CASE LAW SUMMARIES

JENNIFER BUNKER

Case Name	Citation	Summary of the Facts and Procedural History	Summary of the Holding
Allen v. Municipality of Anchorage	168 P.3d 890 (Alaska Ct. App. 2007)	After pleading no contest to two counts of cruelty to animals, Allen was ordered to serve a 30 day sentence and was placed on probation for 10 years. Her probation included a condition that prohibited her from possessing any animals other than her son's dog. It is this condition that Allen contested.	The Court of Appeals of Alaska affirmed. It held that the district court was justified in imposing the probation condition because (1) it is difficult to supervise possession of animals; (2) Allen has a history of cruelty to animals; (3) it is reasonably related to Allen's rehabilitation and to protecting the public; and (4) the probation condition was not unduly restrictive of her liberty. The dissent argued that under Alaska law, Allen does not have the right to appeal any condition of her sentence to the court of appeals under Alaska law because her sentence was less than 120 days.

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American Society For Prevention of Cruelty to Animals v. Ringling Brothers and Barnum and Bailey Circus	502 F. Supp. 2d 103 (D.D.C. 2007)	Animal rights organizations brought suit arguing that the defendant was harassing and harming elephants in violation of the taking provision of the Endangered Species Act (ESA). ESA delegates power to the Secretary of the Interior to issue permits to allow activities pertaining to captive-bred wildlife that are otherwise prohibited by ESA for scientific purposes or to enhance the propagation or survival of the affected species. It also includes a pre-Act exemption. Defendant filed a motion for summary judgment	The District Court for the District of Columbia granted defendant's motion for CBW permitted elephants. Because defendant provided evidence that his CBW permitted elephants were born in captivity in the United States, the court found no issue of contention. The court denied defendant's motion for elephants claimed to be pre-Act exempted because ESA is unambiguous and Congress only granted pre-Act exemptions for two subsections of ESA—neither of these subsections pertains to the defendant. The court also noted that the Fish and Wildlife Service's failure to amend its regulation to conform with an ESA amendment

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		based on its captive-bred wildlife (CBW) permits and the ESA pre-Act exemption.	does not result in an ambiguity in ESA.
California Veterinary Medical Association v. City of West Hollywood	152 Cal. App. 4th 536 (2007)	The Superior Court of Los Angeles County, California, declared invalid a West Hollywood ordinance that banned animal declawing unless necessary for a therapeutic purpose and enjoined its enforcement. The City of West Hollywood appealed.	The Court of Appeal of California held that the California Veterinary Medical Practice Act (VMPA) did not preclude an otherwise valid local regulation of the manner in which a business or profession was performed nor did it preempt the ordinance. It also held that the ordinance's purpose of preventing animal cruelty was within the city's police power and only had an incidental effect on the veterinary field. The court reversed and directed the trial court to grant the City of West Hollywood's motion for summary judgment.

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Cavel International, Inc. v. Madigan	500 F.3d 551 (7th Cir. 2007)	On May 24, 2007, the Illinois Horse Meat Act was amended to prohibit any person in the state to either slaughter a horse for human consumption or to import into or export from Illinois horse meat to be used for human consumption. Cavel owned the only horse slaughterhouse remaining in the United States at the time of this case. The meat was exported to countries such as Belgium, France, and Japan. Cavel claims that the Act violates the federal Meat Inspection Act and the commerce clause of the United States Constitution.	The Court of Appeals for the Seventh Circuit affirmed and dismissed the slaughterhouse's suit with prejudice. The court held that the Meat Inspection Act does not preempt the Illinois amendment because at the time the Act was passed, horse slaughtering for human consumption was legal in some states and the federal government had a legitimate interest in regulating the production of human food. The Act did not mandate that horse slaughtering must be allowed in the States. The court also held that the Illinois amendment does not unduly interfere with the foreign commerce of the United States and states have a legitimate interest in prolonging the lives of animals that their population favors (such as horses).

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		The district court declined to grant Cavel a preliminary injunction against the enforcement of the Illinois amendment because he failed to make a strong showing that he would prevail on the merits of the case.	Therefore, there is no violation of the commerce clause of the United States Constitution. The court also distinguished between rendering plants (in which owners of horses must pay the plant to take the horses and have them disposed of) and slaughterhouses, which pay for live horses.
Center For Biological Diversity v. Lohn	483 F.3d 984 (9th Cir. 2007)	The National Marine Fisheries Service made a proposed ruling that due to its Distinct Population Segment Policy, listing the Southern Resident killer whale as an endangered species under the Endangered Species Act was not warranted because it was not significant to its taxon. The Center for Biological Diversity	The Court of Appeals for the Ninth Circuit dismissed the case as moot, because the Southern Resident killer whale had been listed as an endangered species. Therefore, the court refused to rule on the lawfulness of the Service's Distinct Population Segment Policy.

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		challenged this determination. The court set aside the Service's "not warranted" finding because it did not use the best available scientific data and ordered the Service to reexamine their proposed decision. The Service next recommended that the Southern Resident killer whale be listed as a threatened species then later issued a final rule listing the Southern Resident killer whale as an endangered species.	
Earth Island Institute v. Hogarth	484 F.3d 1123 (9th Cir. 2007)	In 1992, the United States joined with various Latin and South American countries to	The Court of Appeals for the Ninth Circuit affirmed and agreed with the district court that: (1) the Secretary did

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		create the Panama Declaration, a legally-binding agreement in which the United States agreed to weaken the dolphin-safe labeling standard and allow such a label when the tuna was caught with purse-seine nets as long as no dolphins were observed to be killed or seriously injured. In 1997, pursuant to the Panama Declaration, Congress passed the International Dolphin Conservation Program Act, which required the Secretary of Commerce through the National Oceanic and Atomospheric Administration (NOAA) to conduct scientific studies to determine if purse-seine nets were killing or	not conduct studies required by 16 U.S.C. § 1414a(a)(3) to produce data from which scientists could draw population inferences; (2) the Secretary's "no adverse impact" determination ran so counter to the best available evidence that its finding was implausible; and (3) the Secretary's Final Finding was, to some degree, influenced by political concerns (relations with Mexican and South American governments) rather than scientific concerns. The Court of Appeals for the Ninth Circuit rejected the district court's order that the Secretary and NOAA not allow tuna caught in purse-seine nets to be labeled dolphin-safe. It also rejected the district court's requirement that any agent or employee of the agency who

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		seriously injuring dolphins. In 1999, the Secretary made an Initial Finding that using purse-seine nets had no adverse impact on dolphins. Environmental groups brought suit in federal district court. The court rejected the Initial Finding and held that the agency's determination was arbitrary and capricious in light of the inconclusive evidence used to make the determination. The Court of Appeals for the Ninth Circuit affirmed. The agency did more studies and concluded that purse-seine nets were not harming dolphins in a 2002 Final Finding. The district	knew of impermissible labeling to notify the appropriate enforcement agencies. The Court of Appeals for the Ninth Circuit did note that pursuant to its holding, and until a new Congressional directive, there will be no change in tuna labeling standards. Therefore, tuna caught by purse-seine nets will not be allowed to be labeled "dolphin-safe."

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		court vacated the Final Finding and declared that dolphin-safe labeling may not be used for tuna caught with purse-seine nets.	
Feldman v. Bomar	--- F.3d ----, 2008 WL 90235 (9th Cir.)	Plaintiffs brought suit in district court and argued that defendants had violated the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEAQ) by adopting the National Park Service's (NPS) program to restore the fox population on Santa Cruz Island by killing the island's feral pig population rather than sterilizing or transporting the	The Court of Appeals for the Ninth Circuit dismissed plaintiffs' appeal as moot because the feral pigs had already been killed. The court found no policy reasoning that would counter this decision, because the plaintiffs waited two years after the NPS plan was approved before bringing their case to court. Also, the plaintiffs' requests for a temporary restraining order and a preliminary injunction for both denied and affirmed on appeal. The court noted that the pigs created an environmental hazard that necessitated quick action.

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		feral pigs. The district court granted defendants' motion for summary judgment.	
Natural Resources Defense Council, Inc. v. Gutierrez	2008 WL 360852 (N.D. Cal.)	In a prior 2003 case, the court held that defendants had violated the Marine Mammal Protection Act (MMPA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA), and it issued a stipulated permanent injunction that set out specific terms under which the Navy was to operate Low Frequency Active (LFA) sonar. Congress subsequently amended MMPA to exempt military readiness activities from its small	The District Court for the Northern District of California ordered the parties to meet and confer on the precise terms of a preliminary injunction that reduces risk to marine animals by restricting the use of LFA sonar when not necessary for detection and tracking of submarines. In deciding that a preliminary injunction is appropriate, the court decided that plaintiffs have shown that they are likely to prevail on establishing violations of MMPA, NEPA, and ESA, and have shown probability of harassment and irreparable injury to marine life—many of which is endangered. The court also balanced the harms and weighed the

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		numbers and specified geographic region requirements. Later, the National Marine Fisheries Service (NMFS) issued a Final Rule that required the Navy to use a three-point monitoring scheme in order to take marine mammals incidental to testing, training, and military operations. Plaintiffs brought suit to limit the federal government's peacetime use of LFA sonar and alleged that such use as approved by NMFS violates MMPA, NEPA, and ESA because LFA sonar causes irreparable injury to marine mammals.	public interest. It held that there is a strong public interest in the survival and flourish of marine mammals, and there is also a compelling interest in protecting national security by ensuring military preparedness and protecting those serving in the military from hostile attacks. Therefore, the preliminary injunction must be carefully tailored to ensure that both of these interests are served.

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Seeton v. Pennsylvania Game Commission	937 A.2d 1028 (Pa. 2007)	The Tioga Boar Hunt Preserve sells canned boar hunts in which customers can pay a fee to shoot and kill an enclosed animal that may be drugged, tied to stakes, or lured to feeding stations. Seeton wrote to the Pennsylvania Game Commission asking for enforcement of the Pennsylvania Game and Wildlife Code against the Preserve. The Commission responded that the Code did not apply to the Preserve because the boars were kept within enclosures and therefore not "wild mammals" that are	The Supreme Court of Pennsylvania reversed and held that the commonwealth court erred in deferring to the Commission's interpretation of the Code because the Code defines "wild animals" as all mammals that are not designated domestic. The court found no evidence that wild boars are domestic animals. Therefore, because the Commission has jurisdiction over the matter, it remanded the case for further proceedings by the Commission. The dissent argued that Seeton does not have legal standing because she does not have a substantial, direct, and immediate interest in the matter. The dissent further argued the Seeton does

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		protected by the Code. However, neither the Code nor the Commission's regulations define "wild mammals." Seeton then filed a Complaint in Mandamus alleging that this was an improper conclusion and claiming that she had taxpayer standing. The commonwealth court rejected Seeton's challenge because both interpretations of "wild mammal" were reasonable and it must defer to the Commission.	not have taxpayer standing because she is seeking to force a governmental agency to spend money rather than to cease spending tax dollars. Finally, the dissent argued that the Commission's interpretation should be upheld because it is not plainly erroneous or inconsistent with the Code.
State v. West	741 N.W.2d 823 (Table) (Iowa Ct. App. 2007)	West raised deer on his property that he sold to petting zoos, game preserves, and breeders. He shot two dogs	The Court of Appeals of Iowa reversed West's convictions because Iowa Code provides an absolute defense when a dog is caught in the act of chasing any

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	2007 WL 2963990 (Iowa Ct. App. 2007)	owned by his neighbor when he witnessed them running along his fence and barking at the deer. The next day, he found his prize fawn buck dead from a broken neck that he claimed was due to the dogs' agitation. The trial court convicted West of two counts of animal abuse and the lesser included offense of criminal mischief in the fifth degree.	domestic animal. There was no dispute between the parties that the deer were "domestic animals." The court further held that the Iowa legislature determined that killing dogs under this circumstance was reasonable, and therefore the trial court should have acquitted West.
Toledo v. Tellings	871 N.E.2d 1152 (Ohio 2007)	Tellings owned three pit bulls and was charged for violating an ordinance that limits one pit bull per household and a state statute that mandates that pit bull owners have liability	The Supreme Court of Ohio reversed and held that the ordinance and state statute are constitutional because Ohio has a legitimate interest in protecting citizens against unsafe conditions caused by pit bulls, and the ordinance

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		insurance for damages, injury, or death that may be caused by the dog. The trial court found that the ordinance was unconstitutional but the state statute was constitutional. On appeal, the Ohio Court of Appeals held that the ordinance and the state statute were unconstitutional because it violated procedural due process, violated equal protection and substantive due process, and was void for vagueness.	and state statute are rationally related to this interest. The court found no violation of procedural due process, equal protection, substantive due process, nor did it find that they were void for vagueness. The concurrence noted disapproval for the identification of pit bulls as vicious per se in the state statute.

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VIVA! International Voice for Animals v. Adidas Promotional Retail Operations, Inc.	162 P.3d 569 (Cal. 2007)	VIVA! Filed suit against Adidas for importing and selling shoes made from kangaroo hide in violation of California Penal Code §6530. Adidas did not deny that it imports into and sells in California shoes made from kangaroo hide. The district court granted summary judgment in favor of Adidas because the Code was pre-empted by the Endangered Species Act (ESA), which allows the importation of kangaroo products in exchange for the Australian government's implementation	The Supreme Court of California reversed and held that Penal Code §6530 can coexist with the ESA because it prohibited what ESA does not prohibit and this poses no obstacle to current federal policy. The court noted that there is evident federal intention within the ESA that there be significant room for state regulation.

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		of kangaroo population management programs. Judgment was affirmed.	