

BEFORE THE BERKS COUNTY DISTRICT ATTORNEY'S OFFICE

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IN RE PRIVATE CRIMINAL COMPLAINT OF  
ANIMAL PARTISAN, ANIMAL EQUALITY, AND ANIMAL WELFARE INSTITUTE

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Private criminal complaint submitted pursuant to Pa. R. Crim. P. 506(A) requesting criminal charges against Birdsboro Kosher Farms Corp.

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## I. INTRODUCTION

On behalf of Animal Partisan, Animal Equality, and the Animal Welfare Institute, we submit this correspondence in support of a private criminal complaint filed pursuant to Pa. R. Crim. P. 506(A), alleging a violation of the Commonwealth’s animal neglect law, 18 Pa.C.S. § 5532, against Birdsboro Kosher Farms Corporation (“Birdsboro”). Birdsboro’s neglect was the direct cause for the suffering of thousands of chickens and the deaths of hundreds. However, this complaint requests only that the District Attorney charge Birdsboro—as a corporation—with a single charge of animal neglect, a third-degree misdemeanor, and seek the maximum fine of \$5,000.<sup>1</sup>

Until early 2023—including on the date of the incident at issue here—Birdsboro operated a federally inspected<sup>2</sup> poultry slaughterhouse located at 1100 Lincoln Drive, Birdsboro, Pennsylvania 19508.<sup>3</sup> Birdsboro remains a registered “domestic business corporation” with the Pennsylvania Department of State under Identification #4150153.<sup>4</sup> According to online sources, Birdsboro appears to be or have been owned and/or managed by Issy Perlmutter.<sup>5</sup> In early 2023, the Birdsboro slaughterhouse was purchased by a group of investors who now operate the facility under the name “Mesorah Farms.”<sup>6</sup> For clarity, the focus of this complaint is Birdsboro and not Mesorah Farms given the slaughterhouse was owned by Birdsboro at the time of the incident in question.

Though Birdsboro no longer operates the slaughterhouse, and though the events in this complaint occurred a year and a half ago, it remains important to hold Birdsboro accountable. This incident was egregious not only because of the large number of birds affected, but because Birdsboro was warned multiple times by the USDA inspector on the scene that birds were dying due to heat stress. Yet, the company waited hours to take action. When it did, it was too little, too late, and many hundreds of birds suffered and perished as a result.

Animal Partisan is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms.<sup>7</sup>

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<sup>1</sup> 30 Pa.C.S. § 923(a)(5).

<sup>2</sup> See *FSIS Meat, Poultry and Egg Product Inspection Directory*, UNITED STATES DEPARTMENT OF AGRICULTURE, [https://www.fsis.usda.gov/sites/default/files/media\\_file/2021-03/MPI\\_Directory\\_by\\_Establishment\\_Number.pdf](https://www.fsis.usda.gov/sites/default/files/media_file/2021-03/MPI_Directory_by_Establishment_Number.pdf) (last visited Dec. 30, 2023) (at the time of this incident, Birdsboro operated under FSIS Establishment Numbers M45134 and P45134).

<sup>3</sup> *Birdsboro Kosher Farms Corp.*, U.S. DEP’T AGRICULTURE, <https://www.fsis.usda.gov/inspection/fsis-inspected-establishments/birdsboro-kosher-farms-corp>. (last visited Dec. 11, 2023); see also *Birdsboro Kosher*, FACEBOOK, <https://www.facebook.com/birdsboro.kosher/> (last visited Dec. 11, 2023) (listing “1100 Lincoln Rd, Birdsboro, PA” as its headquarters).

<sup>4</sup> Business Search, PENNSYLVANIA DEPARTMENT OF STATE, <https://file.dos.pa.gov/search/business> (last visited Jan. 19, 2024).

<sup>5</sup> *Birdsboro Kosher Farms Corp.*, DUN AND BRADSTREET, [https://www.dnb.com/business-directory/company-profiles/birdsboro\\_kosher\\_farms\\_corp.2bbd81d6b3c84a032d4e2d0179e1e77c.html](https://www.dnb.com/business-directory/company-profiles/birdsboro_kosher_farms_corp.2bbd81d6b3c84a032d4e2d0179e1e77c.html) (last visited Jan. 19, 2024); *Kosher Chicken Processor Cited for Safety and Health Violations, Faces \$317K in Penalties*, JEWISH EXPONENT, <https://www.jewishexponent.com/kosher-chicken-processor-cited-for-safety-and-health-violations-faces-317k-in-penalties/> (last visited Jan. 19, 2024); *Birdsboro Kosher Farms Corp.*, BUZZFILE, <https://www.buzzfile.com/business/Birdsboro-Kosher-Farms-Corp.-610-404-0001> (last visited Jan. 19, 2024).

<sup>6</sup> *Mesorah Farms to Alleviate Kosher Poultry Shortage*, JEWISH LINK, <https://jewishlink.news/mesorah-farms-to-alleviate-kosher-poultry-shortage/> (last visited Jan. 19, 2024).

<sup>7</sup> *Home*, ANIMAL PARTISAN, <https://www.animalpartisan.org> (last visited Jan. 19, 2024).

Animal Equality is a nonprofit animal protection organization whose mission is to create a world where animals used in agriculture are protected and respected. Animal Equality works toward this mission by engaging with public officials, private companies, and members of the public through investigations, campaigns, legal and legislative advocacy, and consumer education.<sup>8</sup>

The Animal Welfare Institute is a nonprofit organization founded in 1951 and dedicated to reducing animal suffering caused by people. AWI engages policymakers, scientists, industry, and the public to achieve better treatment of animals everywhere—in the laboratory, in agriculture, in commerce, at home, and in the wild.<sup>9</sup>

## II. STATEMENT OF FACTS

### A. Incident forming basis of complaint

On July 18, 2022, a USDA veterinarian assigned to Birdsboro documented an incident of extreme and callous neglect that warrants criminal liability for Birdsboro as a corporation. The USDA veterinarian’s findings were captured in a Memorandum of Interview (“MOI”), an official USDA document used to report poultry mistreatment, which is included as Appendix A.<sup>10</sup>

While conducting routine inspection of animals scheduled for slaughter at the plant at 6:00am, the USDA veterinarian observed over 20,000 chickens on parked trailers.<sup>11</sup> Due to the risk that slaughter would be cancelled for the day as a result of staffing problems and mindful of the “increasing heat of the day[,]” the inspector closely monitored the chickens on the trailers, accompanied by Birdsboro’s plant management, which was fully aware of the situation.<sup>12</sup> At 1:15pm—over seven hours since the chickens were first observed waiting on trailers at the plant—the inspector observed that they were “panting” and dying at an increased rate from apparent heat stress.<sup>13</sup> According to historic weather reports, the temperature in Birdsboro, Pennsylvania on July 18, 2022, around that time was 86 degrees.<sup>14</sup>

Birdsboro was well aware of the chickens’ suffering as the USDA veterinarian “continually checked with plant management through the morning and afternoon for updates” and “ensur[ed] that they knew of the risks of the birds as the heat of the day was still increasing.”<sup>15</sup> Later in the day, the USDA veterinarian confirmed that the Pennsylvania State Veterinarian could provide permits to relocate the distressed birds back to the shelter of the empty barns where they

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<sup>8</sup> Home, ANIMAL EQUALITY, <https://animalequality.org/> (last visited Jan. 19, 2024).

<sup>9</sup> Home, ANIMAL WELFARE INSTITUTE, <https://awionline.org/> (last visited Feb. 13, 2024).

<sup>10</sup> Appendix A: USDA Report. The report appears twice in Appendix A: once with the redactions it contained when the USDA first published it in January 2023, and once with the redactions it contained when it was later downloaded in February 2024. It is not clear when or why the USDA changed the redactions after the record was first published. The record as it currently appears on the USDA’s website can be found at <https://www.fsis.usda.gov/science-data/data-sets-visualizations/inspection-task-data> (select “Datasets” and “Poultry Good Commercial Practice Inspection Task (Archive)”).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Birdsboro, Pennsylvania (July 18, 2022), WEATHER UNDERGROUND, <https://www.wunderground.com/history/daily/KABE/date/2022-7-18> (last visited Dec. 30, 2023).

<sup>15</sup> Appendix A: USDA Report.

originated from.<sup>16</sup> Yet, despite having this relocation option, Birdsboro only transferred a portion of the chickens offsite.<sup>17</sup> Birdsboro left the remaining 3,128 chickens in trailers overnight, providing only basic coverings and fans as the chickens sat crammed together in the sweltering night.<sup>18</sup> Between Monday, July 18, 2022 and Tuesday, July 19, 2022, a total of 1,231 chickens died on the trailers.<sup>19</sup> The USDA veterinarian cited the “heat, humidity, and a lack of cooling processes overnight” as the main cause of death.<sup>20</sup>

## **B. Prior issues at Birdsboro**

The July 2022 incident is far from the first time that the USDA has documented inhumane treatment of birds at Birdsboro. In fact, USDA inspection reports are riddled with repeated instances of neglect and cruelty, including the following examples:<sup>21</sup>

- *July 26, 2021* – “It was a hot day (perhaps nearing 90°F) and upon touching a carcass recently tossed from a cage I determined the body temperature to be excessive. There were no other visible lesions or signs of illness. I looked out in the truck unloading area and the chickens on the top layers of cages were either panting or already dead. The high mortality was consistent with heat exhaustion.”
- *July 26, 2021* – “I saw many (approximately 30) live birds loose on the floor in the throat cutting area. As I was assessing the situation, I observed a plant employee starting to pick up the live birds to be returned to the cage line for slaughter. He picked up the birds by their necks and flung them into the open cages.”
- *September 9, 2021* – “I noticed an unusual amount of mortality on some of the lower crates, specifically the right front quadrant, but no morbidity was noted. . . . At approximately 1315h I observed the crates from trailer #28 and examined each deceased chicken. No obvious lesions or overt pathology was present, but many birds were stiff and gangrenous. The mortality was higher than I had previously thought. I also did not see any decrease in mortality with the crates of 8 birds. Many crates had a single live bird in them. At the point where I estimated at least 200 dead birds and the truck was about 1/4 unloaded I called for a halt to slaughter.”
- *February 14, 2022* – “[USDA veterinarian], was performing antemortem on a trailer of chickens at Birdsboro Kosher Farms. Ambient temperature was 13 degrees. As I looked at the right side of the trailer, I noticed unusually high mortality.”

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<sup>16</sup> *Id.*

<sup>17</sup> Appendix A: USDA Report.

<sup>18</sup> *Id.*

<sup>19</sup> Appendix A: USDA Report. We reach the number 1,231 as follows. On July 18, 2022, 20,220 chickens arrived at the slaughter plant for slaughter. 8,000 were later taken off site, and 3,128 were held overnight, leaving a total of 9,092 birds that were taken to slaughter that day. Of those 9,092 birds, 8.5%, or 772, were found to have died prior to slaughter. Of the 3,128 birds taken to slaughter the following day, 14.7%, or 459, were found to have died prior to slaughter. Adding 772 and 459 equals 1,231.

<sup>20</sup> *Id.*

<sup>21</sup> Incidents are based on a search of “Birdsboro Kosher Farms Corp.” in Column C of *Datasets/Poultry Good Commercial Practices Inspection Task (Archive), Inspection Task Data*, UNITED STATES DEPARTMENT OF AGRICULTURE-FOOD SAFETY AND INSPECTION SERVICE, <https://www.fsis.usda.gov/science-data/data-sets-visualizations/inspection-task-data> (last visited Dec. 30, 2023).

- *February 21, 2022* – “[USDA veterinarian] had seen establishment personnel throw 3-4 live turkeys which had had their throat slit, but were unacceptable to the rabbi, over the conveyor and onto the floor. He had also seen 4 to 5 live turkeys thrown on top of other live turkeys in the discard barrels. The live turkeys in the barrels were head-bobbing, flying out of the barrels, and walking while they bled out.”
- *February 28, 2022* – “A large blue half-barrel meant for holding dead chickens was against the wall, on the opposite side of the conveyor from the throat cutting stations, and 2 dead chickens that had been cut and bled out were thrown into the barrel. When I glanced in the barrel to ensure those chickens had expired from exsanguination, I observed another chicken upside down and breathing, its head and neck covered by other carcasses. I withdrew the chicken from the barrel, and it was alive and had not had its throat cut. It had a compound fracture of the right wing, but it was alert and moving.”
- *July 6, 2022* – “I had pulled about 9 chickens from a half-full red (inedible) barrel. I withdrew the next chicken by its neck, as the feet were not visible, and it reacted by immediately flapping its wings and paddling its legs. The neck of the chicken had not been cut by a rabbi. The bird’s body temperature was also very elevated. The bird’s eyes stayed half-closed as it was reacting, and its neck was fairly flaccid.”

The events of July 18, 2022, exemplify Birdsboro’s broader pattern of systemic neglect. Alarming, this pattern of behavior is not confined to Birdsboro’s treatment toward its animals, but also toward its employees as the corporation has previously been cited by the federal government for occupational hazards.<sup>22</sup> In fact, Birdsboro has shown that it considers itself above the law, having failed to pay over \$162,000 in penalties levied by the United States Department of Labor for its “numerous safety hazards, including willful, serious and repeat violations.”<sup>23</sup>

### III. LEGAL ANALYSIS

#### A. Birdsboro’s sale of the plant provides no shield from criminal prosecution.

Birdsboro’s sale of the plant at issue to Mesorah Farms<sup>24</sup> following the incident in question affords no defense to prosecution. First, Birdsboro owned and operated the plant on the date at issue, as documented in the USDA report.<sup>25</sup> Second, Birdsboro remains a registered “domestic business corporation” with the Pennsylvania Secretary of State and no record exists that it has dissolved or is incapable of resuming operations.<sup>26</sup> Moreover, the Pennsylvania Superior Court has held that events subsequent to a criminal act are no shield for liability, stating “That remedial measures were taken here does not affect liability for prior criminal acts any more than the fact

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<sup>22</sup> *Federal appeals court finds Pennsylvania poultry processing facility in contempt for failing to pay \$162K in penalties, address safety violations*, U.S. DEP’T LABOR (Oct. 27, 2022).

<sup>23</sup> *Id.*

<sup>24</sup> See Section I.

<sup>25</sup> Appendix A: USDA Report.

<sup>26</sup> Business Search, Pennsylvania Department of State, <https://file.dos.pa.gov/search/business> (last visited Jan. 19, 2024).

that a defendant stopped selling drugs would absolve him from prosecution for past drugs sold.”<sup>27</sup> Accordingly, the District Attorney may still charge Birdsboro with neglect.

**B. Birdsboro subjected thousands of chickens to sweltering summer heat as they sat crammed in crates for over ten hours; this conduct constitutes animal neglect under 18 Pa.C.S. § 5532 and is punishable as a misdemeanor of the third degree.**

1. Elements of neglect

Pennsylvania’s animal neglect law, 18 Pa.C.S. § 5532<sup>28</sup>, prohibits a wide range of conduct including failing to provide animals with protection from the weather. The law applies to “domestic fowl,” which include “an avis [bird] raised for food,”<sup>29</sup> such as the chickens who suffered and died at Birdsboro. Birdsboro’s failure to protect chickens from the sweltering heat constitutes neglect and Birdsboro should be criminally charged as a corporation with a third-degree misdemeanor.

Under 18 Pa.C.S. § 5532(a)(2), “A person commits neglect if the person fails to provide for the basic needs of each animal to which the person has a duty of care, whether belonging to himself or otherwise, including . . . *protection from the weather.*”<sup>30</sup> The culpability required to be convicted under 18 Pa.C.S. § 5532(a)(2) is “recklessly.”<sup>31</sup> “A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor’s conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor’s situation”<sup>32</sup>

Here, Birdsboro plainly had a duty of care to the birds. The USDA report states that the birds had been delivered to Birdsboro’s property and, at all times relevant to this complaint, were awaiting slaughter on the premises.<sup>33</sup> The report also makes clear that Birdsboro’s plant management had oversight and control over the birds and served as the sole audience for the USDA inspector’s repeated concerns.<sup>34</sup> Yet, despite the USDA veterinarian’s repeated warnings to plant management over the course of several hours, Birdsboro provided no reprieve from the extreme weather despite the increasing temperatures and obvious manifestations of heat stress.<sup>35</sup> The USDA report demonstrates that Birdsboro’s plant management was keenly aware of the risk to the chickens as early as 7:30am when both parties jointly monitored the birds based on the heat of the day.<sup>36</sup> The report further notes that the USDA veterinarian “continually checked with plant

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<sup>27</sup> *In re Private Crim. Complaint Filed by Animal Outlook*, 271 A.3d 516, 525 (Pa. Super. Ct. 2022) (vacated and remanded on other grounds).

<sup>28</sup> Under 42 Pa. C.S. § 5552, a prosecution for an offense must be commenced within two years after it is committed. Thus, the statute of limitations for this offense does not expire until July 18, 2024.

<sup>29</sup> 18 Pa.C.S. § 5531.

<sup>30</sup> 18 Pa.C.S. § 5533(b)(1) (emphasis added).

<sup>31</sup> 18 Pa.C.S. § 302(c) (“When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts intentionally, knowingly or recklessly with respect thereto.”).

<sup>32</sup> 18 Pa.C.S. § 302(b)(3).

<sup>33</sup> Appendix A: USDA Report.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

management through the morning and afternoon and ensur[ed] they knew of the risks to the birds as the heat of the day was still increasing.”<sup>37</sup> Thus, Birdsboro was aware of the “substantial and unjustifiable risk” that thousands of chickens in its care were and would continue to be deprived of protection from the weather unless it enacted immediate measures to mitigate the effects of the summer heat. Birdsboro’s awareness of the risk is further evinced by the fact that after several hours of allowing chickens to languish and suffer in the heat, Birdsboro finally allowed some to return to producer farms and expressed an intent to move others to a covered area with fans.<sup>38</sup> These actions were far too late—instead of providing timely relief from the oppressive temperatures, made even hotter in the cramped cages, Birdsboro allowed thousands of birds to slowly bake, resulting in the agonizing deaths of hundreds.<sup>39</sup> Birdsboro’s disregard of the risk to the birds and delayed action to address it constituted a gross deviation from the actions a reasonable person would have taken in the same situation.

In a similar case, the Pennsylvania Superior Court held that there was sufficient evidence to convict a defendant of neglect for keeping kittens in a vehicle on a warm day, stating: “we ascertain the meaning of the phrase ‘access to . . . protection from the weather’ to indicate that the animals in question must be able to go to a place that protects them from heat, as well as cold, that threatens their basic needs.”<sup>40</sup> As stated above, chickens are not exempt from the protections of Pennsylvania’s animal neglect law and therefore, the same analysis applies. Birdsboro’s knowledge of the situation combined with its failure to take meaningful action or offer protection from the elements in a timely manner demonstrated utter indifference to the plight of the birds and constitutes neglect.<sup>41</sup>

## 2. Penalty

As a result of Birdsboro’s neglect, scores of chickens suffered bodily injury or were placed in imminent risk of serious bodily injury in the form of heat stress and death. Under 18 Pa.C.S. § 5532(b)(2), “if the violation causes bodily injury to the animal or places the animal at imminent risk of serious bodily injury,” the violation constitutes a misdemeanor of the third degree.<sup>42</sup> Birdsboro subjected thousands of chickens to bodily injury and should be charged with a third-degree misdemeanor.

Pennsylvania’s rules of statutory construction state that “[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage.”<sup>43</sup> Per Black’s Law dictionary, the term “injury” means “any harm or damage.”<sup>44</sup> The phrase “bodily injury” refers to “any damage to a [living being’s] physical condition including pain or illness.”<sup>45</sup> Numerous studies examining the impact of heat stress on poultry have shown it to cause damage

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Appendix A: USDA Report.

<sup>40</sup> *Commonwealth v. Arthur*, 2023 Pa. Super. Unpub. LEXIS 2127 at \*13 (Pa. Super. Ct. 2022) (vacated and remanded on unrelated grounds involving failure to appoint counsel).

<sup>41</sup> *Id.*

<sup>42</sup> 18 Pa.C.S. § 5532(b)(2).

<sup>43</sup> 1 Pa.C.S. § 1903(a).

<sup>44</sup> *Injury*, Black’s Law Dictionary (11th ed. 2019).

<sup>45</sup> *Bodily injury*, Merriam-Webster Legal Dictionary Online (2023).

to many organs in the body, including the heart, liver and lungs, as well as renal damage.<sup>46</sup> One study found, “[t]he significant effects of heat stress on poultry include changes in the respiratory metabolism, energy demand and blood circulation which aggravate the burden of the heart.”<sup>47</sup> Another study found that heat stress “causes neurological damage and cerebral dysfunction” in addition to “irreversible pathological damage to organs.”<sup>48</sup>

Given that hundreds of chickens died of heat stress and thousands of others languished at risk of such fate, Birdsboro’s neglect caused “bodily injury” and “placed [the chickens] in imminent risks of serious bodily injury” in the form of organ damage and respiratory distress.<sup>49</sup> Accordingly, Birdsboro’s neglect warrants punishment as a misdemeanor of the third degree.

### **C. The District Attorney may charge Birdsboro as a corporation for criminal animal neglect on two separate and independent grounds.**

Birdsboro as a corporation is criminally liable for the neglect of its birds on two separate grounds. Either one independently is sufficient to charge Birdsboro as a corporation.

#### 1. Birdsboro as a corporation is a “person” under the animal neglect statute.

Under 18 Pa.C.S. § 5532(a)(2), any “person” who fails to provide protection from the weather may be punished for animal neglect. The term “person” includes “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.”<sup>50</sup> Had the General Assembly intended only natural persons to be subject to the neglect statute, it could have used the term “individual.”<sup>51</sup> Accordingly, the neglect statute effectively punishes any “corporation” that “fails to provide . . . protection from the weather.”<sup>52</sup>

Here, Birdsboro, through its plant management as a representative of the corporation, plainly failed to provide thousands of chickens with protection from the weather. Throughout the morning of July 18, 2022, the USDA veterinarian warned Birdsboro’s plant management of the “increasing heat of the day” and the “risks to the birds as the heat of the day was still

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<sup>46</sup> *Chronic heat stress induces lung injury in broiler chickens by disrupting the pulmonary blood-air barrier and activating TLRs/NF-κB signaling pathway*, J. of Poultry Sci. (2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10539940/> (last visited Jan. 1, 2024); *Heat stress-induced renal damage in poultry and the protective effects of HSP60 and HSP47*, Cell Stress Chaperones (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6111100/> (last visited Jan. 1, 2024).

<sup>47</sup> *A quantitative proteomic analyses of primary myocardial cell injury induced by heat stress in chicken embryo*, J. of Thermal Biology (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0306456523000025> (last visited Jan. 1, 2023).

<sup>48</sup> *Effect of chronic heat stress on some physiological and immunological parameters in different breed of broilers*, J. of Poultry Sci. (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6162357/#:~:text=Studies%20have%20shown%20that%20chronic,and%20increased%20morbidity%20and%20mortality> (last visited Jan. 1, 2024).

<sup>49</sup> 18 Pa.C.S. § 5532(b)(2).

<sup>50</sup> 1 Pa.C.S. § 1991.

<sup>51</sup> *Id.*; See also *Cal. Univ. of Pa. v. Bradshaw*, 210 A.3d 1134, 1138 (Pa. Cmmw. Ct. 2019) (“An ‘individual’ is a ‘natural person,’ while the broader term ‘person’ includes both natural persons and other types of entities, such as corporations. Under those definitions, a corporation is a ‘person,’ but it is not an ‘individual.’ As Respondent points out, the General Assembly’s use of those two terms in Section 708 of the RTKL was deliberate.”).

<sup>52</sup> 18 Pa.C.S. § 5532(a)(2).



increasing.”<sup>53</sup> Yet, despite these repeated warnings, including permission from the Pennsylvania State Veterinarian to move “the full number of birds” off the premises and back to empty producer barns, Birdsboro took no action until after 5:00pm, at least six hours after the issue was first identified by the USDA veterinarian and after a significant number of birds died on the trailers.<sup>54</sup> Accordingly, Birdsboro itself, as a corporation and therefore a “person,” committed neglect and should be held criminally liable.

2. Birdsboro may also be charged under Pennsylvania’s corporate criminal liability scheme.

Pennsylvania law allows a corporation to be convicted of the commission of a misdemeanor offense if: “the offense is defined by a statute other than this title in which a legislative purpose to impose liability on corporations plainly appears and the conduct is performed by an agent of the corporation acting in behalf of the corporation within the scope of his office or employment.”<sup>55</sup> Birdsboro meets all of the elements for corporate criminal liability under 18 Pa.C.S. § 307(a)(1) and should be charged.

First, Birdsboro remains an active “domestic business corporation” registered with the Pennsylvania Department of State.<sup>56</sup>

Second, the offense here is a misdemeanor of the third degree because Birdsboro “cause[d] bodily injury” to the chickens and “place[d] the [chickens] at imminent risk of serious bodily injury” by subjecting them to heat stress and death.<sup>57</sup>

Third, the legislative purpose to impose liability on corporations plainly appears in the neglect statute, 18 Pa.C.S. § 5532. As stated above, the statute prohibits a “person” from committing neglect and such term “[i]ncludes a corporation,”<sup>58</sup> thus plainly indicating the General Assembly’s intent to “impose liability.”

Fourth, the individuals responsible for the welfare of the birds left in the trailer were all agents of Birdsboro acting within the scope of their employment when they committed the misdemeanor offense of animal neglect.<sup>59</sup> An “agent” is “[a]ny director, officer, servant, employee or other person authorized to act in behalf of the corporation or association and, in the case of an unincorporated association, a member of such association.”<sup>60</sup> The USDA report indicates that the USDA veterinarian notified “plant management” of the risks of rising temperatures to the birds.<sup>61</sup> Clearly, any individual designated as “plant management” is an “agent” of Birdsboro. Moreover, the USDA report indicates that “plant management” informed the USDA veterinarian that the slaughter may be delayed due to staffing issues, thus confirming that the decision to allow the

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<sup>53</sup> Appendix A : USDA Report.

<sup>54</sup> *Id.*

<sup>55</sup> 18 Pa.C.S. § 307(a)(1).

<sup>56</sup> *Business Search*, PENNSYLVANIA DEPARTMENT OF STATE, <https://file.dos.pa.gov/search/business> (last visited Jan. 19, 2024).

<sup>57</sup> 18 Pa.C.S. § 5532(b)(2).

<sup>58</sup> 1 Pa.C.S. § 1991.

<sup>59</sup> An individual is considered an “agent” if he is “authorized to act in behalf of the corporation” in any capacity. 18 Pa.C.S. § 307(f). This definition includes corporate directors, officers, servants, mere employees, and non-employee contractors. *Id.*

<sup>60</sup> 18 Pa.C.S. § 307(f).

<sup>61</sup> Appendix A: USDA Report.

birds to languish on the trailer was within the “scope of employment,” namely management of the slaughter process.

As yet another grounds for charges under Pennsylvania’s corporate criminal liability scheme, Birdsboro can also be charged under 18 Pa.C.S. § 307(a)(3) which allows corporate criminal liability when “the commission of the offense was authorized, requested, commanded, performed or recklessly tolerated by . . . a high managerial agent acting in behalf of the corporation within the scope of his office or employment.” Based on the facts outlined in the USDA report, Birdsboro’s plant management was well aware of the suffering of the birds and failed to take any meaningful action for several hours. Thus, Birdsboro’s high managerial agent—plant management—“recklessly tolerated” the conduct and therefore, Birdsboro is subject to criminal liability.

**D. Birdsboro’s disregard for the welfare of the birds was so callous and untethered to existing norms in the poultry industry that it negates any possible affirmative defense.**

1. The affirmative defense of “due diligence” is unavailable to Birdsboro as it failed to take measures to protect the birds from the heat, even after being notified by the USDA veterinarian of their plight.

Under 18 Pa.C.S. § 307(d), a corporation may raise an affirmative defense against criminal liability for any offense charged under 18 Pa.C.S. § 307(a)(1) by demonstrating that “the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.” Such is not the case here, as the facts plainly demonstrate Birdsboro abdicated its responsibility to monitor and prevent the neglect its workers subjected upon the birds. Importantly, such a defense is **only available** if Birdsboro is charged under 18 Pa.C.S. § 307(a)(1) (see Section C(2), above) but is **not available** to Birdsboro for any charges brought against Birdsboro as a “person” directly under 18 Pa.C.S. § 5532(a)(2) (see Section C(1), above). Thus, even if the defense did apply—which it does not—it does not shield Birdsboro from all liability.

Birdsboro’s failure to perform its “due diligence” is best demonstrated by the fact that the plant manager—the person who would presumably exercise the corporation’s due diligence—was notified of the situation by the USDA inspector during the morning of July 18, yet none of the birds were afforded any shelter or protection from the weather or removed to another location until at least 5:00pm, many hours later. In fact, the USDA report indicates that the inspector “continually checked with plant management through the morning and afternoon for updates” and “ensur[ed] that they knew of the risks to the birds as the heat of the day was still increasing.”<sup>62</sup> Despite these repeated warnings, Birdsboro failed to take any meaningful action to prevent the deaths of hundreds of birds until near the close of the business day.<sup>63</sup> Indeed, neglect toward birds in Birdsboro’s facility was pervasive, with incidents of heat stress occurring repeatedly within the span of a year.<sup>64</sup> Moreover, there is no indication in the USDA report that Birdsboro had taken any steps prior to the arrival of the chickens at the plant to provide them

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<sup>62</sup> Appendix A: USDA Report.

<sup>63</sup> *Id.*

<sup>64</sup> *See* Section II(B).

with protection from the summer heat and only provided fans and shade after scores of birds had suffered and died.

Had Birdsboro’s high managerial agents exercised due diligence over the birds languishing and suffering on the trailer, they would have abated this neglect.<sup>65</sup> Yet the evidence is devoid of any indication that Birdsboro enacted any weather protections, humane handling monitoring, or additional controls to safeguard the welfare of its chickens until it was too late for thousands of birds. Indeed, not even prior USDA violations appear to have convinced Birdsboro to provide protection from the elements for the animals it slaughters. As such, it is clear Birdsboro’s high managerial agents failed to exercise due diligence on July 18, 2022, and therefore, the company is not shielded by the affirmative defense.

2. The “normal agricultural operations” defense is not available to Birdsboro because its conduct was so divergent from poultry industry standards.

The “normal agriculture operation” exemption, codified at 18 Pa.C.S. § 5560, does not apply, as leaving birds to languish unprotected in sweltering heat is *not an accepted agricultural practice*. Accordingly, Birdsboro cannot avoid criminal charges by asserting that its conduct is normal in the poultry industry.

Pennsylvania law contains an exemption to neglect charges for “normal agricultural operations.” Specifically, 18 Pa.C.S. § 5560 states:

Sections 5532 (relating to neglect of animal), 5533 (relating to cruelty to animal), 5534 (relating to aggravated cruelty to animal), 5536 (relating to tethering of unattended dog) and 5543 (relating to animal fighting) shall not apply to activity undertaken in a normal agricultural operation.<sup>66</sup>

The law further defines a “normal agricultural operation” as:

Normal activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products in the production and harvesting of agricultural, agronomic, horticultural, silvicultural and aquicultural crops and commodities.<sup>67</sup>

The precise definition of “normal agricultural operation” has twice been addressed by the Pennsylvania Superior Court. In *Commonwealth v. Barnes*, the court found that “normal” means “conforming with or constituting an accepted standard, model, or pattern; natural; standard; regular.”<sup>68</sup> More recently, in the case of *In re Private Crim. Complaint Filed by Animal Outlook*—a case involving the abuse of cows at an industrial dairy—the court held that “the

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<sup>65</sup> Even if the workers received some form of animal welfare training (likely provided as part of their onboarding/orientation training), this does not exculpate Birdsboro from liability as a company. This cursory training and any third-party audits, if any occurred, were clearly completely inadequate for preventing cruelty and neglect throughout Birdsboro’s operations. A company cannot escape liability for its workers’ criminal conduct simply by providing a cursory training and then instructing workers to self-report violations. (Imagine the near-total immunity corporations would enjoy if that were the standard.).

<sup>66</sup> 18 Pa.C.S. § 5560.

<sup>67</sup> 18 Pa.C.S. § 5531.

<sup>68</sup> *Commonwealth v. Barnes*, 427 Pa. Super. 326, 629 A.2d 123, 129 (Pa. Super. 1993).

exception only applies when the conduct is an accepted standard within the agricultural industry and the defendant acted in the course of business within that industry.”<sup>69</sup> The court in *Animal Outlook* further stated that:

[T]o determine whether there is adequate evidence to disprove a normal-agricultural-operations defense, we must ascertain whether the certified record contains sufficient evidence that the activities at issue fell outside the bounds of what is considered standard and accepted within the dairy farming industry. Certainly, the recommendations and guidelines of industry groups are pertinent to this inquiry to the extent that they are widely accepted or regular.<sup>70</sup>

Thus, the question in the present matter is whether leaving chickens crammed in cages with no protection from the weather to suffer and die from heat stress is a “standard and accepted” practice in the poultry industry. It is not.

The national advocate for the chicken industry—the National Chicken Council (NCC)—expressly prohibits the type of neglect that occurred at Birdsboro. NCC represents “approximately 95 percent of the chickens produced in the United States”<sup>71</sup> and, as such, its guidelines suggest what is “standard and accepted” within the chicken industry. The NCC standards in place at the time of the incident<sup>72</sup> (and still in place in more updated versions) require that farms comply with the following conduct:

- “The company must have a program that effectively protects birds from extremes of heat and cold while in holding sheds or during the unloading process.”<sup>73</sup>
- “In the event of a utility outage, mechanical breakdown, or some other event that limits the processing of birds moved to the processing plant, measures must be taken to make the birds comfortable and minimize mortality.”<sup>74</sup>
- “Procedures for ventilation/cooling/heating must have designated temperatures at which fans, misters (if present), and heaters are to be operated.”<sup>75</sup>
- “Potential for temperature and climatic stress should be considered when scheduling catching, transport, and holding and appropriate measures such as use of fans or side boards should be utilized during extreme weather events.”<sup>76</sup>
- “Holding areas should be covered and equipped with fans (and misters if necessary) or

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<sup>69</sup> *In re Private Crim. Complaint Filed by Animal Outlook*, 271 A.3d 516, 523 (Pa. Super. 2022).

<sup>70</sup> *Id.* at 528.

<sup>71</sup> *About NCC*, NAT’L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/about/> (last visited Dec. 12, 2023).

<sup>72</sup> *National Chicken Counsel Animal Welfare Guidelines and Audit Checklist*, NATIONAL CHICKEN COUNCIL (Sep. 2020), [https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines\\_Broilers\\_Sept2020.pdf](https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines_Broilers_Sept2020.pdf) (last visited Jan. 20, 2024); For December 2022 update, see here: [https://www.nationalchickencouncil.org/wp-content/uploads/2023/01/NCC-Broiler-Welfare-Guidelines\\_Final\\_Dec2022-1.pdf](https://www.nationalchickencouncil.org/wp-content/uploads/2023/01/NCC-Broiler-Welfare-Guidelines_Final_Dec2022-1.pdf).

<sup>73</sup> *Id.* at p.15, #5.

<sup>74</sup> *Id.* at p.15, #4.

<sup>75</sup> *Id.* at p.15, #5(b).

<sup>76</sup> *Id.* at p.14, #10.

heaters to ensure proper cooling/warming of birds according to the company guidelines.”<sup>77</sup>

- “Poultry raised for food should be cared for in ways that prevent or minimize fear, pain, stress, and suffering.”<sup>78</sup>

Birdsboro repeatedly violated each of these welfare standards set by the largest chicken association in the United States and as such, its conduct cannot be considered “routine and accepted.” Birdsboro had no protocol in place to protect the thousands of birds on the trailer from extreme temperatures as demonstrated by the corporation’s failure to act until several hours after concerns for the birds’ welfare were first identified by the USDA veterinarian. Moreover, Birdsboro made no effort to “make the birds comfortable and minimize mortality” until near the close of the workday when some birds were sent off the property and cover and fans were allowed for others.<sup>79</sup> Hour after hour, thousands of chickens sat wedged against each other in tiny cages and languished under the heat of the summer sun while Birdsboro did nothing to alleviate their suffering. This conduct is unrecognizable when compared to poultry industry standards and accordingly, Birdsboro cannot avail itself to the “normal agricultural operations” exemption.

**E. The District Attorney is not preempted from enforcing the neglect statute by the federal Poultry Products Inspection Act (“PPIA”).**

The mere fact that Birdsboro was a federally inspected slaughterhouse does not preclude the District Attorney from filing state neglect charges. Protections for animals afforded by laws created by the Pennsylvania General Assembly do not dissipate at the walls of a slaughterhouse.

At the federal level, the inspection and slaughter of poultry is largely governed by the Poultry Products Inspection Act (“PPIA”), a law enforced by the USDA.<sup>80</sup> The PPIA contains a preemption provision that states:

Requirements within the scope of this Act [21 USCS §§ 451 et seq.] with respect to premises, facilities and operations of any official establishment, which are in addition to, or different than those made under this Act [21 USCS §§ 451 et seq.] may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of paragraph (b) of section 11 of this Act [21 USCS § 460(b)], if consistent therewith, with respect to any such establishment.<sup>81</sup>

Accordingly, *only* those laws that are “in addition to or different than” the PPIA are preempted and states still have ample room to enforce animal protection laws. Here, the District Attorney may still enforce Pennsylvania’s neglect law because the treatment of poultry transported or held for slaughter is entirely outside the scope of the PPIA and therefore, the law does not add any “additional” or “different” requirements. As held by the Ninth Circuit when considering the issue

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<sup>77</sup> *Id.* at p.15 #5(a).

<sup>78</sup> *Id.* at p.2.

<sup>79</sup> Appendix A: USDA Report.

<sup>80</sup> 21 U.S.C. § 451-473.

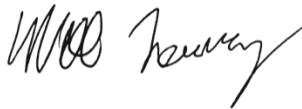
<sup>81</sup> 21 USCS § 467e

of preemption, the PPIA is “wholly silent on the treatment of farm animals, (including feeding procedures) or methods of slaughter for poultry.”<sup>82</sup> Further, the PPIA “does not regulate in any manner the handling, shipment, or sale of live poultry.”<sup>83</sup> As the PPIA does not deal with the treatment of the chickens while they are being held awaiting slaughter, the application of Pennsylvania’s neglect law, 18 Pa.C.S. § 5532, to the chickens who suffered and died at Birdsboro is beyond the scope of the PPIA and is not preempted.

#### IV. CONCLUSION

Birdsboro subjected thousands of birds to criminal neglect by leaving them stuffed side by side in cages for hours on end during a sweltering summer day. As a result, hundreds of birds died due to heat stress and many more suffered. This incident of neglect is not an isolated case, but rather the culmination of Birdsboro’s systemic failures and complete apathy to the suffering of the birds in its care.

While each individual bird technically warrants their own criminal charges and Birdsboro is subject to hundreds—or even thousands—of counts of criminal neglect, we respectfully and reasonably request that the District Attorney file a single misdemeanor charge of animal neglect against Birdsboro as a corporation and seek the maximum fine of \$5,000.<sup>84</sup> If you have any questions or require further information, please contact us at the email addresses or telephone numbers below.



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<sup>82</sup> *Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Becerra*, 870 F.3d 1140, 1148 (9th Cir. 2017).

<sup>83</sup> *Id.*

<sup>84</sup> 30 Pa.C.S. § 923(a)(5).

## APPENDIX A: USDA REPORT

### JANUARY 2023 DOWNLOAD FROM USDA WEBSITE

EstablishmentID	EstablishmentNumber	EstablishmentName	InspectionDate	TaskID	MOINumber	MOIDescription
124238	45134	M45134+P Birdsboro Kosher Farms Corp.	21-Jul-22	{1748D6 44-5EFC- EC11- B656- 0003FF0 C6195}	FKJ4315 073428 G	<p>On July 18, 2022, by 0600 hours approximately 20,220 chickens had arrived on the establishment premises for slaughter. I, the REDACTED (REDACTED) observed the birds for Antemortem Inspection at 0600 hours and noted no signs of ill health. I was notified at approximately 0730hrs by REDACTED that slaughter may be cancelled due to staffing problems and that it was unknown if any slaughter would happen that day at all. I continued to monitor the birds on the trailers, accompanied by plant management, due to the increasing heat of the day. At approximately 1100 hours I notified the REDACTED (REDACTED) of the concern as per FSIS protocol. By 1315 hours, I observed that the birds on the trailers were panting and that there was increased mortality occurring, likely due to heat stress. I continually checked with REDACTED through the morning and afternoon for updates and ensuring that they knew of the risks to the birds as the heat of the day was still increasing. At 1520 hours, the REDACTED was willing to provide permits to move the full number of birds off the premises back to empty producer barns if needed. REDACTED moved 8,000 birds offsite. The birds departed the establishment premises after 1700 hours. Slaughter operations began at approximately 1315 hours. At 1830 hours the establishment finished slaughter operations. REDACTED notified FSIS that there were 1500 birds left and the remaining birds were to be held overnight, still in their coops on the trailers, under the covered area in front of fans. The actual number of birds that were held overnight from July 18 to July 19 was found via paperwork submitted on Wednesday, July 20 to be 3,128. Once the slaughter reports were received, they showed that Monday there were REDACTED DOAs out of REDACTED birds slaughtered (8.5%). Of the REDACTED chickens held overnight, an additional REDACTED of those birds were found to be DOAs on Tuesday (14.7%). The REDACTED issued a permit instructing the establishment to bring the 8,000 birds that had been removed from the property back again for slaughter the following day, 7/19/2022. The birds had not been returned to the plant for slaughter as of 7/20/2022, which FSIS has reported to the REDACTED. Slaughter in accordance with Good Commercial Practices requires that poultry are treated humanely. The holding of birds in the trailers with the conditions at that time, heat, humidity, and a lack of cooling processes overnight likely contributed to the increased mortality rate. The Poultry Products Inspection Act (PPIA) (21 U.S.C. 453(g)(5)), and federal regulations including 9CFR 381.65(b) provide that poultry must be slaughtered in accordance with Good Commercial Practices. Poultry carcasses showing evidence of having died from causes other than slaughter are considered adulterated and must be condemned.</p>

FEBRUARY 2024 DOWNLOAD FROM USDA WEBSITE

Establishment ID	Establishment Num	Establishment Name	Inspection Date	TaskID	MOINumber	MOIDescription
124238	M45134+P 45134	Birdsboro Kosher Farms Corp.	21-Jul-22	195}	{1748D644- 5EFC-EC11- B656- FKJ4315 073428 G	<p>On July 18, 2022, by 0600 hours approximately 20,220 chickens had arrived on the establishment premises for slaughter. I, the Supervisory Public Health Veterinarian (SPHV) observed the birds for Antemortem Inspection at 0600 hours and noted no signs of ill health. I was notified at approximately 0730hrs by plant management that slaughter may be cancelled due to staffing problems and that it was unknown if any slaughter would happen that day at all. I continued to monitor the birds on the trailers, accompanied by plant management, due to the increasing heat of the day. At approximately 1100 hours I notified the District Veterinary Medical Specialist (DVMS) of the concern as per FSIS protocol. By 1315 hours, I observed that the birds on the trailers were panting and that there was increased mortality occurring, likely due to heat stress. I continually checked with plant management through the morning and afternoon for updates and ensuring that they knew of the risks to the birds as the heat of the day was still increasing. At 1520 hours, the PA State Veterinarian was willing to provide permits to move the full number of birds off the premises back to empty producer barns if needed. Establishment Management moved REDACTED birds offsite. The birds departed the establishment premises after 1700 hours. Slaughter operations began at approximately 1315 hours. At 1830 hours the establishment finished slaughter operations. Establishment management notified FSIS that there were REDACTED birds left and the remaining birds were to be held overnight, still in their coops on the trailers, under the covered area in front of fans. The actual number of birds that were held overnight from July 18 to July 19 was found via paperwork submitted on Wednesday, July 20 to be REDACTED. Once the slaughter reports were received, they showed that Monday there were REDACTED DOAs out of REDACTED birds slaughtered (8.5%). Of the REDACTED chickens held overnight, an additional REDACTED of those birds were found to be DOAs on Tuesday (14.7%). The PA State Veterinarian issued a permit instructing the establishment to bring the REDACTED birds that had been removed from the property back again for slaughter the following day, 7/19/2022. The birds had not been returned to the plant for slaughter as of 7/20/2022, which FSIS has reported to the State Veterinarian. Slaughter in accordance with Good Commercial Practices requires that poultry are treated humanely. The holding of birds in the trailers with the conditions at that time, heat, humidity, and a lack of cooling processes overnight likely contributed to the increased mortality rate. The Poultry Products Inspection Act (PPIA) (21 U.S.C. 453(g)(5)), and federal regulations including 9CFR 381.65(b) provide that poultry must be slaughtered in accordance with Good Commercial Practices. Poultry carcasses showing evidence of having died from causes other than slaughter are considered adulterated and must be condemned.</p>