UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS, *et al.*,	)	
Plaintiffs,	)	
v.	)	Case No. 1:03-cv-02006 (EGS/JMF)
RINGLING BROS. AND BARNUM & BAILEY CIRCUS, *et al.*,	)	
Defendant.	)	

DX 18

EXHIBIT 18
TO
REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, et al.,

Plaintiffs,

v.

BRUCE BABBITT, SECRETARY, DEPARTMENT OF THE INTERIOR, et al.,

Defendants,

and

BOBBY BEROSINI, LTD.,

Defendant-Intervenor.

Civil Action No. 93-1836 (CRR)

MEMORANDUM OPINION OF CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

APPEARANCES

FOR THE PLAINTIFFS: Katherine A. Meyer of Meyer & Glitzenstein, Washington D.C. argued the case for the Plaintiffs. With her on the briefs was Eric R. Glitzenstein of Meyer & Glitzenstein, Washington, D.C.

FOR THE DEFENDANTS: Elinor Colbourn, Environment & Natural Resources Division, United States Department of Justice, Washington, D.C. argued the case for the Defendants. With her on the briefs were Lois J. Schiffer, Assistant Attorney General, Washington, D.C.; James C. Kilbourne, United States Department of Justice, Washington, D.C.; and Michael Young, Office of the Solicitor, Department of the Interior, Washington, D.C.

FOR THE DEFENDANT-INTERVENOR: George J. Mannina, Jr. of O'Connor & Hannan, Washington, D.C. argued the case for the Defendant-Intervenor. With him on the brief was Gary C. Adler of O'Connor & Hannan, Washington, D.C.

INTRODUCTION

The Plaintiffs are national non-profit groups that seek to eliminate animal abuse, and individuals interested in primates. Bruce Babbitt, Secretary of the Department of the Interior, and

Richard N. Smith, former Director of the Fish and Wildlife Service ("FWS"), are the governmental Defendants. The Defendant-Intervenor, Bobby Berosini, Ltd., ("Berosini"), is an organization that uses orangutans, an endangered species, in its nightclub act.

The Plaintiffs claim, inter alia, that the governmental Defendants violated the Endangered Species Act ("ESA") in granting Berosini a permit to keep captive-bred orangutans for the years 1981, 1983, 1985, 1987, and 1989. The Plaintiffs also claim that the governmental Defendants violated the procedural requirements of the ESA in failing to provide notice and an opportunity for comment on Berosini's permit applications. Last, Plaintiffs assert that Berosini violated the ESA because Berosini transported the orangutans in interstate commerce, and because it allegedly abuses and mistreats the orangutans in its Las Vegas nightclub act. In accordance with their claims, Plaintiffs have requested: (1) an injunction preventing Berosini from transporting the orangutans across state lines; (2) a declaratory judgment that the Government's issuance of a captive-bred wildlife registration to Berosini violated the ESA; (3) a declaration that the old regulations violated the ESA; and (4) an order requiring the governmental Defendants to take possession of the orangutans.

In essence, the governmental Defendants counter the Plaintiffs' arguments by contending that the Plaintiffs' claims are moot because the Defendants' have amended their captive-bred wildlife regulations. As a result of the amendment, the governmental Defendants have denied Berosini a renewal of its

permit for captive-bred orangutans. Thus, the governmental Defendants assert there is no live controversy as against the Government because the Plaintiffs' real claim is that Berosini abused the orangutans, not the Government. Consequently, the governmental Defendants contend that they should be dismissed from this suit. In addition, the governmental Defendants correctly contend that they should be dismissed from the suit because the Plaintiffs' claims are not redressable against them as governmental Defendants.

Berosini, the Defendant-Intervenor, has requested, inter alia, that the Court transfer this case to the United States District Court for the District of Nevada at Las Vegas. According to Berosini, because the alleged harm occurred in Nevada, it would be more convenient for the parties and witnesses, and serve the ends of justice to transfer the case to Nevada.

The parties have filed, inter alia, Motions for Summary Judgment, Oppositions, and Replies thereto.[1] For the reasons

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[1] The Plaintiffs have also filed, an original Complaint, a first amended Complaint and a second amended Complaint. The Court previously granted the Plaintiffs leave to file their first amended Complaint. With respect to Plaintiffs' second amended Complaint, Rule 15 of the Federal Rules of Civil Procedure provides that a party may amend its Complaint a second time "only by leave of court." Fed. R. Civ. Pro. 15. In exercising its discretion, the Court shall deny, without prejudice, the Plaintiffs' Motion to Amend because of the timing of their filing.

The Plaintiffs filed the instant Motion just three days prior to the deadline set by this Court for dispositive motions, thereby preventing an adequate time for a response by the other parties. Therefore, in the exercise of its discretion and in the interest of justice, the Court shall deny, without prejudice, the Plaintiffs' Motion to Amend.

stated hereafter, the Court shall dismiss the governmental Defendants from the case and transfer the remaining claims to the United States District Court for the District of Nevada at Las Vegas.

STATUTORY AND REGULATORY FRAMEWORK

The ESA operates through a comprehensive statutory scheme. See 16 U.S.C. § 1531, et seq. In a critical provision relevant to this litigation, section 9 of the ESA states that it is unlawful for any person to "take" an endangered wildlife species within the United States, or to "deliver, receive, carry, transport, or ship in interstate commerce . . . in the course of a commercial activity, any such species." 16 U.S.C. § 1538(1)(A), (E).

Under a separate "Exceptions" provision, section 10 of the ESA, the Fish and Wildlife Service ("FWS") is authorized to issue permits to allow persons to participate in activities that would otherwise be prohibited under section 9. 16 U.S.C. § 1539. Section 10 provides that:

> The Secretary [of the Interior] may permit, under such terms and conditions as he shall prescribe-
> (A) any act otherwise prohibited by section [9] of this title for scientific purposes or to enhance the propagation or survival of the affected species . . . .

Id.. To carry out the mandate of the ESA, and pursuant to the authorization provisions of 16 U.S.C. § 1539(a)(1), the Secretary issued regulations in 1979 that further define the "Exceptions" provision of section 10 under the ESA. See 44 Fed. Reg. 54002 (Sept. 17, 1979); 50 C.F.R. § 17.21(g).

Prior to a 1994 amendment, the regulations, with respect to

section 10, defined "enhance the propagation or survival" as "[e]xhibition of living wildlife in a manner designed to educate the public about the ecological role and conservation needs of the affected species." 50 C.F.R. § 17.3. Thus, under the above-mentioned regulations, individuals could obtain a permit for captive bred wildlife based solely upon a showing of "educational activities."

Effective January 1994, the captive-bred wildlife regulations promulgated by the FWS were partially amended. Under the amended regulations, an individual may obtain a permit as long as the individual shows that "the principal purpose of these activities is to facilitate captive breeding." 58 Fed. Reg. 68,325 (Dec. 27, 1993). Consequently, this restriction, which is now in effect, is a new condition that eliminates educational activities as the sole justification for issuing a registration. Id.

FACTS

The facts material to this case are not in dispute.[2] The orangutan is a primate that has been listed as an endangered species since 1970. 50 C.F.R. § 17.11(h). In 1981 Berosini obtained a captive-bred wildlife ("CBW") registration pursuant to existing FWS regulations allowing it to buy and sell captive-bred orangutans in interstate commerce. The FWS renewed Berosini's

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[2] Pursuant to Local Rule 108(h), the Plaintiffs and the Defendant-Intervenor have filed statements of material facts as to which there is no genuine issue. Further, the Governmental Defendants have filed responses to the Plaintiffs' and the Intervenor-Defendants' respective statements in accordance with Local Rule 108(h).

registration in 1983, 1985, 1987, and 1989, and Berosini purchased several orangutans during that span. Under then existing regulations, a registration to buy and sell captive-bred orangutans could be issued based solely on an applicant's showing that he or she would engage in educational activities.

In January, 1990, Berosini was notified that the FWS was suspending its registration, due to a finding by the United States Department of Agriculture, Animal and Plant Health Inspection Service, that the enclosures for the orangutans in Berosini's possession violated the applicable orangutan housing regulations.

Berosini requested reconsideration of the suspension, but in June, 1990, the FWS denied its request.

Despite the suspension, on May 30, 1991, Berosini applied to renew its CBW registration, which was scheduled to expire on June 30, 1991. The FWS then notified Berosini that because of the prior suspension of its registration, and because the FWS had decided to review the current regulations that allowed individuals to obtain a CBW registration based solely on a showing of educational activities, Berosini's application would be held in abeyance.

Subsequently, on June 8, 1992, the FWS decide to lift the suspension of Berosini's registration because of the FWS' findings that Berosini had resolved the housing deficiencies, and had provided an adequate showing of educational activities. See 50 C.F.R. § 13.27(a). Nevertheless, although the FWS lifted Berosini's suspension, the FWS refrained from making a decision on whether to renew Berosini's application for a renewal of its

permit, because it was in the midst of reviewing its CBW regulations.

After reviewing its CBW regulations, the FWS, on December 27, 1993, amended its regulations into a final rule. Under the amended regulations, which became effective in January 1994, educational activities may not be the sole or exclusive basis for the issuance of a registration. See 58 Fed.Reg. 68323 (Dec. 27, 1993).

On the basis of Berosini's most recent registration application, which solely asserted educational activities as the basis for its application, the FWS on February 3, 1994 denied Berosini's request for renewal of its CBW registration.

DISCUSSION

Summary judgment shall be rendered upon a showing that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-87 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Frito-Lay, Inc. v. Willougby, 863 F.2d 1029, 1032 (D.C. Cir. 1988).

I. THE PLAINTIFFS' REQUEST FOR RELIEF IS NOT REDRESSABLE BECAUSE IT IS NOT UNLAWFUL FOR BEROSINI TO TRANSPORT THE ORANGUTANS ACROSS STATE LINES FOR PURPOSES OF ITS NIGHTCLUB ACT.

With respect to endangered species, the ESA provides that:

> [I]t is unlawful for any person [to] . . . transport . . . in interstate or foreign commerce . . . in the course of a commercial activity, any such [endangered] species

16 U.S.C. § 1538 (a)(1)(E). Under the ESA "commercial activity" is

defined as "all activities of industry and trade, including, but not limited to, the buying or selling of commodities." 16 U.S.C. § 1532(2).

The Plaintiffs contend, incorrectly, that these provisions prevent Berosini from transporting the orangutans across state lines to perform in its nightclub act. (Pls.' Mot. for Partial Summ. J. against the Government Defendants at 43-45.)

Plaintiffs' argument fails because it ignores the further interpretation of "commercial activity" provided by the FWS regulations. According to the FWS, commercial activity "means the actual or intended transfer of wildlife . . . from one person to another person for gain or profit." 50 C.F.R. § 17.3(c) (1993) (emphasis added). Moreover, this Circuit has upheld the FWS' interpretation of "commercial activity." See Humane Soc'y of the United States v. Babbitt, No. 93-5339 at 4 (D.C. Cir. Feb. 14, 1995).

According to the FWS's definition of commercial activity, Berosini is not prohibited from transferring the orangutans across state lines because it is not transferring the animals "from one person to another person for gain or profit." 50 C.F.R. § 17.3(c) (1993). Instead, Berosini transports the animals across state lines to perform in its nightclub act. Consequently, following the language of the statute and the precedent of this Court, Berosini's transportation of the orangutans in interstate commerce solely for the purposes of nightclub performances does not come within the ambit of the statute. Therefore, the Plaintiffs' request that

Berosini be enjoined from transporting the orangutans shall be denied.

II. THE COURT MUST DISMISS THE GOVERNMENTAL DEFENDANTS FROM THIS CASE BECAUSE THE FWS' AMENDMENT OF ITS CAPTIVE-BRED WILDLIFE REGISTRATION REGULATIONS MOOTED THE PLAINTIFFS' CHALLENGE TO THE GOVERNMENT'S ISSUANCE OF THE REGISTRATIONS, AND BECAUSE ANY ALLEGED HARM TO THE PLAINTIFFS WAS CAUSED BY BEROSINI AND, THEREFORE, IS NOT REDRESSABLE BY THE COURT.

The governmental Defendants have moved for dismissal of all claims against them on a variety of grounds, including mootness and lack of redressability. (Fed. Defs.' Mot. to Dismiss or for Summ. J. at 9-11, 20-25). In their Opposition, the Plaintiffs argue that the FWS' decisions to allow Berosini to purchase endangered orangutans makes the FWS responsible for Berosini's current possession and mistreatment of the animals, and therefore the governmental Defendants should not be dismissed. (See Pls.' Oppos. to Defs.' Renewed Mots. to Dismiss and Defs.' Mots. for Summ. J. at 4-6). However, the Court finds that because there is no live controversy presently pending against the FWS or Department of Interior, and because the Plaintiffs' real dispute is with the Defendant-Intervenor Berosini, the Court must dismiss the governmental Defendants from this case.

A. The Governmental Defendants Must Be Dismissed From This Case Because Changes In The FWS' Permit Renewal Procedures Rendered The Plaintiffs' Challenge To Those Regulations Moot.

A recent case in this Circuit described the mootness doctrine:

> Mootness and standing are related concepts. The Supreme Court has characterized mootness as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue

> throughout its existence (mootness)." United States Parole Comm'n v. Geraghty, 445 U.S. 388, 397, 100 S.Ct. 1202, 1209, 63 L.Ed.2d 479 (1980) (internal quotation omitted).

Garden State Broadcasting Ltd. Partnership v. Federal Communications Comm'n, 996 F.2d 386, 394. In seeking equitable relief, an aggrieved plaintiff must demonstrate the existence of "a substantial controversy, between parties having adverse legal interest, of sufficient immediacy and reality" requiring legal determination. Steffel v. Thompson, 415 U.S. 452, 460 (1974). Because of the amendment to the registration standards and the FWS' rejection of Berosini's request for renewal of its registration, the Court concludes that the Plaintiffs' claims against the governmental Defendants are moot.

In suing the FWS and the Department of Interior, the Plaintiffs disputed the validity of the 1981, 1983, 1985, 1987, and 1989 CBW registrations issued to Berosini as part of the Plaintiffs' claim of continuous injury. However, all of the registrations issued in the 1980s have expired, and Berosini's application for renewal of the 1989 registration was unsuccessful. Due to the denial of Berosini's renewal permit, no injunctive relief regarding Berosini's present registration status is necessary, and any declaratory judgment regarding the propriety of past registrations would not redress the Plaintiffs' alleged injuries. Accordingly, Plaintiffs' claims against the Government are moot.

B. The Governmental Defendants Must Be Dismissed From This Case Because The Alleged Harm Was Not Caused By The Governmental Defendants And Is Not Redressable By The Court, And Because The Plaintiffs Cannot Mandate That The Government Exercise Its Prosecutorial Discretion.

In order to bring suit into federal court, a plaintiff must, at the very least, have Constitutional standing. To achieve Constitutional standing, a plaintiff must satisfy three elements: First, the plaintiff must have suffered an "injury in fact" so that a concrete, actual or imminent legal interest has been invaded. Second, the injury must be fairly traceable to the objected to conduct, or lack thereof, at issue. Last, the injury must be redressable by the requested relief. Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992) (citations omitted); see Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 472 (1982). This Circuit has applied the three pronged standing test many times. E.g., Humane Soc'y of the United States v. Babbitt, No. 93-5339 (D.C. Cir. Feb. 14, 1995); Animal Legal Defense Fund, Inc. v. Espy, 29 F.3d 720 (D.C. Cir. 1994); Animal Legal Defense Fund, Inc. v. Espy, 23 F.3d 496 (D.C. Cir. 1994). Upon examination of the facts of this case, the Court concludes that because the Plaintiffs cannot satisfy the test for standing as to the governmental Defendants, the governmental Defendants must be dismissed from this case.[3]

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[3] Because the Plaintiffs cannot meet the causation prong and the redressability prong, the Court does not address the injury-in-fact prong of the test for standing.

1. The plaintiffs' claims of harm were not caused by the governmental defendants.

The causation prong of the standing test requires a showing of a "causal nexus between the agency action and the asserted injury . . . . " Humane Soc'y of the United States v. Babbitt, No. 93-5339 (D.C. Cir. Feb. 14, 1995) (quoting Freedom Republicans, Inc. v. Federal Election Comm'n, 13 F.3d 412, 418 (D.C. Cir. 1994), cert. denied, 115 S. Ct. 84 (1994). The Court observes that the Plaintiffs do not have standing because the Plaintiffs' purported injuries cannot be traced to the Government's actions.

Under the ESA, the definition of "take" includes "harass," and the regulation states that harassment includes "an act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or shelter." 50 C.F.R. § 17.3(b). The Plaintiffs contend that the FWS' issuance of a permit caused the harassment of the orangutans.

However, the Plaintiffs' reasoning does not establish causation. Precisely because the governmental Defendants' recent amendment of their regulations compelled the FWS to deny Berosini's request for renewal of its CBW registration, the Plaintiffs have no claim against the Government. In essence, this case concerns the Plaintiffs' allegations that Berosini is mistreating its animals. The Plaintiffs have not identified, and cannot identify, any authorization that the Government has given Berosini to abuse its animals, train them in a specific way, or use them in his show.

The Plaintiffs' attempt to attribute the alleged mistreatment

of the orangutans in Berosini's nightclub act to the Government is a mis-characterization of the true cause of any such inhumane handling of the animals; there are no allegations that any Government official struck the animals, only assertions that Bobby Berosini did so.

In light of the denial of Berosini's request for a renewal of its registration to possess the orangutans, the lack of any indication that the Government permitted Berosini to "take" them as defined by the statute, and because the Plaintiffs' alleged harm was not caused by the governmental Defendants, the Court must dismiss the Government as a Defendant to this action.

2. The plaintiffs' claims are not redressable by this Court.

Even if the Governmental Defendants' actions did cause the alleged harm to the Plaintiffs, the Plaintiffs still do not have standing because their claims are not redressable by the Court. The redressability prong of the standing test requires a showing that the alleged injury may be redressed by a favorable decision. Humane Soc'y of the United States v. Babbitt, No. 93-5339 (D.C. Cir. Feb. 14, 1995) (citing National Wildlife Fed'n v. Hodel, 839 F.2d 694, 704 (D.C. Cir. 1988).

The Plaintiffs seek redress in the form of declaratory and injunctive relief. Specifically, Plaintiffs request: (1) the entry of a declaratory judgment that the Government's previous issuance of a CBW registration to Berosini was in violation of the ESA and APA; (2) the entry of a declaratory judgment that the 1979 regulations were contrary to the ESA and the APA; and (3) an order

requiring the governmental Defendants to take possession of Berosini's orangutans. (Amended Compl. at 28-30). However, an analysis of the relief sought by the Plaintiffs reveals the lack of redressability of the Plaintiffs' injuries.

Granting the first two requests would not remedy the Plaintiffs' distress because the Defendants have promulgated new regulations that have resulted in a denial of Berosini's request for a permit renewal. Furthermore, the third request is also not redressable because the Court cannot order the governmental Defendants to take possession of the orangutans.

Under 16 U.S.C. § 1540, citizens are entitled to bring a civil suit. See 16 U.S.C. § 1540. However, that provision does not provide for the entry of an order directing the governmental Defendants to take possession of the orangutans. See 16 U.S.C. § 1540(e). Accordingly, because the Plaintiffs are not entitled to an order requiring the Government to take possession of the orangutans the Plaintiffs' third request is not redressable.

While this Court has no tolerance for the sort of mistreatment alleged in the Plaintiffs' various Complaints, the Plaintiffs' claims against the Government are not redressable by the Court. Therefore, the governmental Defendants must be dismissed from the case.

3. The plaintiffs cannot compel the governmental defendants to use their prosecutorial discretion.

Furthermore, the Plaintiffs are not entitled to keep the governmental Defendants in this case merely by requesting an order from this Court forcing Berosini to relinquish the animals. Under

16 U.S.C. § 1540(e), the ESA provides for forfeiture. However, forfeiture under the ESA is to be conducted by the Secretary. 16 U.S.C. § 1540(e). Therefore, the decision whether to seek forfeiture is left to the discretion of the agency.

In requesting an Order of forfeiture in this case, the Plaintiffs, at bottom, are requesting the Court to compel the Secretary to exercise his or her prosecutorial discretion. However, the law in this area is that a plaintiff may not compel an exercise of prosecutorial discretion. See Heckler v. Chaney, 470 U.S. 821, 832 (1985); e.g. International Union, United Auto., Aerospace & Agric. Implement Workers of America v. Brock, 783 F.2d 237, 244 (D.C. Cir. 1986). Therefore, since the Plaintiffs cannot compel the governmental Defendants to exercise their prosecutorial discretion, the Plaintiffs are not entitled to force them to remain in this suit.

Turning to the claims against Berosini, the Court observes that without deciding the applicability of the citizen-suit provision of the ESA, 16 U.S.C. § 1540(g), for the convenience of the parties and the witnesses and in the interests of justice, the Court will transfer this case pursuant to 28 U.S.C. § 1404(a). The Court further observes that it may well turn out that this case cannot be determined as a matter of law, and testimonial evidence may be required at the scene where Berosini houses the orangutans and has them perform in the nightclub act.

III. FOR THE CONVENIENCE OF THE PARTIES AND THE WITNESSES, IN THE INTERESTS OF JUSTICE, AND BECAUSE OF THE LANGUAGE OF THE STATUTE, THE COURT SHALL TRANSFER THE REMAINING CLAIMS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA AT LAS VEGAS.

Pursuant to 28 U.S.C. § 1404(a), the Defendant-Intervenor has moved to transfer any of the Plaintiffs' claims against it to the District of Nevada. The change of venue statute, 28 U.S.C. § 1404(a), provides that:

> For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

28 U.S.C. § 1401(a). For the convenience of the parties and the witnesses, in the interest of justice, and because of the language of the statue, this Court shall transfer the Plaintiffs' claims against the Defendant-Intervenor to the District of Nevada at Las Vegas.

First, the convenience of the parties militates in favor of transferring the remaining claims to the District of Nevada. With the governmental Defendants out of the suit, only the People for the Ethical Treatment of Animals have headquarters in Washington, D.C. In contrast, the Defendant-Intervenor is located in Las Vegas, Nevada, and Plaintiff Jacqueline Shumaker resides there as well. Ms. Shumaker's stated willingness to travel to Washington does not persuade the Court to overlook the site of her residency. Similarly, the Plaintiffs' argument that their counsel are located in the Washington, D.C. area is far from controlling; the statute does not mention anything about the convenience of counsel.

Second, the Court agrees with the Defendant-Intervenors that

the convenience to the witnesses would be greatly enhanced by relocating this action to Nevada. The alleged mis-treatment of the animals which is at the heart of this case took place in Nevada, and the bulk of the eyewitnesses of this mis-treatment are likely to be located there. In addition, the governmental inspectors who examined the orangutans are located in the western United States. Even the animal rights groups who are Plaintiffs in this action claim to have a significant numbers of witnesses in Nevada.

Third, the Court notes that, in the interest of justice, Nevada is the appropriate forum for the adjudication of the remainder of the claims. With the dismissal of the governmental Defendants, this is no longer a Washington case. The ease of access to proof supports such a transfer, in that Berosini conducts his business there; Berosini's records are there; the animals and their housing are there; and the alleged continuous and future injury will take place in and around the casinos in Nevada.

Finally, the citizen suit provision of the ESA states that a suit "under this subsection may be brought in the judicial district in which the violation occurs." 16 U.S.C. § 1540(g)(3)(A). The "plain language" of this section suggests that the suit must be transferred to Nevada if it is to heard at all. With the governmental Defendants dismissed from the lawsuit and with none of the harm to the orangutans occurring here, this District is not one in which the violation occurred within the language of the statute.

CONCLUSION

For all the reasons previously stated, the Court finds that the governmental Defendants must be dismissed from this suit, and the remaining claims shall be transferred to the United States District Court for the District of Nevada at Las Vegas. The Court shall enter an Order of even date herewith in accordance with this Opinion.

February 22, 1995
DATE

Charles R. Richey
CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE