February 21, 2016

Metro Nashville Animal Seizure Authority
Memorandum Opinion.pdf

Daniel A. Horwitz

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Dear Ms. Martin,

Thank you for contacting me in reference to your concerns about animals being abused and maintained in dangerous conditions throughout Nashville and Davidson County.

You retained me to evaluate the Department of Law's December 30, 2015 memorandum opinion concerning law enforcement's authority to take immediate action necessary to rescue dogs and other animals that are in imminent danger. In its opinion, the Department of Law broadly concluded that: (1) the Metropolitan Public Health Department "is only authorized to impound a dog prior to a hearing when the dog poses an immediate threat to public safety," and (2) "under the United States Constitution and the Tennessee Constitution, MPH may, prior to a hearing, seize and impound as vicious a dog [sic] held on private property only when the dog poses an immediate threat to the public." For the reasons detailed in the attached memorandum, however, these conclusions are inaccurate and woefully incomplete.

Notwithstanding the Department of Law's suggestion to the contrary, robust and overwhelming legal precedent supports the conclusion that law enforcement may take immediate action necessary to save an animal that is in imminent danger without either a warrant or a pre-deprivation hearing. Of note, this is also precisely what occurs in Knoxville and other cities in Tennessee, where such rescues are already commonplace.

As noted by the Department of Law, there is little doubt that the MPH is lawfully permitted to impound an animal that poses an immediate threat to public safety without first obtaining a warrant or providing the animal's owner with a pre-deprivation hearing. However, it is equally clear that law enforcement is permitted to take such action under circumstances when there is an immediate threat to an animal as well. Simply stated, the exigent circumstances exception to the warrant requirement applies under circumstances when law enforcement reasonably believes that an animal is in imminent danger. Similarly, as long as an owner is afforded adequate post-deprivation process, failure to provide a hearing before impounding an animal generally does not violate due process under circumstances when immediate law enforcement action is necessary to eliminate an emergency situation. Accordingly, if an animal is facing imminent danger in the form of abuse, mistreatment, exposure to extreme weather, or for some other reason, then there is no legal restriction – constitutional or otherwise – that prevents law enforcement from taking immediate action necessary to come to the animal's aid.

A memorandum explaining the basis for this conclusion is attached to this letter for your review.

Sincerely,

Daniel A. Horwitz, Esq.
1. Introduction

Over the past few months, several highly disturbing reports of animal cruelty have surfaced in the Nashville and Middle Tennessee area. One report references allegations that a Gallatin man tied and dragged two Great Pyrenees puppies behind his truck, resulting in their paw pads and toenails being ripped off and causing one of the puppies to incur “severe lacerations and abrasions on his whole body.”\(^1\) Another report references a woman who was arrested for animal cruelty after “one of her dogs was found dead and frozen, another clinging to life, in the north Nashville area.”\(^2\) A third report references a Nashville woman whose dog, Billy, was so severely malnourished when he was brought to the veterinarian that he had to be euthanized immediately:


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Rapidly decreasing temperatures and increased attention to instances of animal cruelty and mistreatment like those detailed above have given rise to heightened concerns about animal welfare in Nashville and Davidson County. Further, many local residents who have witnessed animals being abused, mistreated or left in frigid conditions have sought a more robust response from law enforcement. In response to the third incident referenced above, for example, one local resident decried that “the vet called the police and asked for assistance to report cruelty and asked for an officer to respond. And no one came.”\textsuperscript{4} The resident characterized such inaction as “straight up cold indifference [from] the Metro Nashville Police Department [which] did nothing, even when a vet begged for their help.”\textsuperscript{5} She also lamented that: “This is not my first run in with their lack of concern.”\textsuperscript{6}

Partly in response to such concerns raised by local residents, the Metropolitan Public Health Department and Metro Animal Care and Control recently sought a legal opinion from the Metropolitan Department of Law concerning law enforcement’s authority to impound animals without either a warrant or a pre-impoundment hearing. Encouragingly, the Department of Law’s memorandum opinion makes several references to the robust legal authority indicating that pre-hearing, warrantless animal seizures are constitutionally permissible under circumstances when immediate law enforcement action is necessary to save the life of an animal. This authority notwithstanding, however, the opinion nonetheless broadly concludes that:

1. The Metropolitan Public Health Department “is only authorized to impound a dog prior to a hearing when the dog poses an immediate threat to public safety.” And:

\textsuperscript{4} Id.
\textsuperscript{5} Id.
\textsuperscript{6} Id.
2. “Under the United States Constitution and the Tennessee Constitution, MPHD may, prior to a hearing, seize and impound as vicious a dog [sic] held on private property only when the dog poses an immediate threat to the public.”

For the reasons provided below, however, both of these conclusions are wrong. Instead, if an animal is facing imminent danger in the form of abuse, mistreatment, exposure to extreme weather, or for some other reason, then there is no legal restriction – constitutional or otherwise – that prevents law enforcement from taking immediate action necessary to come to the animal’s aid.

II. The Exigent Circumstances Exception to the Warrant Requirement

The Fourth Amendment to the United States Constitution provides that:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Similarly, Article I, § 7 of the Tennessee Constitution states:

“That the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an officer may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offences are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.”

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7 See Metropolitan Department of Law Dec. 30, 2015 Memorandum Opinion, pp. 1, 8 (emphases added). Unfortunately, it is not clear from the opinion whether these conclusions were intended to be confined to situations involving vicious dogs alone, or whether they were meant to apply more broadly.

8 U.S. Const., amend IV.

The Tennessee Supreme Court has held on multiple occasions that “[A]rticle I, section 7 is identical in intent and purpose with the Fourth Amendment.”\(^\text{10}\) Under both, “[a] search or a seizure without a warrant is presumptively unreasonable and invalid.”\(^\text{11}\) However, “because the ultimate touchstone of the Fourth Amendment is ‘reasonableness,’”\(^\text{12}\) it has long been understood that the warrant requirement is subject “to a few specifically established and well-delineated exceptions.”\(^\text{13}\)

Among the well-delineated exceptions to the warrant requirement is the “exigent circumstances” exception,\(^\text{14}\) which is sometimes called the “emergency” exception.\(^\text{15}\) Within this exception, the U.S. Supreme Court has identified “several exigencies” that justify a warrantless entry into a home.\(^\text{16}\) Among these exigencies, the Supreme Court has held without equivocation that “law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant

\(^{10}\) State v. Downey, 945 S.W.2d 102, 106 (Tenn.1997) (quoting Sneed v. State, 423 S.W.2d 857, 860 (Tenn. 1968)). Of note, however, the Tennessee Supreme Court has also held that Article I, § 7 of the Tennessee Constitution “affords defendants greater protection than the Fourth Amendment provides,” particularly in the context of property rights. See Daniel A. Horwitz, Twelve Angry Hours: Improving Domestic Violence Holds in Tennessee Without Risk of Violating the Constitution, 10 Tenn. J.L. & Pol’y 215, 244-45 (2015) (collecting cases). Given Tennessee’s uniquely strong public policy in favor of protecting animals, however, animal seizures are an unlikely candidate for more expansive protection under the Tennessee Constitution. See, e.g., Tenn. Code Ann. § 40-39-101, et seq. (enacting nation’s first animal abuse registry); Tenn. Code Ann. § 29-34-209 (enacting nation’s first “Good Samaritan” law providing civil immunity to civilians who use force to rescue an animal from a vehicle); Tenn. Code Ann. § 39-14-212(d) & Tenn. Code Ann. § 39-14-217(j) (defining aggravated cruelty to animals and livestock as felony offenses).


\(^{13}\) Katz v. United States, 389 U.S. 347, 357 (1967).

\(^{14}\) Kentucky v. King, 563 U.S. 452, 460 (2011) (“One well-recognized exception applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.”) (internal quotations and alterations omitted).

\(^{15}\) See, e.g., United States v. Ponder, 240 F. App’x 17, 20 (6th Cir. 2007) (“Defendant-Appellant argues that the warrantless search of the home was not justified because not one of the exigent emergency exceptions is applicable . . . .”); Edward G. Mascolo, The Emergency Exception to the Warrant Requirement Under the Fourth Amendment, 22 Buff. L. Rev 419 (1973).

\(^{16}\) King, 563 U.S. at 460.
from imminent injury.”17 Consequently, it is beyond dispute that “[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.”18

III. The Exigent Circumstances Exception Applies to Animals

Given the well-recognized existence of the “exigent circumstances” exception to the warrant requirement, the primary question presented is whether this exception extends to situations involving imminent danger to animals. Fortunately, robust and extensive judicial authority provides a clear answer to this question. It does.

Over the past three decades, whether the exigent circumstances exception to the warrant requirement applies to emergency situations involving animal welfare has been addressed by several dozen federal and state courts across the United States.19 Notably, included among the courts that have opined on the issue is the United States Court of Appeals for the Sixth Circuit,20 which has appellate jurisdiction over all federal District Courts in Tennessee. In every instance, reviewing courts have concluded that the exigent circumstances exception to the warrant requirement does indeed apply to situations involving imminent danger to animals.

17 Brigham City, 547 U.S. at 403. Notably, “the need ‘to prevent the imminent destruction of evidence’ has long been recognized as a sufficient justification for a warrantless search” as well. King, 563 U.S. at 460 (quoting Brigham City at 403). Whether this exception, and whether any other potential argument – such as a claim that a mistreated animal has been legally abandoned in a given circumstance – provides a separate basis for a warrantless animal seizure is beyond the scope of this opinion. See, e.g., State v. Bauer, 127 Wis. 2d 401, 407 (Ct. App. 1985) (“Warrantless seizure of property whose owner has abandoned it or requested another to destroy or get rid of it does not violate the fourth amendment.”); Suss v. Am. Soc. for Prevention of Cruelty to Animals, 823 F. Supp. 181, 186 (S.D.N.Y. 1993) (“A seizure for purposes of the Fourth Amendment (applicable here through the Fourteenth Amendment) takes place when some meaningful interference with an individual’s possessory interest in property occurs. This would not apply to a marginal trespass such as entry into a private yard to rescue an animal in a tree.”) (internal quotation and citation omitted).

18 Brigham City, 547 U.S. at 403 (quoting Mincey v. Arizona, 437 U.S. 385, 392 (1978)).

19 See infra, pp. 7-11.

20 See United Pet Supply, Inc. v. City of Chattanooga, Tenn., 768 F.3d 464, 490 (6th Cir. 2014).
The first published decision addressing whether the exigent circumstances exception to the warrant requirement applies to animals appears to have been released by the District of Columbia Court of Appeals in 1984.\textsuperscript{21} The case arose in response to citizen complaints involving visible animal suffering in a pet store.\textsuperscript{22} According to the court, “when the temperature reached the level of at least 103 degrees Fahrenheit, witnesses observed several suffering animals in the [store’s] closed unventilated display window.”\textsuperscript{23} In particular, two animals – a puppy and a rabbit – “appeared to be suffering directly from the extreme heat,” and both were observed “sprawled out on the bottom of their small cages in a semi-dazed condition, panting and covered with heavy salivation.”\textsuperscript{24} The puppy was promptly rescued from the display case, and the rabbit was seized without a warrant and provided medical treatment. Following an investigation, the store’s owner was prosecuted for animal cruelty. He subsequently filed a motion to suppress the evidence obtained as a result of the rabbit’s seizure, which he claimed was unlawful.

Rejecting the defendant’s motion to suppress, the trial court ruled that “exigent circumstances justified the warrantless entry and seizure in question.”\textsuperscript{25} On appeal, the D.C. Court of Appeals affirmed the trial court’s ruling. Specifically, the court concluded that:

“Although the exigency in the present case involved the protection of animal life rather than human life, we believe that the public interest in the preservation of life in general and in the prevention of cruelty to animals in particular requires some flexibility in the application of the general rule that a valid warrant is a prerequisite for a search.

\textsuperscript{21} Tuck v. United States, 477 A.2d 1115 (D.C. 1984),
\textsuperscript{22} Id. at 1117.
\textsuperscript{23} Id.
\textsuperscript{24} Id.
\textsuperscript{25} Id. at 1118.
We are convinced that there was a compelling societal need for immediate entry and for seizure, protection and treatment of the rabbit. Bearing in mind the oft-repeated thought that what may appear to be small in principal may loom large in principle, we conclude that the exigencies of the situation militated against delay and were of a sufficient proportion to justify proceeding without a warrant.”  

The Court of Appeals of Wisconsin quickly followed suit the following year. Wisconsin’s foray into the matter arose out of a state humane officer’s warrantless search of a barn and her subsequent seizure of several emaciated horses that were found “near death” due to having been maintained in “awful” conditions. The search at issue was precipitated by the humane officer finding a dead horse on the defendants’ driveway and determining that the primary cause of the horse’s death was starvation. After the remaining horses were rescued and their owners prosecuted for animal cruelty, the owners sought to suppress the evidence obtained during the search of their barn on the basis that the humane officer had not first obtained a search warrant.

The defendant’s claim that the humane officer’s warrantless search and seizure had been unlawful was squarely rejected based on the exigent circumstances exception to the warrant requirement. According to the court: “a compelling need was demonstrated in this case. This need was to stop the ongoing suffering of the animals. The exigent standard test applies to situations involving mistreatment of animals.”

Since then, a multitude of courts have reached precisely the same conclusion. See, e.g., Dicesare v. Stout, 992 F.2d 1222 (10th Cir. 1993) (“The exigent standard test applies

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26 Id. at 1120 (emphasis added) (internal quotations and citations omitted).
27 Bauer, 127 Wis. 2d 401.
28 Id. at 404.
29 Id.
30 Id. at 409 (emphasis added).
to situations involving mistreatment of animals.”) (quotation omitted); Siebert v. Severino, 256 F.3d 648, 657 (7th Cir. 2001) (“Exigent circumstances may justify a warrantless seizure of animals.”); Pennington v. Penner, 207 F. Supp. 2d 1225, 1241 (D. Kan. 2002) (same); Morgan v. State, 289 Ga. App. 209, 212 (2008) (“[Exigent] circumstances exist where a police officer reasonably believes that an animal on the property is in need of immediate aid due to injury or mistreatment.”); Pine v. State, 889 S.W.2d 625, 632 (Tex. App. 1994) (“Because the need to preserve the life of the colt justified Deputy Brumfield’s warrantless seizure of the animal, we hold that the Fourth Amendment was not violated.”); Com. v. Duncan, 467 Mass. 746, 752 (2014) (“In light of the public policy in favor of minimizing animal suffering in a wide variety of contexts, permitting warrantless searches to protect nonhuman animal life fits coherently within the existing emergency aid exception to the warrant requirement, intended to facilitate official response to an immediate need for assistance for the protection of life or property.”) (quotation omitted); State v. Stone, 321 Mont. 489, 498 (2004) (“We conclude that Deputy Gleich’s warrantless search was justified given the unrefuted imminent threat to the lives and well-being of the animals on Stone’s property. We agree that, under the circumstances here, the prevention of needless suffering and death of the animals on Stone’s property created exigent circumstances justifying the warrantless search for and rescue of the animals.”); People v. Chung, 185 Cal. App. 4th 247, 732 (2010) (“Exigent circumstances properly may be found when an officer reasonably believes immediate warrantless entry into a residence is required to aid a live animal in distress. Where an officer reasonably believes an animal on the property is in immediate need of aid due to injury or mistreatment, the exigent circumstances exception to the warrant requirement of the Fourth Amendment may be invoked to permit warrantless entry to aid the
animal.”); State v. Grillo, 162 Wis. 2d 632 (Ct. App. 1991) (“[I]t is clear that the emergency doctrine applies to animals.”); Brinkley v. Cty. of Flagler, 769 So. 2d 468, 472 (Fla. Dist. Ct. App. 2000) (“The distress of the animals was apparent to the deputy and the investigator, and any reasonable person would also have concluded that an urgent and immediate need for protective action was warranted. Accordingly, we find that entry onto the Brinkleys’ property under these circumstances was constitutionally permitted.”); Walker v. Wegener, 2012 WL 4359365, at *15-16 (D. Colo. Aug. 30, 2012) (“[E]xigent circumstances supported [law enforcement’s] warrantless seizure of the two dogs . . . . Under these circumstances, the only reasonable inference that can be drawn . . . is that [the officers] were presented with reasonable grounds to believe, mistakenly or not, that there was an immediate need to protect the lives of the two dogs seized.”); People v. Thornton, 286 Ill. App. 3d 624, 630 (1997) (“the circumstances known to the officers at the time of their entry into defendant’s apartment was sufficient for the officers to reasonably believe that an emergency was at hand which required their immediate assistance. The tenant in the apartment above defendant's apartment told the officers that a dog had been yelping in defendant's apartment continuously for two or three days.”). Cf. Suss, 823 F. Supp. at 184-87 (“Legal authority supports reasonable governmental action to protect non-human species from untoward effects of cruel or ill-advised human activity. . . . Real immediacy may allow emergency entries to preserve animal life that is threatened because of cruelty[.]”); Davis v. State, 907 N.E.2d 1043, 1050 (Ind. Ct. App. 2009) (“circumstances of animal cruelty may create exigent circumstances to permit a warrantless search of the curtilage.”); State v. Berry, 92 S.W.3d
823, 830 (Mo. Ct. App. 2003) (“[E]xigent circumstances in cases involving animal abuse constitute an exception to the search warrant requirement . . . .”).31

Most importantly, however, the U.S. Court of Appeals for the Sixth Circuit – which has appellate jurisdiction over every federal District Court in Tennessee – has reached this conclusion as well. Specifically, in the 2014 case United Pet Supply, Inc. v. City of Chattanooga, the Sixth Circuit evaluated the legality of a warrantless animal seizure that was conducted under circumstances in which it was “undisputed that the animals were dehydrated and in high heat and without water, [and where] one hamster had a large cut that had not received medical care.”32 Under these circumstances, a unanimous Sixth Circuit panel held that law enforcement’s “warrantless animal seizure did not violate the Fourth Amendment” because “the conditions of the store created an imminent and ongoing danger to the health of the animals.”33 “Given the high heat and squalid conditions in which the animals were found,” the Sixth Circuit explained, “a reasonable official could believe that the exigent circumstances justified the warrantless seizure of the animals.”34

In light of this conclusive and overwhelming judicial authority, there is no serious doubt about whether the exigent circumstances exception to the warrant requirement applies in situations involving imminent danger to animals. It does. As such, the Department of Law’s restrictive conclusion that the Metropolitan Public Health

31 The Department of Law’s opinion appears to recognize this reality, rendering its ultimate conclusion all the more difficult to understand. See Metropolitan Department of Law Dec. 30, 2015 Memorandum Opinion, p. 4 (“It is likely that a Tennessee court would find that a search or seizure based on an objectively reasonable belief that an animal was in imminent danger of death is justified by the exigent circumstances exception to the search warrant requirement of the Fourth Amendment, at least if carried out in a manner unlikely to cause substantial harm to people or other property.”).
33 Id.
34 Id.
Department “is only authorized to impound a dog prior to a hearing when the dog poses an immediate threat to public safety” is inaccurately restrictive, and it fails accordingly.

With this robust precedent in mind, if Metro law enforcement officials witness or receive credible reports of imminent danger to animals, animal cruelty, or animal abuse, then neither the Fourth Amendment to the United States Constitution nor Article I, § 7 of the Tennessee Constitution prevents such officials from taking immediate action without first having to obtain a warrant. Notably, immediate law enforcement intervention under such circumstances is already common practice in Knoxville, and it is contemplated by Nashville’s own municipal animal cruelty ordinance as well. See Metro Code § 8.12.030 (“Any [authorized] police officer or any employee of the metropolitan government . . . may lawfully interfere to prevent the perpetration of any act of cruelty as defined herein upon any animal in his presence.”). Consequently, when an animal is facing imminent danger, there is no constitutional restriction that prevents law enforcement from taking immediate action necessary to come to the animal’s aid.

IV. Pre-Hearing Impoundment May Satisfy Due Process

In addition to being permitted to take immediate action necessary to save the life

35 See Metropolitan Department of Law Dec. 30, 2015 Memorandum Opinion, p. 8 (emphasis added).
36 As noted, such conduct may also rise to the level of a felony offense under Tennessee law. See Tenn. Code Ann. § 39-14-212(d) (“Aggravated cruelty to animals is a Class E felony.”); Tenn. Code Ann. § 39-14-217(j) (“Aggravated cruelty to a livestock animal is a Class E felony.”); Tenn. Code Ann. § 39-14-202(a) (“A person commits an offense who intentionally or knowingly: (1) Tortures, maims or grossly overworks an animal; (2) Fails unreasonably to provide necessary food, water, care or shelter for an animal in the person’s custody[.]”).
37 See Knoxville, Tennessee Code of Ordinances, Sec. 5-23(c)-(d) (“The administrator or any animal control or police officer shall rescue any animal which is being confined in violation of subsection (a)(4) of this section . . . . Whenever any animal is kept within any building or on any premises without food, water, shelter, adequate space and ventilation, proper sanitation or proper care and attention, it shall be the duty of the administrator or any animal control or police officer to enter such building or premises to take possession of and remove such animal.”), Sec. 5-6(b) (“Notwithstanding any other provision of this chapter, the administrator or any animal control or police officer shall have the authority to enter upon any property to enforce the provisions of this chapter if a violation of such law is being committed in the presence of the administrator or officer.”).
of an animal without first having to obtain a warrant, a second, related question is whether law enforcement may impound an animal prior to a hearing without violating due process.\textsuperscript{38} As noted, on this point, the Department of Law concluded that: “Under the United States Constitution and the Tennessee Constitution, MPHD may, prior to a hearing, seize and impound as vicious a dog [sic] held on private property only when the dog poses an immediate threat to the public.”\textsuperscript{39}

It is not clear whether or not the Department of Law’s December 30, 2015 memorandum opinion reflects its belief that the sole circumstance in which a pre-hearing animal seizure may take place is in the event that a vicious dog poses an immediate threat to the public, or whether its opinion was instead intended to be isolated to situations involving “vicious dogs” alone. Even in the context of vicious dogs, however, this conclusion is still unduly restrictive.

“In defining the contours of the Due Process clause, the U.S. Supreme Court has instructed that ‘[t]he fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”\textsuperscript{40} However, the Supreme Court “has also explained that the requirements of due process are ‘flexible and call[[] for such procedural protections as the particular situation demands.’”\textsuperscript{41} Although pre-deprivation hearings are strongly favored in light of their potential to prevent an erroneous deprivation of liberty or property, as a general matter, post-deprivation

\textsuperscript{38} “[T]he [Tennessee Supreme] Court has stated in previous decisions that Article I, Section 8 and Article XI, Section 8 of the Tennessee Constitution and the Fourteenth Amendment to the Constitution of the United States confer essentially the same protection upon the individuals subject to those provisions.”

\textit{Tennessee Small Sch. Sys. v. McWherter}, 851 S.W.2d 139, 152 (Tenn. 1993). Accordingly, this opinion does not differentiate between the two provisions.

\textsuperscript{39} See Metropolitan Department of Law Dec. 30, 2015 Memorandum Opinion, p. 8 (emphasis added).

\textsuperscript{40} Horwitz, supra n. 10, at 249 (quoting \textit{Mathews v. Eldridge}, 424 U.S. 319, 333 (1976)).

\textsuperscript{41} Id. (quoting \textit{Mathews}, 424 U.S. at 334).
hearings are not forbidden so long as an individual “is not denied a meaningful opportunity to be heard.”

Pursuant to the Supreme Court’s seminal Due Process decision in Mathews v. Eldridge,

“The specific dictates of due process generally require [] consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and [third], the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.”

Applying these three factors in the context of pre-hearing animal impoundment, controlling Sixth Circuit precedent holds that “failure to provide a pre-deprivation hearing does not violate due process in situations where a government official reasonably believe[s] that immediate action [i]s necessary to eliminate an emergency situation and the government provide[s] adequate post-deprivation process.” Thus, as a general matter, if an animal seizure: (1) is conducted by trained law enforcement officials; (2) is based on reliable information; and (3) is necessary to prevent imminent danger to animals, then a pre-impoundment hearing is unnecessary, and a prompt post-impoundment hearing will suffice.

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43 Mathews, 424 U.S. at 335.
44 United Pet Supply, 768 F.3d at 486.
45 See id. at 486-87 (applying Mathews factors to animal seizure, and concluding that a pre-hearing deprivation did not violate due process); Lowery v. Faires, 57 F.Supp.2d 483, 492–94 (E.D.Tenn.1998), aff’d, 181 F.3d 102 (6th Cir.1999) (holding that failure to provide a pre-deprivation hearing did not violate due process where taking the time to provide a pre-deprivation hearing would have endangered both animals and the public); Reams v. Irvin, 561 F.3d 1258, 1264 (11th Cir.2009) (holding that “the risk of an erroneous deprivation . . . was relatively low” when trained officials concluded that farm animals were in unsafe conditions and removed the animals without a pre-deprivation hearing).
V. Conclusion

For the reasons provided above, neither the United States Constitution nor the Tennessee Constitution prohibits warrantless searches or seizures under circumstances when immediate intervention is necessary to save the life of an animal. Similarly, as a general matter, due process is not offended by impounding an animal prior to a hearing so long impoundment is necessary to respond to an emergency situation and so long as the animal’s owner is promptly afforded a post-impoundment hearing. Accordingly, Metro law enforcement officials are well within their authority to take immediate action to rescue dogs and other animals that are being abused, mistreated or maintained in dangerous conditions throughout Nashville and Davidson County whenever such immediate intervention is necessary.

Respectfully submitted,

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