

September 17, 2021

Honorable Judge Jill Clifton
Hearing Clerk's Office
U.S. Department of Agriculture
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Washington DC 20250-9203

via email:

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Re: Objection to Conditions Order UPDATES, to Monitor the Hearing and Request for Ruling on the Unopposed Emergency Motion to Intervene in AWA Docket 19-0004 for the Limited Purpose of Preserving the Animal Welfare Institute's First Amendment Rights

Dear Hon. Judge Clifton:

The Animal Welfare Institute ("AWI") hereby objects to the Conditions Order UPDATES, to Monitor the Hearing in the matter *In re: Daniel J. Moulton*, AWA Docket No. 19-0004, dated September 14, 2021. Additionally, AWI respectfully requests a ruling on its Emergency Motion to Intervene for the limited purpose of preserving its rights to pursue appellate review of rulings that adversely impact AWI's rights under the First Amendment to the United States Constitution.

I. AWI's Objection to the Conditions Order UPDATES

AWI objects to the Conditions Order UPDATES, to Monitor the Hearing in this matter because this order continues to infringe on AWI's First Amendment rights. AWI explained the basis for its First Amendment concerns in previous filings on this docket, including the following: AWI's Objection to Conditions Order dated July 23, 2021; AWI's Objection to Order Deferring Ruling, dated August 10, 2021; and AWI's Emergency Motion to Intervene, dated August 26, 2021. For the sake of brevity, AWI incorporates those prior-filed documents by reference here.

AWI understands that the Conditions Order UPDATES imposes conditions that "are relaxed only slightly from the July 22 'Conditions Order, to Monitor the Hearing,'" and that the slightly relaxed conditions address one of AWI's concerns by allowing non-parties to designate additional observers from their organizations, rather than having only a single designated observer. However, the Conditions Order UPDATES does not address the most significant

restrictions on AWI's ability to observe and document the hearings in this matter, including the unconstitutional prior restraint on AWI's ability to speak freely about the hearings. *See, e.g., Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 570 (1976) (holding that a restriction on reporting on judicial proceedings was a "clearly invalid" prior restraint on free speech). Likewise, the "slightly relaxed" conditions remain overbroad and, as explained in prior filings and incorporated by reference here, are not narrowly tailored to serve an overriding government interest. For example, the Conditions Order UPDATES does not include any consideration of whether there are less restrictive means of serving the stated goals "to protect Hearing integrity and to prevent witness harassment." Moreover, the Conditions Order UPDATES did not provide AWI with due process rights, including a reasonable opportunity to be heard as to fundamental issues underlying its constitutional concerns, including Mr. Moulton's lack of credibility and the lack of any proof (or even any plausible allegations) about how AWI's observation could harm any stated interests here—which it would not, as proven by AWI's history of observing prior Animal Welfare Act hearings without incident. For these reasons, AWI objects to the Conditions Order UPDATES as an ongoing violation of AWI's constitutional rights.

II. AWI's Request for a Ruling on the Emergency Motion to Intervene

As previously explained, AWI submitted an Emergency Motion to Intervene for the limited purpose of preserving its ability under the USDA's regulations to pursue appellate review of rulings that adversely impact its First Amendment rights.

To AWI's knowledge, no party opposes AWI's Emergency Motion to Intervene. The USDA's regulations specify that any opposition to a motion must be filed "[w]ithin 20 days after service of any written motion or request," unless the Judge specifies a "shorter or longer period." 7 C.F.R. § 1.143(d). AWI served its Emergency Motion on August 26, 2021, and because AWI did not receive notice of the Court specifying any shorter or longer period for oppositions to be filed, AWI believes that any oppositions were due by no later than Wednesday, September 15, 2021. AWI has not received notice of any oppositions to its Emergency Motion. Accordingly, AWI has good cause to believe that its Emergency Motion is unopposed by any party.¹

Pursuant to 7 C.F.R. § 1.145, AWI intends to pursue appellate review of orders that infringe on AWI's First Amendment rights, including: the Conditions Order, to Monitor the Hearing, dated July 22, 2021; the Exclusion Order to Protect Hearing Integrity and to Prevent Witness Harassment, dated July 22, 2021; the Order Deferring Ruling on non-party Objection, dated August 9, 2021; the 2021 September 20 (Mon) Hearing Resumes order, dated August 16, 2021; the Hearing Notice AMENDED, dated September 13, 2021; and the Conditions Order UPDATES, to Monitor the Hearing, dated September 14, 2021. To that end, and in light of the lack of opposition from any party, AWI respectfully requests a ruling on its Emergency Motion to Intervene.

Respectfully submitted,

¹ AWI has verified that the Complainant has not opposed AWI's Emergency Motion and has not received notice of any opposition by the Respondent.

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CERTIFICATE OF SERVICE

Daniel J. Moulton, a/k/a Dan Moulton, d/b/a Moulton Chinchilla Ranch, Respondent
Docket: 19-0004

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the OBJECTION TO CONDITIONS ORDER UPDATES, TO MONITOR THE HEARING AND REQUEST FOR RULING ON THE UNOPPOSED EMERGENCY MOTION TO INTERVENE IN AWA DOCKET 19 0004 FOR THE LIMITED PURPOSE OF PRESERVING THE ANIMAL WELFARE INSTITUTE'S FIRST AMENDMENT RIGHTS has been furnished and was served upon the following parties on September 17, 2021 by the following:

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Respectfully Submitted,

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