

Appeal of Importation Denial

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Background

On January 14, 2010, I received a letter from the New Mexico Department of Game and Fish denying my application for importation of an exotic animal. The animal is a neutered male *Leptailuras serval*, or serval. The letter stated that the reason for denial was “the fact that the animal is CITES appendix II listed, and the importation of CITES listed animals is prohibited except for use in a scientific study or for use as part of an approved restoration/recovery program”.

I am contesting the decision to deny my importation permit based on previous enforcement of the law.

Background

The serval in question, Kyprioth, was born November 18, 2007. He was born with a severely crippling genetic deformity in both front legs, and was given to me by a breeder to rehabilitate.

I spent hundreds of hours doing physical therapy on Kyprioth's front legs, enabling him to slowly become able to walk on his own.



Background

The serval breeder was told by my mother, Kelli Perras, that she had received all the proper permitting required to keep him in the state of New Mexico. In October of 2009, I learned from animal control officers Curtis Childress and Robyn Gojkovitch that my mother had forged all of the permits.

Upon hearing this, I immediately sent Kyprioth to a friend of mine in another state who does have all the proper permits to keep him while I worked on bringing him legally back into New Mexico. I then continued to assist in the investigation of my mother in every way possible to me.

My Credentials

I have worked as a zoo assistant at the GW Exotic Animal Park, where I cared for animals ranging from large carnivores including bears, lions, and wolves, to small herbivores and reptiles. I led park tours for families and school groups, and I used Kyprioth in educational presentations, including programs with handicapped children.

I work in the NMSU Wildlife Department as a laboratory technician. I maintain a stable captive breeding population of *Cyprinodon tularosa*, a native threatened species, as well as caring for the displays of fish from around the world.

I am also a student at NMSU and majoring in Wildlife Sciences. I graduate next semester.

My Credentials

I have obtained permission to keep Kyprioth from the City of Las Cruces, as well as the County of Dona Ana, neither of which had a formal permit process. The stipulation from the city included that I must obtain a USDA/APHIS Class C license and use the animal for educational purposes.

This is the same exact federal license that zoos must obtain to use their animals for educational purposes. The same permit is currently held by the Albuquerque Biological Park, the Alameda Park Zoo, the Living Desert Zoo & Gardens State Park, the Spring River Park and Zoo, and the Hillcrest Park Zoo.

My Credentials

I met all of the federal requirements for a USDA/APHIS Class C license and passed inspection, as of January 7, 2010, with Jeanne Kjos, the USDA/APHIS inspector for my region.

The federal government makes NO distinction between my license and other zoo licenses besides the number of species kept; I am held to exactly the same standards of care and confinement as a zoo.

Arguments For Granting Attachment

- * Servals in particular often have extreme difficulty adapting to new homes. They bond very closely to their first owners, and become much more upset than the typical domestic animal (and even most other wild cat species) when separated from their beloved humans. Losing a home can cause a serval to stop using the litter box. In drastic situations the animal may even stop eating.
- * Due to the fact that Kyprioth was born handicapped, I bottle raised him, and I did extensive physical therapy with him, this bond has been intensified.

Arguments For Granting

Safe Care

- * Due to his handicap, Kyprioth needs care beyond the scope of the average serval. Zoos, such as the one that he is currently living in, are not equipped to perform the regular physical therapy that is still necessary for him to remain mobile. Other facilities are also entirely outdoors, and winter temperatures cause him to get arthritis in his front legs.
- * Zoos are also set up to maintain as many animals as possible in as efficient a manner as possible, and while this may be fine for most animals, Kyprioth is my child and has always had more enrichment and human interaction than any zoo could offer him.

Arguments For Granting

Confinement

- * As required to obtain a federal class C license, Kyprioth's enclosure is a 400 square foot fully enclosed (with ceiling) chain link facility protected by a 6 foot perimeter fence.
- * The perimeter fence is 3 feet away from the interior fence, to keep any people from reaching into his enclosure.



Arguments Against

Argument:

New Mexico law prohibits the importation of threatened or endangered species.

Facts:

*Servals are not threatened or endangered.

**L. serval* is listed in CITES Appendix II as a “species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival”. (CITES, 2010)

Arguments Against

(continued)

Facts:

*The Endangered Species Act lists only the Barbary Serval, *L. serval constantina*, as endangered. No other serval species are threatened or endangered. (ESA, 2010)

*The International Union for the Conservation of Nature (IUCN) is the most accurate in determining the status of the species in the wild. The IUCN lists *L. serval* as a species of “Least Concern”, meaning that they do not consider the species protected or in need of protection at the time being.

Arguments Against

Argument:

Servals cannot receive New Mexico import permits because they are listed in CITES.

Facts:

**L. serval* is listed in CITES Appendix II, however NMDGF has only utilized Appendix I in their enforcement of the law because Appendix I “includes species threatened with extinction”. (CITES, 2010)

*NMDGF has granted permits for 460 animals listed in CITES Appendix II and III, including 2 neutered servals. None of these were given exceptions due to scientific study or restoration/recovery plans.

Arguments Against

Argument:

Permits granted by NMDGF for CITES Appendix II or III listed species not in scientific study or restoration/recovery plans were “accidents”.

Facts:

*NMDGF has granted a little over 730 permits between 2000 and 2010 (NMDGF 2010).

*NMDGF has granted permits for 9 CITES Appendix I listed animals without scientific study or restoration/recovery plans (NMDGF 2010). These 9 may be true lapses in enforcement.

Arguments Against

(continued)

Facts:

*NMDGF has granted permits for 460 CITES Appendix II listed animals without scientific study or restoration/recovery plans (NMDGF 2010). This large percentage of “accidents” seems more like a pattern of enforcement.

*Legal precedent requires that unless the permits granted “accidentally” are revoked, all further similar situations must be enforced in the same manner.

Arguments Against

Argument:

Permits granted for CITES Appendix II and III animals without scientific study or restoration/recovery plans were for educational use at parks and zoos.

Facts:

*Regulation 19.35.7.8 B NMAC does not grant an exception for importing CITES listed animals for educational purposes.

*Even if there were an exception under 19.35.7.8 B for educational purposes, federal law does not distinguish my class C license from that of a zoo.

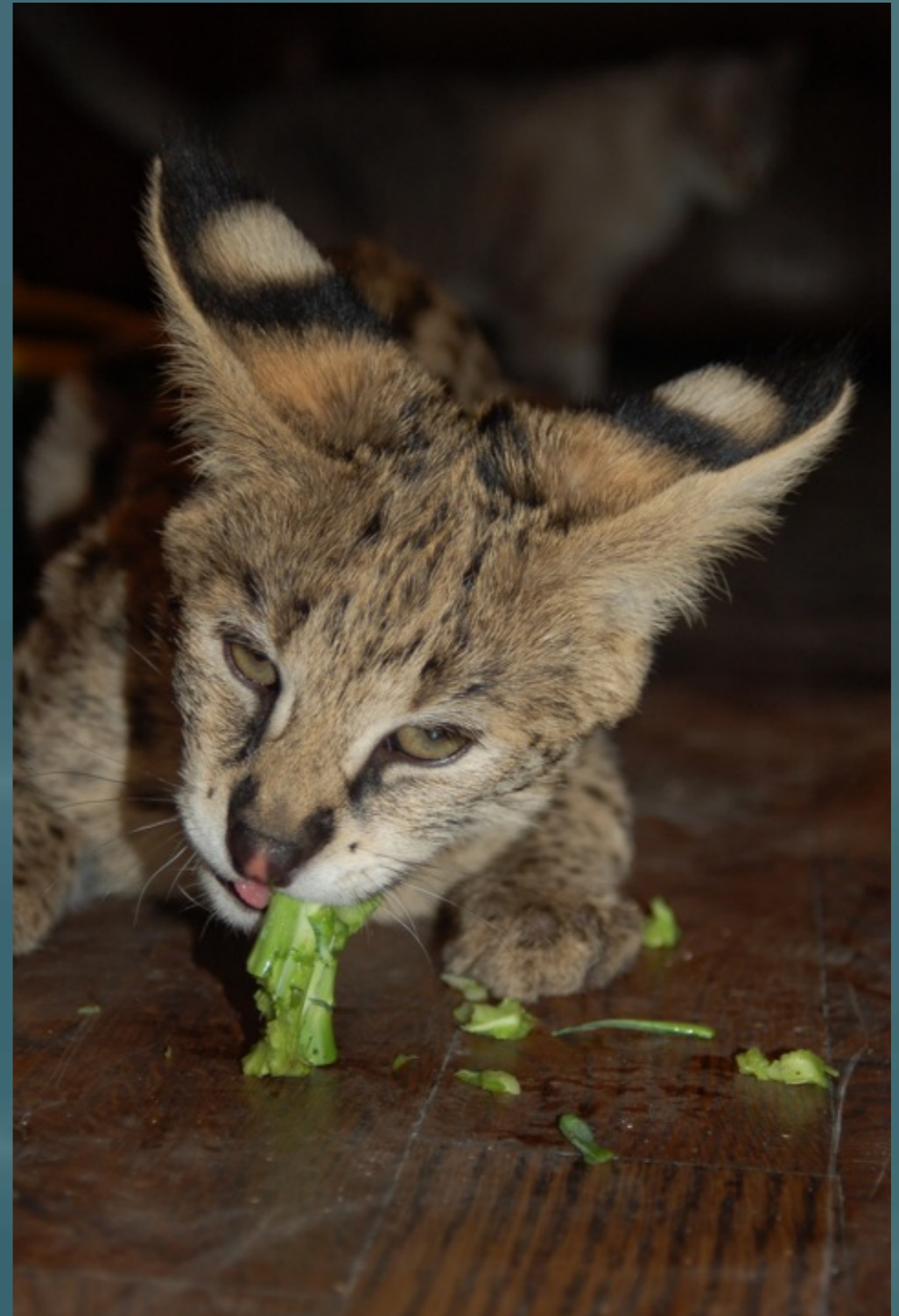
Arguments Against

Argument:

Servals could breed with native felid species.

Facts:

*Kyprioth is neutered.



Arguments Against

Argument:

Servals are predators and could impact native wildlife.

Facts:

* Servals are mesopredators and rarely prey on animals over 3 ounces in weight (roughly the size of a small rat). (The Nutrition and Natural History of the Serval and Caracal Veterinary Clinics of North America: Exotic Animal Practice, Volume 12, Issue 2, Pages 327-334 S. Livingston, 2010)

* Kyprioth has a crippling genetic deformity which impairs his ability to hunt and survive in the wild.

* Servals in the wild are frequently predated on by larger carnivores including African wild dogs and domestic dogs. (S. Livingston, 2010) A coyote or dog could easily kill him.

Arguments Against

Argument:

Exotic cats are a danger to the public.

Facts:

*This species has never been reported, even in the wild, of causing injury to a human or spreading disease.

*Statistically, an individual who handles exotic animals is 33 times more likely to be killed by a domestic dog and 1218 times more likely to be killed while riding a horse than to be killed by even a large exotic cat species. (National Center for Health Statistics, 1990-2008).

Arguments Against

(continued)

Facts:

- * Kyprioth is the product of 20 generations of captive bred, bottle raised servals. His temperament is comparable to that of a domestic cat.
- * Kyprioth weighs 32 pounds. This is approximately the same weight as an adult English Springer Spaniel.
- * Kyprioth has had numerous interactions with the public and has always been personable and affectionate with strangers and children.

Conclusion

Regulation 19.35.7.18 C NMAC states that “Commission may set aside the decision of the Department only if the Commission determines that the decision of the Department was arbitrary or capricious; the decision of the Department was not based on law or regulation; or the appellant provides additional data or proves significant impact that contradicts the data of the department.”

Each of these criteria have been demonstrated sufficiently to set aside the previous decision of the Department, and to grant my animal entrance into the state of New Mexico.

Thank You

