



Feb. 1, 2024

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*Submitted via email*

**Re: Support for Animal Partisan Petition (#23-07)**

Dear Deputy Under Secretary Eskin:

The Association of Prosecuting Attorneys (APA) appreciates this opportunity to comment in support of the petition submitted by Animal Partisan on September 2, 2023 (#23-07).<sup>1</sup>

APA is a private non-profit organization whose mission is to support and enhance the effectiveness of prosecutors in their efforts to create safer communities. We are a national organization supporting all prosecutors, including both appointed and elected prosecutors, as well as their deputies and assistants. APA recognizes that animals are sentient beings with the undeniable capacity to suffer pain and that animal cruelty is a violent crime that should be effectively prosecuted.<sup>2</sup>

We have reviewed Animal Partisan's petition and are in favor of its request for a public notice that would clarify the jurisdiction of state and local law enforcement and prosecution officials to enforce state animal cruelty laws when animals are mistreated in federally inspected slaughter establishments. We also appreciate and support the petition's call for greater cooperation between U.S. Department of Agriculture (USDA) personnel and state government officials in the enforcement of those laws.

As the petition notes, it appears there is confusion among some state and local officials about whether they have the authority to investigate and prosecute instances of livestock and poultry mistreatment in federal slaughter plants.<sup>3</sup> It seems that some officials are

<sup>1</sup> See U.S. Department of Agriculture, Food Safety and Inspection Service, Policy, Petitions, Petition Submitted by Animal Partisan ("Petition"),

<https://www.fsis.usda.gov/policy/petitions/petition-submitted-animal-partisan>.

<sup>2</sup> See APA, Animal Abuse Prosecution Project, <https://www.apainc.org/programs-2/animal-abuse-prosecution-project/>.

<sup>3</sup> See Petition at 2-3.



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under the misconception that federal laws such as the Federal Meat Inspection Act (FMIA) (21 U.S.C. § 601 *et seq.*), Humane Methods of Slaughter Act (HMSA) (7 U.S.C. § 1901 *et seq.*), and Poultry Products Inspection Act (PPIA) (21 U.S.C. § 451 *et seq.*) categorically preempt the enforcement of state animal cruelty statutes when animal abuse occurs in slaughter facilities. On the contrary, federal courts have made it clear that not all state anti-cruelty statutes are preempted by the FMIA or HMSA,<sup>4</sup> and that few, if any, are preempted by the PPIA.<sup>5</sup>

Importantly, the petition explains that animal mistreatment in these facilities is a real problem. The USDA's own records describe incidents involving "animals being beaten with lumber, shovels, and pipes, punched, kicked in the face, thrown, hoisted by their tails, having feathers forcefully pulled while conscious, forced to trample one another, deprived of food and water, and subjected to other acts of violence and neglect."<sup>6</sup> These are egregious acts of animal cruelty that must be prevented and, where warranted, prosecuted under state law.

APA's Animal Abuse Prosecution Project developed a statement of principles regarding the prosecution of animal cruelty crimes.<sup>7</sup> Those principles recognize that "[a]nimal cruelty, both active and passive, is a crime of violence, and as such requires a prosecutor's full attention, with the accompanying allocation of resources to hold the offenders accountable and achieve just results."<sup>8</sup> Further, "[p]rosecutors, in exercising their professional discretion, should give animal cruelty cases priority and make certain they are handled in the same professional manner as other crimes of violence."<sup>9</sup> It is therefore critical that prosecutors, when confronted with potential acts of violence or neglect toward animals, are provided with clear guidance regarding the circumstances in which they do or do not have the authority to investigate and consider bringing criminal charges. Guidance from the USDA would bring much-needed clarity to situations involving animals in slaughter plants.

There is clear precedent for USDA to issue the type of clarifying notice requested in Animal Partisan's petition. For example, in 2004, the department published a similar notice clarifying that livestock slaughter plants should approach the humane handling of animals in order to comply with the HMSA, FMIA, and implementing regulations.<sup>10</sup>

<sup>4</sup> See *Nat'l Meat Ass'n v. Harris*, 564 U.S. 452 (2012).

<sup>5</sup> See *Ass'n des Éleveurs de Canards et d'Oies du Québec v. Becerra*, 870 F.3d 1140 (9th Cir. 2017).

<sup>6</sup> Petition at 4.

<sup>7</sup> APA, Animal Abuse Prosecution Project,

<https://www.apainc.org/programs-2/animal-abuse-prosecution-project/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Notice Re: Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach To Meet Such Requirements, 69 Fed. Reg. 54,625, 54,625 (Sept. 9, 2004).



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Similarly, in 2005, the USDA issued a notice clarifying that, in order to comply with the PPIA, poultry slaughter establishments should treat poultry humanely.<sup>11</sup> In the case at hand, the department should issue an analogous notice clarifying the circumstances in which state government officials have the jurisdiction to investigate instances of animal abuse in slaughter plants in compliance with the preemption provisions of relevant federal laws.

The APA recognizes a direct link between the criminal acts of animal abuse and interpersonal violence including murder, child abuse, domestic violence, and elder abuse. The USDA thus has the ability and the responsibility to safeguard both animals and society by granting Animal Partisan's petition and issuing a notice that would help prosecutors around the country better understand whether and when they are in a position to hold those who have abused animals to account.

Thank you for considering these comments.

Respectfully Submitted,

**David LaBahn**  
President and CEO

<sup>11</sup> Notice Re: Treatment of Live Poultry Before Slaughter, 70 Fed. Reg. 56,624, 56,624 (Sept. 28, 2005).