UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 19-0004
	)	
DANIEL J. MOULTON, an individual, also known as DAN MOULTON, doing business as MOULTON CHINCHILLA RANCH,	)	
	)	RESPONSE TO REQUEST FOR A CLOSED HEARING
Respondent	)	

Complainant, the Administrator of the Animal and Plant Health Inspection Service (APHIS), hereby files his response to the Respondent's requests for a closed hearing, dated July 9 and 15, 2021, respectively, in the above-captioned Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq*.)(AWA or Act), and the regulations thereunder (9 C.F.R. § 1.1 *et seq*.)(Regulations) case, which asks the court to close the hearing to the media and the public.

The Respondent, Daniel J. Moulton, is alleged to have willfully violated the AWA and the Regulations thereunder from 2013 to 2017. The Respondent allegedly failed to provide APHIS with access for inspection and/or to have a responsible adult available to accompany APHIS official during inspection; failed to provide adequate veterinary care to animals; failed to establish and maintain programs of adequate veterinary care that included appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and/or daily observation of animals; failed to comply with minimum standards for structural strength for facilities for animals; and failed to comply with minimum standards for humane handling, care, treatment, housing, and transportation of animals. The allegations are serious and numerous and must be treated as such.

It is necessary to ensure all safeguards and guarantees the administrative legal system provides—including the public's right to access the hearing.

Respondent's request is untimely, as the Court has already granted access to the public to attend the hearing. The Respondent failed to make this request before the decision was made, and it should be denied. Moreover APHIS opposes the Respondent's request, because under the First Amendment, the public has a right to attend the hearing. As the Respondent notes, *Richmond Newspapers, Inc. v. Virginia* discusses public access to criminal cases in order to protect the public against the government's "arbitrary interference with access to important information."[1] In *Richmond Newspapers* and the following caselaw, a two-step test to determine whether there is a First Amendment right of public access has been articulated. This test has also been applied to civil and administrative hearings.[2]

The court in *New York C.L. Union v. New York City Transit Auth.* articulated the test and its applicability to an administrative hearing, stating: "to determine whether a particular adjudicatory forum should be presumptively open to the public, courts ask whether the forum has historically been open and whether openness enables it proper functioning."[3]

Analyzing the test, the first step in the two-part test is the experience test.[4] The court must consider whether historically the process or place at issue has been open to the public and press. The second step is the logic test is to look at "whether public access plays a significant positive role in the functioning of the particular process in question."[5] It has been found that

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[1] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 583 (1980).
[2] *See Westmoreland v. Columbia Broad. Sys., Inc.,* 752 F.2d 16, 22 (2d Cir.1984) (finding that the First Amendment guarantees a qualified right of access to civil trials and their related proceedings and records); *see also N. Jersey Media Grp., Inc. v. Ashcroft*, 308 F.3d 198, 200 (3d Cir. 2002).
[3] *New York C.L. Union v. New York City Transit Auth.* 684 F.3d 286 at 291 (2d Cir. 2012).
[4] *N. Jersey Media Grp.*, 308 F.3d at 206.
[5] *Id.*

administrative law hearings can, like criminal hearings, presume access unless a legitimate reason for closure has been demonstrated.[6] Administrative hearings governed by the Rules of Practice applicable to this proceeding are open and have historically been open to the public.[7]

To find that the First Amendment right of access does not apply and that there is an exception to the general presumption of access, there must be a strong justification in denying access.[8] "Closed proceedings, although not absolutely precluded, must be rare and only for cause shown."[9] The standard applied is that there must be "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered."[10] Higher values and narrow tailoring have been found where physical safety and privacy interests of individuals (including witnesses, third parties, and those investigated) necessitate closure.[11] While there are cases in which closure is appropriate, it must be found necessary under the circumstances—and in this case it has not been shown to be necessary. The Respondent's request is deficient in articulating specific examples that the court can use to determine whether a closure order is appropriate.

The circumstances at hand simply do not approach the level of necessity to require limiting First Amendment Rights by enforcing a closure.[12] The Respondent has failed to identify

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[6] *New York C.L. Union v. New York City Transit Auth.*, 684 F.3d 286 at 303 (2d Cir. 2012).
[7] The Rules of Practice contemplate access to the public and state that "the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time, place, and manner for hearing as soon as feasible after the motion is filed, *with due regard for the public interest. . ."* 7 CFR 1.141(b) (emphasis added).
[8] *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty.*, 457 U.S. 596 at 606 (1982).
[9] *Press-Enter. Co. v. Superior Ct. of California, Riverside Cty.*, 464 U.S. 501 at 509 (1984).
[10] *Press–Enterprise I*, 464 U.S. at 510.
[11] *New York C.L. Union v. New York City Transit Auth.*, 684 F.3d 286 at 290 (2d Cir. 2012).
[12] *New York C.L. Union*, 684 F.3d at 303.

sufficient higher values such that the hearing should be closed. There are no privacy rights at stake and no higher interests have been articulated. The Respondent's claim that "Peta and Animal Folks are aligned with each other" is vague and is not supported by facts. The Respondent's claims in his request for a closed hearing: that Peta has gone after his customers with false information; that there have been false news stories published about him; that a veterinarian was needlessly turned over to the Minnesota Board of Veterinarians by Peta; that Peta has harassed his wife, family, and veterinarians; that Peta has sent false letters and photographs; and that institutions have been criticized for purchasing chinchillas from the Respondent, are unsupported. Even if these claims may be true, they still fail to meet the standard of higher values necessary to close a hearing. There is no reason to believe anyone's physical safety or privacy rights of parties involved in the hearing will be put at risk due to a remote open hearing in the form of a teleconference.

All of the Respondent's claims focus on acts by PETA—a party that has not requested to join the hearing. The Respondent has not made supported claims regarding actions of other groups that may be permitted to attend the hearing or the public at large. Respondent's argument regarding PETA is not relevant and does not demonstrate a sufficient reason to close the hearing to the rest of the public.

It is presumed that the public will have access to a hearing in order to prevent secret proceedings which may lead to the oppression of the accused, unless the threshold is reached at which the hearing must be closed—Respondent has failed to reach the threshold. Contrary to what the Respondent suggests, in order to obtain a fair hearing for APHIS and the Respondent, it

is necessary that the public be permitted access to the hearing.

Respectfully submitted,

DATE: July 16, 2021

__/s/_____
RUPA CHILUKURI
JOHN RODRIGUEZ
Attorneys for Complainant

CERTIFICATE OF SERVICE

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

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the RESPONSE TO REQUEST FOR A CLOSED HEARING has been furnished and was served upon the following parties on July 16, 2021 by the following:

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Respectfully Submitted,

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