal of food waste. *Id.* § 3.11.

Inspectors at Defendant’s facilities observed multiple enclosures where dogs had dug holes under a fence but the holes were covered with boards, wire, or concrete blocks. [ECF No. 2-17]. This failure to maintain the dogs in their designated enclosures apparently led to one dog escaping its enclosure under a fence, only to be attacked and killed by dogs in the next enclosure. *Id.*

Defendant has employees to assist the operation of his facilities but they appear to be insufficient in number and insufficiently trained in their duties. One site, housing over 262 dogs, has three staff members. [ECF No. 2-19]. When interviewed by APHIS inspectors, the employees did not appear to be well-versed in the requirements of the AWA, and admitted as much to inspectors. [ECF No. 2-3 ¶ 12]. One employee failed to observe a puppy gasping for air and subsequently died during an inspection by APHIS. [ECF No. 2-15 at 2].

⁵ The declaration submitted by Maxwell states that the Redding location is unlicensed and is among “many more locations” operated by Defendant that are not licensed by the USDA.

4. Sufficiency of the Evidence

It appears very clear from the submissions by Plaintiff that the health of the dogs housed at Defendant's facilities are in serious danger. Dr. Heather Cole, a Supervisory Veterinary Medical Officer with APHIS stated in her declaration that she has "never encountered a licensee who has this high of a level of chronic and repeat noncompliance across every category of Animal Welfare Act requirements . . . [Defendant's] facilities are the all-around least compliant facilities" she has encountered. [ECF No. 2-4 ¶ 6].

The AWA authorizes this Court to enter a temporary order against a dealer, such as Defendant, when the dealer jeopardizes the health of the animals in their care in contravention of the statute. 7 U.S.C. § 2159. After a thorough review of the record, the Court has determined that a Temporary Restraining Order is appropriate in this case and is, indeed, mandated by the AWA. *Id.* § 2159(b) ("The court shall, upon proper showing, issue a temporary restraining order").

III. CONCLUSION

For the reasons discussed above, Plaintiff's Motion for a Temporary Restraining Order, [ECF No. 2], is GRANTED. Defendant Daniel Gingerich, along with his agents, servants, employees, and anyone who works in active concert with him shall:

(1) provide to counsel for the United States of America within 7 days of this Order a list of every location at which they have any dogs that are intended for breeding or sale as of September 27, 2021;

(2) provide to counsel for the United States of America within 7 days of this Order an animal inventory for each location identified in paragraph (1), listing the breed, sex, age, and unique identification number, described in paragraph (3), of each and every dog at each of the identified locations;

(3) assign within 7 days of this Order a unique identification number to each dog listed on the inventories provided pursuant to paragraph (2), consistent with 9 C.F.R. § 2.50(a)(1);

(4) ensure that, within 14 days of this Order, every dog listed on the inventories receives a “complete physical examination from head to tail,” as required by 9 C.F.R. § 3.13(a)(2), by a licensed veterinarian other than Dr. William McClintock⁶ or any other veterinarian associated with Country Village Animal Clinic, Centerville, Iowa;

(5) provide complete veterinary records for the “complete physical examinations” required by paragraph (4) and any veterinary care otherwise provided to any dog to counsel for the United States within 7 days of the animal being seen by a veterinarian;

(6) provide to counsel for the United States within 7 days of this Order up-to-date written programs of veterinary care that comply with 9 C.F.R. § 2.40(b) and § 3.13(a) for each location identified in paragraph (1);

(7) ensure that a licensed veterinarian, other than Dr. William McClintock or any other veterinarian associated with Country Village Animal Clinic, Centerville, Iowa, documents the vaccination status of every dog identified in paragraph (2), timely vaccinates all dogs consistent with the vaccination schedule set out in the relevant written program of veterinary care, and accurately documents the vaccinations and make those documents available to USDA Animal and Plant Health Inspection Service inspectors upon request;

⁶ Plaintiff requests that Dr. William McClintock, and any other veterinarian associated with the Country Village Animal Clinic in Centerville, Iowa, be excluded from the TRO based on the extensive veterinary issues at Defendant’s facility. A disciplinary history of Dr. McClintock was submitted along with the TRO motion which casts a shadow on his documentary history. The Court will thus order that a different veterinarian provide the care required in this TRO.

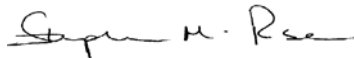
(8) immediately cease from acquiring by birth or transfer or disposing by euthanasia or transfer any dogs listed on the inventories in paragraph (2) without the consent of the United States or a court order;

(9) in the case of any dogs who are already pregnant at the time of this Order, provide notice to counsel for the United States within 72 hours of the birth of any puppies, including the number of puppies born, the identification number of the dam, and the identification numbers assigned to the puppies, see 9 C.F.R. § 2.50(a)(1); see also 9 C.F.R. § 2.75; and

(10) if any dogs listed on the inventories provided pursuant to paragraph (2) die, have a licensed veterinarian, other than Dr. William McClintock or any other veterinarian associated with Country Village Animal Clinic, Centerville, Iowa, confirm the death in person and document the condition of the dog; the veterinarian's record of death must be provided to counsel for the United States with 72 hours of the death of the animal.

IT IS SO ORDERED.

Dated this 28th day of September, 2021, at 9:45 am.



STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT