BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE

THE HUMANE SOCIETY OF THE UNITED STATES,

PETITIONER

PETITION FOR ENFORCEMENT

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I. Introduction

The Humane Society of the United States (HSUS) hereby petitions[1] the Department of Justice to investigate and commence enforcement proceedings against the New Iberia Research Center ("New Iberia"), a biomedical research laboratory at the University of Louisiana at Lafayette, for ongoing and repeated violations of the False Claims Act (31 U.S.C. § 3729 *et seq.*), breach of contract, and unjust enrichment. As demonstrated in this petition, New Iberia is fraudulently obtaining millions of dollars in federal grant funds from the National Center for Research Resources (NCRR), a division of the National Institutes of Health (NIH), and also entering in bad faith into an annual contract with another division of the NIH, the National Institute of Allergy and Infectious Diseases (NIAID).

As explained below, to improve laboratory animal welfare and ensure judicious use of taxpayer funds, since 1997 NCRR has imposed a moratorium on breeding chimpanzees who are owned or financially supported by NCRR. This moratorium has been incorporated into NCRR's grant agreements with New Iberia as an express condition of the funding. However, documents obtained by the HSUS demonstrate that New Iberia has routinely bred federally-owned and otherwise NCRR-supported chimpanzees in direct violation of the moratorium and the grant conditions. Because it is likely that New Iberia is aware that it will not comply with the breeding moratorium when it enters into the grant agreements with NCRR, New Iberia is entering into the agreement under fraudulent pretenses and depriving the federal government of millions of taxpayer dollars. This amounts to a violation the False Claims Act, and the Department of Justice should pursue an enforcement action against New Iberia accordingly.

Further, New Iberia has repeatedly submitted grant applications and grant-related reports to NCRR over the last decade that falsely certify the laboratory's compliance with the breeding moratorium, and that make numerous material misrepresentations about, for example, the lack of infant chimpanzees in the laboratory's research colony. By making these false certifications and clear misrepresentations in order to continue to receive grant funds from NCRR, New Iberia is committing additional clear violations of the False Claims Act, which is specifically designed to eliminate this type of federal government contract fraud.

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[1] The First Amendment confers "the right of the people . . . to petition Government for a redress of grievances." U.S. CONST., amend. I. The Supreme Court has long held that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *See United States v. Cruikshank*, 92 U.S. 542, 552 (1875); *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967); *Thomas v. Collins*, 323 U.S. 516, 530 (1945).

Not only is New Iberia's fraud costing the government millions of dollars in grant funding, but New Iberia's breeding violations will cost the federal government millions of dollars in lifetime care for infant chimpanzees, and unjustly enriches the laboratory by creating valuable research animals for New Iberia's benefit.

Finally, as also discussed below, New Iberia is compounding its fraud by contracting in bad faith with another division of the National Institutes of Health, the National Institute of Allergy and Infectious Diseases (NIAID), and obtaining funds from NIAID for the specific purpose of breeding chimpanzees. New Iberia almost certainly knows that it cannot comply with this breeding contract without violating its simultaneous agreement with NCRR.[2]

For these reasons and as further discussed below, HSUS respectfully requests that the Department of Justice investigate and take appropriate enforcement action against New Iberia for these violations of federal law.

Description of Federal Parties

The National Institutes of Health (NIH) is an agency within the U.S. Department of Health and Human Services. NIH provides funding for grants, cooperative agreements, and contracts that are aimed at supporting scientific advances relevant to public health. NIH funding is disbursed through programs organized by twenty-seven different NIH institutes and centers, including the National Center for Research Resources (NCRR) and the National Institute of Allergy and Infectious Diseases (NIAID).

NCRR provides laboratory scientists and clinical researchers funding to try to understand, detect, treat, and prevent a wide range of diseases. The NCRR Chimpanzee Management Program (ChiMP) supports long-term housing and maintenance at NCRR-supported facilities for chimpanzees. NCRR aims to provide programmatic oversight of these facilities and to ensure that they comply with the Animal Welfare Act and policies concerning laboratory animal care and use. According to NIH, all chimpanzees owned by the federal government are owned by NCRR.

NIAID's mission is to conduct and support basic and applied research to better understand, treat, and ultimately prevent infectious, immunologic, and allergic

[2] The conflicting agreements with two different divisions of the NIH also highlights gross mismanagement within the agency, which, while not the subject of this Petition, must also be addressed. Thus, in addition to seeking enforcement action by the Department of Justice, HSUS has also petitioned the Department of Health and Human Services to request that the agency terminate both the NCRR grant agreement and the NIAID breeding contract.

diseases. NIAID does not own any chimpanzees currently in laboratories, but does fund breeding and research protocols using the species.

II. Background

Use of Chimpanzees in Research and at New Iberia

Approximately 1,000 chimpanzees currently reside in six U.S. laboratories,[3] including New Iberia, which holds about one-third of the chimpanzee colony. About fifty percent of the total colony is owned by the federal government (NCRR), and NIH also provides significant financial support for the non-federal chimpanzees, who are owned by private corporations and state universities such as the University of Louisiana at Lafayette. *See* Kathleen M. Conlee & Sarah T. Boysen, *Chimpanzees in Research: Past, Present, and Future*, in THE STATE OF THE ANIMALS III, 119-137 (2005). Most of the chimpanzees in laboratories are not being used in research protocols, either having been deemed ineligible for any further testing or warehoused for unidentified potential future use. Thus, a substantial portion of the NIH funding of these laboratories is used simply to house and maintain this large and expensive research colony (through, for example, the NCRR annual award of over $1,000,000 to New Iberia at issue in this Petition).

The use of chimpanzees in research raises a host of welfare concerns. Chimpanzees in research laboratories are routinely forced to undergo invasive techniques, including exposure to infectious diseases and tissue biopsies, for which they are anesthetized using a dart gun, a terrifying experience for this highly cognitive species. Chimpanzees in biomedical laboratories live in a constant state of stress and fear, and experts have diagnosed such individuals with persistent and unrelieved anxieties often resulting in self-mutilation and dissociative and attachment disorders identical to those commonly seen in human soldiers and victims of abuse. *See* G.A. Bradshaw et al., *Building an Inner Sanctuary: Complex PTSD in Chimpanzees*, J. OF TRAUMA AND DISSOCIATION vol. 9, no. 1, 9-34 (2008); G.A. Bradshaw et al., *Developmental Context Effects on Bicultural Post-Trauma Self*

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[3] The United States is the only developed country that still uses chimpanzees (*Pan troglodytes*) in biomedical research laboratories. Many other countries (including the European Union, United Kingdom, Sweden, Netherlands, Austria, Germany, Italy, Norway, Belgium, Spain, Australia, New Zealand, and Japan) have recently prohibited or severely restricted the use of this highly intelligent species, our closest living relative, in invasive research that has not significantly benefitted human medicine and that has produced a welfare crisis for a species that is teetering on the edge of extinction in the wild. *See* Kathleen M. Conlee, *Chimpanzees in research and testing worldwide: Overview, oversight and applicable laws*, JAPANESE SOC'Y FOR ALTERNATIVES TO ANIMAL EXPERIMENTS, AATEX 14, 111-118 (2008); Andrew Knight, *The beginning of the end for chimpanzee experiments?*, PHILOSOPHY, ETHICS, AND HUMANITIES IN MEDICINE vol. 3, no. 16 (2008).

Repair in Chimpanzees, DEVELOPMENTAL PSYCHOLOGY vol. 45, no. 5, 1376-1388 (2009).

Indeed, there is no doubt that inhumane treatment of the chimpanzee research colony routinely occurs at New Iberia. A nine-month undercover investigation conducted by HSUS revealed over one hundred violations of the Animal Welfare Act (7 U.S.C. § 2131 *et seq.*; 9 C.F.R. Part 2, 3) affecting chimpanzees, including distress caused by lack of enrichment and socialization, distress caused by maternal deprivation, and injury caused by sedation methods, inadequate veterinary care, and unsanitary and overcrowded conditions. *See* http://www.humanesociety.org/assets/pdfs/animals_laboratories/case_report-hsus_undercover_investigation_new_iberia_research_center_march_2009.pdf Pursuant to a March 2009 HSUS complaint, the Department of Agriculture conducted an inspection and investigation that found multiple severe violations of the Animal Welfare Act affecting chimpanzees and other nonhuman primates. New Iberia agreed to settle the claims and paid an $18,000 fine in May 2010. (Appendix I).

NCRR Moratorium on Chimpanzee Breeding

Prior to 1977, when the international community added chimpanzees to Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 U.S.T. 1087, March 3, 1973), recognizing that the species is at risk of extinction because of trafficking, the U.S. frequently imported wild chimpanzees, paying poachers to capture individuals in Africa. (Many of these wild-caught chimpanzees continue to be held in biomedical laboratories today.) In 1986, NIH established a chimpanzee breeding program, pursuant to which laboratories rapidly bred the species with little regard to genetic integrity, or the species' naturally long period of infant development, in anticipation of using the species to find a cure for AIDS. *See* NATIONAL RESEARCH COUNCIL, CHIMPANZEES IN RESEARCH, at 7 (1997); M. Stephens, *Chimpanzees in laboratories: Distribution and types of research*, ALTERNATIVES TO LABORATORY ANIMALS vol. 23, 579-583 (1995).

However, a few years later, scientists discovered that chimpanzees are not a good model for AIDS research. *See* Jarrod Bailey, *An Assessment of the Role of Chimpanzees in AIDS Vaccine Research*, ALTERNATIVES TO LABORATORY ANIMALS vol. 36, 381-428 (2008). Even though chimpanzees and humans share nearly all of their DNA, their genomes are widely divergent when it comes to immunology; because of these differences, infectious diseases often have dissimilar impacts on

each species..[4] As a result of this frivolous breeding and scientific reality, NIH recognized that there was a "surplus" of chimpanzees in U.S. laboratories. NATIONAL RESEARCH COUNCIL, CHIMPANZEES IN RESEARCH, at 49 (1997).[5] Therefore, NCRR issued a moratorium on breeding chimpanzees who are owned or financially supported by NCRR; this moratorium has been extended indefinitely and is in effect to this day. NATIONAL CENTER FOR RESEARCH RESOURCES, CHIMPANZEE MANAGEMENT PLAN WORKING GROUP REPORT, May 2007, *available at* http://www.ncrr.nih.gov/comparative_medicine/chimpanzee_management_program/.

NCRR Grant to New Iberia to Maintain a Chimpanzee Research Colony

NCRR has long supported the chimpanzees at New Iberia, including more than 100 federally-owned chimpanzees, and awards the laboratory approximately $1,000,000 annually to maintain this biomedical research colony (Project Number 5U42RR015087-10). This annual grant is intended to cover staff salaries, fringe benefits, travel costs, consultant services, supplies, and utilities, *i.e.*, NCRR funding is not for particular research protocols, but instead provides general support and allows New Iberia to operate its laboratory. *See* Appendix III.

Since at least 2000, NCRR has included the following express condition in the annual grant award: "The National Academy of Sciences Report on 'Chimpanzees in Research: Strategies for their Ethical Care, Management, and Use' (July, 1997) recommended a 5 year moratorium for chimpanzee breeding activities. This is consistent with the NCRR recommendation made in 1995 for the CBRP [chimpanzee breeding and research program] colonies, and extended five years in May 2000 by the ChiMP working group. *Therefore, as a condition of this award, a*

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[4] For further discussion of the historic uses of chimpanzees in biomedical research, the impacts such studies have had on human medicine, and a discussion of alternatives, *see* Jarrod Bailey, *An Assessment of the Use of Chimpanzees in Hepatitis C Research Past, Present and Future: 1. Validity of the Chimpanzee Model*, ALTERNATIVES TO LABORATORY ANIMALS vol. 38, 387-418 (2010); Jarrod Bailey et al., *Chimpanzee Research: An Examination of Its Contribution to Biomedical Knowledge and Efficacy in Combating Human Diseases* (2007); The Chimpanzee Sequencing and Analysis Consortium, Initial sequence of the chimpanzee genome and comparison with the human genome, NATURE vol. 437, 69-87 (September 1, 2005); Jarrod Bailey, *An Examination of Chimpanzee Use in Human Cancer Research*, ALTERNATIVES TO LABORATORY ANIMALS vol. 37, 399-416 (2009); Andrew Knight, *The Poor Contribution of Chimpanzee Experiments to Biomedical Progress*, J. OF APPLIED ANIMAL WELFARE SCI. vol. 10, no. 4, 281–308 (2007).

[5] Note that pursuant to a recent Congressional request (Appendix II), the National Academy of Sciences is preparing to conduct another in-depth analysis of the present and future need for chimpanzee use in biomedical research; thus, New Iberia's prolific chimpanzee breeding is particularly concerning at this time when the very necessity of maintaining a chimpanzee research colony is being reevaluated. *See* http://www.iom.edu/Activities/Research/Chimpanzees.aspx?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+IomTopicBiomedicalAndHealthResearch+%28IOM+Topic%3A+Biomedical+and+Health+Research%29&utm_content=Google+Feedfetcher

moratorium on breeding activities within the NCRR-supported CBRP colonies will remain in effect for the duration of the Project Period . . ." (Appendix III (emphasis added). As noted above, NCRR extended the breeding moratorium indefinitely in 2007, and the breeding moratorium continues to be a condition of the NCRR grant through the August 2011 project period.[6]

There is no question that New Iberia is bound by the breeding moratorium. The Notice of Award states that "acceptance of this award including the 'Terms and Conditions' is acknowledged by the grantee when funds are drawn down or otherwise obtained from the grant payment system." (Appendix III) Moreover, New Iberia repeatedly certifies that it is in compliance with the NCRR terms and conditions when it submits grant progress reports and applications for continuation grants, as discussed further below. Therefore, it is a direct violation of the NCRR grant agreement for New Iberia to breed chimpanzees who are owned or otherwise supported by NCRR.

NIAID Contract for Disease-Free Infants

Shockingly, despite NCRR's policy and grant conditions prohibiting breeding, New Iberia entered into a contract with NIAID specifically for the purpose of breeding chimpanzees (Contract Number N01-A0-22754 "Leasing of Chimpanzees for the Conduct of Research" Appendix IV). As explained further below, New Iberia could not have entered into this breeding contract in good faith, knowing that its existing agreement with NCRR specifically prohibits breeding of NCRR-supported chimpanzees. Nor could it repeatedly enter into the NCRR grant agreement, other than under fraudulent pretenses, knowing that it has an obligation to NIAID to breed chimpanzees.

Pursuant to the NIAID contract, which began in 2002 and includes annual renewal options through 2012, NIAID has paid New Iberia over $6,000,000 for New Iberia to breed chimpanzees and provide four to twelve "disease-free infant chimpanzees (*Pan troglodytes*) per year." Appendix IV, at Article B.1, F.1. New Iberia is responsible for providing housing and adequate care for the chimpanzees, and

[6] Note that the NCRR breeding moratorium policy prohibits breeding of chimpanzees who are "owned or supported by NCRR" while the NCRR grant term at issue provides that there is a "moratorium on breeding activities within the NCRR-supported CBRP colonies." Because NCRR provides general maintenance funding to New Iberia, the grant term should be interpreted broadly to prohibit any chimpanzee breeding; however, at the very least this grant term clearly prohibits breeding of federally-owned chimpanzees. This petition will focus on breeding of federally-owned chimpanzees, which represents the majority of breeding that has occurred at the laboratory in the last decade. However, additional breeding of non-federally owned chimpanzees (i.e. NCRR-supported chimpanzees) also runs afoul of the NCRR grant agreement.

NIAID provides the laboratory with an endowment for such purposes. Appendix IV, at Article B.4.

When the infants produced pursuant to the contract are between 18-24 months of age, NIAID determines whether they are acceptable "for the purposes of the study of hepatitis virus, parainfluenza viruses 1-3, or Norwalk viral infections" and whether the infant chimpanzees have been "conditioned to confined housing" (*i.e.*, separated from their mothers and weaned, despite the fact that female chimpanzees normally nurse their infants for about four years, a crucial period of development for the species). After leasing the infant chimpanzees to other biomedical laboratories for invasive studies, NIAID returns the 4-6 year old juvenile chimpanzees to New Iberia, after which time New Iberia is "free to seek additional support for the chimpanzees." Appendix IV, Statement of Work.

Thus, through NIAID, the federal government directly subsidizes breeding of laboratory chimpanzees and provides funding for care and housing of the resulting infants, despite the fact that NCRR has a specific moratorium against such breeding. And, although the NIH has claimed in correspondence with The HSUS that breeding to fulfill the NIAID contract does not involve NCRR-owned chimpanzees, as discussed below, the evidence plainly demonstrates otherwise. Indeed, New Iberia routinely breeds NCRR-owned chimpanzees in contravention of its NCRR grant in order to meet the requirements of the NIAID contract.

Evidence of Breeding Federally-Owned Chimpanzees at New Iberia

Through a series of requests under the Louisiana Public Records Act (La. Rev. Stat. § 44:1 *et seq*.), HSUS received information about the ownership status of chimpanzees identified as the dam and sire of chimpanzees born at New Iberia since 2000 (Appendix V). New Iberia records show that 123 chimpanzees with an NCRR-owned dam and/or sire were born at the laboratory in the last decade (about 80% of the total births at the laboratory during this time); of these 123 progeny, 116 are currently owned by New Iberia, but seven are owned by the federal government (NCRR). *See* Table 1, below.

Cross-checking the infant identification numbers provided by New Iberia in monthly Technical Progress Reports required by the NIAID contract, HSUS discovered that New Iberia is clearly breeding federally-owned chimpanzees in order to fulfill its obligations under the NIAID contract, but in direct violation of its grant agreement with NCRR. (Appendix IV). In fact, of the 123 progeny from federally-owned chimpanzees, 50 were bred by New Iberia in performance of the NIAID contract (*See* Table 1, below). Indeed, the vast majority of the chimpanzees

bred to fulfill the NIAID contract have either a federal dam or sire, or both, which suggests that New Iberia is either incapable of performing the NIAID contract without violating the NCRR agreement, or that New Iberia consciously chooses to violate the NCRR agreement to meet the NIAID contract. Regardless of whether New Iberia is breeding federally-owned chimpanzees through willful blindness or intent, entering into the NIAID contract while simultaneously certifying compliance with NCRR's breeding moratorium is an act of fraud with respect to both agreements.

Further, since the NCRR grant agreement is essential to the operation of New Iberia, there is an argument that all breeding (*i.e.*, including that of non-federally owned chimpanzees), violates the NCRR agreement, which clearly states that there is a moratorium on breeding activities within the NCRR-supported chimpanzee colony.

Table 1 – New Iberia breeding of federally-owned chimpanzees since 2000

	Infant Year of Birth	Infant ID	Infant Ownership	Dam ID	Dam Ownership	Sire ID	Sire Ownership	Infant on NIAID Contract Progress Report Lists?
1	2000	A0A003	University	88A014	Federal	88A012	University	yes
2	2000	A0A004	University	X110	Federal	A254	Federal	
3	2000	A0A005	University	88A018	Federal	88A012	University	yes
4	2000	A0A006	University	86A002	Federal	X114	Federal	yes
5	2000	A0A007	University	89A005	Federal	88A012	University	yes
6	2001	A1A001	University	91A023	Federal	91A007	Federal	
7	2001	A1A002	**Federal**	88A013	Federal	88A012	University	
8	2001	A1A003	University	91A024	University	91A007	Federal	
9	2001	A1A004	University	A207	Federal	A148	Federal	
10	2001	A1A005	University	88A014	Federal	88A012	University	yes
11	2001	A1A006	University	A242G	Federal	A185F	University	
12	2001	A1A007	University	A055	Federal	unknown		yes
13	2001	A1A008	University	91A002	University	91A007	Federal	yes
14	2001	A1A009	University	X110	Federal	A254	Federal	
15	2001	A1A010	**Federal**	92A004	University	91A007	Federal	yes
16	2001	A1A011	University	A182	Federal	A202	Federal	
17	2001	A1A012	University	92A015	Federal	unknown		yes
18	2001	A1A013	University	88A018	Federal	88A012	University	yes
19	2001	A1A014	University	A332	Federal	A245	Federal	
20	2002	A2A001	University	88A005	Federal	A185F	University	
21	2002	A2A003	University	93A010	Federal	93A004	Federal	
22	2002	A2A004	University	89A015	University	91A008	Federal	
23	2002	A2A005	University	A223	Federal	A259	Federal	
24	2002	A2A006	University	88A013	Federal	88A012	University	yes
25	2002	A2A007	University	91A002	University	93A004	Federal	yes
26	2002	A2A008	University	91A024	University	91A016	Federal	yes
27	2002	A2A009	University	93A007	Federal	A254	Federal	yes
28	2002	A2A010	University	X109	Federal	A254	Federal	
29	2002	A2A012	University	A255	Federal	A254	Federal	
30	2002	A2A013	University	A328A	Federal	A148	Federal	
31	2002	A2A014	University	93A012	Federal	93A004	Federal	yes
32	2002	A2A015	University	90A013	Federal	89A021	University	
33	2002	A2A016	University	92A008	Federal	93A006	Federal	
34	2002	A2A017	University	A332	Federal	A245	Federal	
35	2002	A2A018	University	A185	Federal	A245	Federal	

	Infant Year of Birth	Infant ID	Infant Ownership	Dam ID	Dam Ownership	Sire ID	Sire Ownership	Infant on NIAID Contract Progress Report Lists?
36	2003	A3A001	University	A182	Federal	A202	Federal	
37	2003	A3A002	University	X110	Federal	A254	Federal	yes
38	2003	A3A004	University	A237E	Federal	A254	Federal	
39	2003	A3A005	University	91A005	University	93A009	Federal	yes
40	2003	A3A006	University	93A008	Federal	93A004	Federal	yes
41	2003	A3A007	University	88A013	Federal	88A012	University	yes
42	2003	A3A008	University	88A014	Federal	88A012	University	yes
43	2003	A3A009	**Federal**	91A002	University	93A009	Federal	yes
44	2003	A3A010	University	91A024	University	93A009	Federal	
45	2003	A3A012	University	93A007	Federal	A254	Federal	
46	2003	A3A013	University	92A012	Federal	89A021	University	yes
47	2003	A3A018	University	A247C	Federal	A254	Federal	yes
48	2003	A3A019	University	A247C	Federal	A254	Federal	yes
49	2003	A3A020	University	92A015	Federal	93A013	Federal	yes
50	2003	A3A021	University	88A018	Federal	88A012	University	yes
51	2003	A3A022	University	95A004	University	95A001	Federal	
52	2003	A3A023	University	95A003	University	95A001	Federal	yes
53	2003	A3A024	University	A242G	Federal	A185F	University	
54	2004	A4A001	University	X113	Federal	A236D	University	
55	2004	A4A002	University	A320	Federal	93A003	Federal	
56	2004	A4A003	University	92A011	Federal	93A013	Federal	yes
57	2004	A4A004	University	A163E	Federal	A236D	University	
58	2004	A4A005	University	88A016	Federal	A236D	University	
59	2004	A4A006	University	88A003	Federal	A236D	University	
60	2004	A4A008	University	89A005	Federal	88A012	University	
61	2004	A4A009	University	88A013	Federal	88A012	University	
62	2004	A4A010	University	88A014	Federal	88A012	University	yes
63	2004	A4A011	University	A192	Federal	A333	Federal	
64	2004	A4A012	University	96A005	Federal	95A006	Federal	
65	2004	A4A013	University	A336C	Federal	A185F	University	
66	2004	A4A014	University	93A012	Federal	93A013	Federal	
67	2004	A4A015	University	96A002	Federal	93A001	Federal	yes
68	2004	A4A016	University	95A015	Federal	unknown		
69	2005	A5A001	University	X112	Federal	A148	Federal	
70	2005	A5A002	University	92A012	Federal	89A021	University	yes

	Infant Year of Birth	Infant ID	Infant Ownership	Dam ID	Dam Ownership	Sire ID	Sire Ownership	Infant on NIAID Contract Progress Report Lists?
71	2005	A5A003	University	93A002	Federal	93A013	Federal	
72	2005	A5A006	University	92A011	Federal	93A006	Federal	yes
73	2005	A5A007	University	A212	Federal	unknown		
74	2005	A5A008	University	92A015	Federal	93A006	Federal	yes
75	2005	A5A009	University	91A023	Federal	93A009	Federal	yes
76	2005	A5A010	University	96A003	University	95A006	Federal	yes
77	2005	A5A011	University	A237E	Federal	A254	Federal	
78	2005	A5A012	University	A223	Federal	unknown		
79	2005	A5A013	University	88A013	Federal	88A012	University	
80	2005	A5A014	University	96A014	Federal	unknown		
81	2005	A5A015	University	95A007	University	95A006	Federal	
82	2005	A5A016	University	X038	Federal	A202	Federal	
83	2005	A5A017	University	93A012	Federal	93A013	Federal	
84	2006	A6A001	University	96A004	University	96A012	Federal	
85	2006	A6A002	University	96A018	University	A148	Federal	yes
86	2006	A6A003	University	92A015	Federal	93A013	Federal	yes
87	2006	A6A004	University	93A002	Federal	93A013	Federal	yes
88	2006	A6A005	University	96A002	Federal	93A001	Federal	
89	2006	A6A007	University	92A011	Federal	93A006	Federal	yes
90	2006	A6A008	University	X112	Federal	A148	Federal	
91	2006	A6A009	University	96A017	Federal	98A003	University	
92	2006	A6A010	University	92A008	Federal	C0557	University	
93	2006	A6A011	University	88A014	Federal	88A012	University	
94	2006	A6A012	University	88A019	Federal	92A007	Federal	
95	2006	A6A013	University	93A010	Federal	C0557	University	
96	2006	A6A014	University	A237	Federal	96A012	Federal	yes
97	2006	A6A015	University	88A020	Federal	88A012	University	
98	2006	A6A016	University	87A002	Federal	89A021	University	
99	2007	A7A001	University	90A013	Federal	C0557	University	
100	2007	A7A002	University	96A003	University	95A006	Federal	
101	2007	A7A003	University	A237E	Federal	A254	Federal	
102	2007	A7A005	University	92A004	Federal	93A006	Federal	
103	2007	A7A007	University	91A023	Federal	93A004	Federal	
104	2007	A7A008	University	88A019	Federal	unknown		
105	2007	A7A009	University	92A012	Federal	89A021	University	yes
106	2007	A7A010	University	96A014	Federal	unknown		
107	2007	A7A011	University	93A012	Federal	unknown		yes

	Infant Year of Birth	Infant ID	Infant Ownership	Dam ID	Dam Ownership	Sire ID	Sire Ownership	Infant on NIAID Contract Progress Report Lists?
108	2007	A7A012	University	92A015	Federal	unknown		
109	2008	A8A004	University	92A006	Federal	C0557	University	
110	2008	A8A007	University	92A012	Federal	unknown		yes
111	2008	A8A008	University	92A005	Federal	unknown		yes
112	2008	A8A009	**Federal**	93A002	Federal	93A006	Federal	yes
113	2008	A9A001	University	92A014	Federal	unknown		
114	2008	A9A003	University	X038	Federal	A202	Federal	
115	2009	A9A004	University	93A012	Federal	unknown		yes
116	2009	A9A005	University	98A005	University	94A003	Federal	
117	2009	A9A007	University	89A005	Federal	88A012	University	
118	2009	A9A008	University	91A023	Federal	unknown		
119	2009	A9A009	**Federal**	92A006	Federal	unknown		yes
120	2009	A9A010	**Federal**	92A005	Federal	unknown		yes
121	2009	A9A011	**Federal**	92A005	Federal	unknown		yes
122	2009	A9A013	University	92A012	Federal	unknown		
123	2009	A9A014	University	93A002	Federal	unknown		yes

III. Discussion

As demonstrated above, New Iberia has repeatedly breached its agreement with NCRR by producing more than one hundred infant chimpanzees over the last decade from federal dam or sires. In addition to violating the False Claims Act and defrauding the government of millions of dollars in grant funds, as well as saddling the federal government with the costs of caring for the infant chimpanzees, by illegally breeding chimpanzees New Iberia is also unjustly enriched, as it stands to profit from leasing infant chimpanzees to researchers.

Although New Iberia claims that it implants female chimpanzees with birth-control devices, vasectomizes male chimpanzees, or houses chimpanzees in same-sex groups in order to eliminate production, the laboratory clearly does not implement these measures, as such precautions would have prevented almost all of the 123 births. The sheer number of violations of the NCRR moratorium (roughly one infant per month over the last decade) demonstrates that New Iberia is knowingly breeding federally-owned chimpanzees.

1. False Claims Act

Since at least 2000, New Iberia has not been in compliance with the breeding moratorium required by the NCRR agreement and as certified in New Iberia's application materials. Therefore, each year of NCRR funding for the last decade resulted from New Iberia's false claims, and, thus, this fraud has cost the federal government damages in excess of $10,000,000. Because the False Claims Act allows the federal government to collect treble damages, enforcement against New Iberia for violations could lead to a $30,000,000 recovery.

The False Claims Act prohibits "any person"[7] from "knowingly present[ing] . . . to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1). A "claim" includes "any request or demand, whether under a contract or otherwise, for money or property" (*id.* at § 3729(b)(2)); the term should be construed broadly to reach "all fraudulent attempts to cause the Government to pay out sums of money." *U.S. v. Neifert-White Co.*, 390 U.S. 228, 233 (1968). It is well established that information included in grant applications and reports can constitute false claims. *See, e.g., Cook County, Ill. v. U.S. ex rel. Chandler*, 538 U.S. 119 (2003); *U.S. ex rel. Berge v. Board of Trustees of the University of Alabama*, 104 F.3d 1453 (4th Cir. 1997); *U.S. v. President and Fellows of Harvard College*, 323 F.Supp.2d 151 (D.Mass. 2004).

NCRR is responsible for maintaining the health and well-being of the chimpanzees it owns and supports, and is clearly concerned about unnecessary breeding of such chimpanzees, as indicated by NCRR conditioning its grant on compliance with the breeding moratorium. Therefore, NCRR has a direct interest in information about the laboratory's breeding activities, and such information would clearly affect its decision-making in issuing grants. Unfortunately, by continually applying for and reporting on the NCRR grant award, New Iberia falsely certifies its compliance with the terms of the grant agreement even though it knows that it will not comply with the moratorium. Further, New Iberia's grant reports and applications contain material misrepresentations about the chimpanzee colony and other directly

[7] While the Supreme Court held in *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000) that a *qui tam* relator cannot bring a False Claims Act action against a state or state agency, the United States is free to bring such suits. *Id.* at Ginsburg, J., concurring ("I read the Court's decision to leave open the question whether the word 'person' encompasses States when the United States itself sues under the False Claims Act."). Further, even when a laboratory is wholly owned by a state university, as New Iberia is, False Claims Act liability may still be found. *See U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702 (10th Cir. 2006).

relevant federal support. (Appendix III). Such assertions are also false claims that induce the federal government to continue providing support.

There is no doubt that these claims were "knowingly" made – the principal investigator for the NCRR grant is Thomas J. Rowell, a veterinary medical doctor who is the Director of New Iberia and is personally involved with primate research at the laboratory. Dr. Rowell signs the annual Application for Continuation Grant submitted to NCRR (along with the President of the University of Louisiana at Lafayette), certifying that "the statements herein are true, complete and accurate to the best of my knowledge."

For example, in a grant progress report submitted by New Iberia to NCRR in July 2008, New Iberia claims it "will *continue* to . . . utilize contraceptive implants to *eliminate production* as un-implanted females come into reproductive age and perform vasectomies on males when ideal housing arrangements (separating males and females) are not possible." (Emphasis added). That report also claims that the "current population demographics for the *entire colony* for the current [2007-2008] reporting period" includes zero chimpanzees under the age of ten. (Emphasis added).

Moreover, each year New Iberia submits an Application for Continuation Grant, requesting additional funds from NCRR and including a progress report summary. Included in that application is list of "other support" that the New Iberia researchers, including Thomas J. Rowell and Dana Hasselschwert, receive from the federal government – notably absent in the 2004 grant application is mention of the contract that New Iberia has with NIAID to breed chimpanzees, even though the principal investigators for that contract are also Rowell and Hasselschwert.

2. Breach of Contract

NCRR's grant to New Iberia is a cooperative agreement between the federal government and the laboratory that has the binding force of a contract. *See, e.g., Total Med. Mgmt., Inc. v. U.S.*, 104 F.3d 1314 (Fed. Cir. 1997). Both parties receive a benefit and a burden as a result of the agreement – NCRR pays New Iberia to house and care for federally-owned chimpanzees and operate its biomedical laboratory. In exchange for federal funding, New Iberia is obligated to comply with NCRR's breeding moratorium.

As discussed in depth above, New Iberia routinely flouts this contractual obligation by actively breeding federally-owned chimpanzees. The fact that 123 chimpanzees have been born in the last decade from federally-owned dams and/or sires indicates

that this breach is not simply the result of negligent birth control measures, but rather represents a knowing and willful violation of the moratorium.

As a result of New Iberia's repeated breach of the NCRR grant agreement, the federal government is now listed as the owner of seven infant chimpanzees, for which the government is legally obligated to provide lifetime care. This could cost the government approximately $7,000,000 over the next several decades.[8] If New Iberia complied with the terms of the grant agreement and refrained from breeding federally-owned chimpanzees, the federal government would not be obligated to provide this support, and could focus its limited resources on the hundreds of other federally-owned chimpanzees languishing in biomedical laboratories.

3. Unjust Enrichment

In addition to the injury suffered by the federal government as a result of New Iberia's breach of its agreement with NCRR, the laboratory is unjustly enriched by the unlawful breeding. Unjust enrichment is defined as "the retention of a benefit conferred by another, without offering compensation, in circumstances where compensation is reasonably expected; a benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense." Black's Law Dictionary (Bryan A. Garner ed., 2001).

Pursuant to New Iberia's contract with NIAID, once the infant chimpanzees are returned to New Iberia, the laboratory is free to use those chimpanzees, including leasing them out to other biomedical laboratories and researchers for financial gain. While seven of the infants resulting from breeding of federally-owned chimpanzees are now owned by the federal government, the remaining 116 are now owned by the university, and are potentially valuable research commodities that would not exist but for the unlawful breeding. For example, in a recent news article, the director of the Southwest National Primate Research Center, another biomedical laboratory

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[8] In 2000, Congress passed the Chimpanzee Health Improvement, Maintenance, and Protection Act (CHIMP Act, Pub. L. No. 106-551), the purpose of which is "to provide a permanent lifetime sanctuary for chimpanzees who have been designated as no longer useful or needed in scientific research." 146 Cong. Rec. S11654 (2000). Inherent in this law is the recognition that the federal government is morally obligated to provide lifetime care to chimpanzees used for biomedical research, and that euthanasia is not an appropriate solution for managing the overpopulation of the research colony. *See* 42 U.S.C. § 287a-3a(d)(2)(I); *Standards of Care for Chimpanzees Held in the Federally Supported Chimpanzee Sanctuary System*, 73 Fed. Reg. 60410 (October 10, 2008). Therefore, in addition to providing financial assistance to laboratories to maintain a research colony and support research protocols, the federal government is required to pay for lifetime care of all federally-owned chimpanzees. Current estimates of lifetime care for this long-lived species can be upwards of $1,000,000 per chimpanzee, depending on the facility, with laboratory care often more expensive than sanctuary care.

that uses chimpanzees, acknowledged that laboratories can charge researchers $70,000 to use a chimpanzee for a single experiment. Tim Korte, *Chimps' Future Prompts Debate Over NM Primate Lab*, Associated Press (September 22, 2010), *available at* http://www.google.com/hostednews/ap/article/ALeqM5jANRf1Sa-O021Y5g6DMOyAT8rLKAD9ICR9PG0. To remedy this unjust enrichment, New Iberia should be required to fund the immediate retirement to sanctuary of each of these 116 progeny (and their mothers, if the infant is under five years of age).[9]

Further, New Iberia is unjustly enriched by unlawfully producing infants and then transferring title of those infants to the federal government. The seven federally-owned infants are already supported by NCRR funding, but the NIAID contract allows the lab to seek additional, potentially duplicative, funding, a further misuse of federal contract dollars.

Conclusion

As demonstrated in this petition, New Iberia routinely and unlawfully breeds federally-owned chimpanzees in direct violation of the terms of a federal grant;[10] therefore, HSUS respectfully requests that the Department of Justice investigate and take appropriate enforcement action against New Iberia for violation of the

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[9] The CHIMP Act directs the Secretary of Health and Human Services to "provide for the establishment and operation . . . of a system to provide for the lifetime care of chimpanzees who have been used, or were bred or purchased for use, in research conducted or supported by the National Institutes of Health, the Food and Drug Administration, or other agencies of the Federal Government . . ." 42 U.S.C. § 287a-3a(a). The "system" referred to in this directive is specifically defined as a "sanctuary system" that is operated by a non-profit entity. *Id.* at § 287a-3a(a), (e), (f). Non-federally owned chimpanzees "can be accepted into the system if the owner transfers to the sanctuary title to the chimpanzee" and "the Secretary may authorize the imposition of a fee for accepting such chimpanzee into the system . . ." *Id.* at § 287a-3a(c), (d)(4). Thus, Congress clearly intended that research chimpanzees have the opportunity to live their last years in a sanctuary setting, as opposed to being kept in laboratories until they are deceased. *See* 153 Cong. Rec. E2670-02 ("The system envisioned by the CHIMP Act is now a reality in Keithville, Louisiana. It is called Chimp Haven."). In 2007, Congress amended the CHIMP Act to prohibit chimpanzees from being recalled to laboratories after being released to sanctuary, further clarifying Congress' intent that chimpanzees not languish in cages for decades on end. Pub. L. No. 110-170. Chimpanzees retired from New Iberia should be sent to the federal sanctuary system, or to another member of the North American Primate Sanctuary Alliance.

[10] Congress recently raised concern about the chimpanzee breeding at New Iberia – the Senate Committee on Appropriations found that "disturbing questions have been raised about whether this [NCRR] moratorium is being following at the New Iberia Research Center" and so "[t]he Committee asks the NCRR to investigate this matter promptly, take all steps necessary to ensure that the NIRC is complying with the moratorium, and update the Committee on the results." S. Rep. No. 111-243, at 116 (2010) (Senate Committee Report on the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Bill, 2011 (S. 3686)).

False Claims Act, breach of contract, and unjust enrichment. HSUS is available to provide assistance to the Department as the investigation proceeds.