

No. 24-1061

In the Supreme Court of the United States

PROJECT VERITAS AND
PROJECT VERITAS ACTION FUND,
Petitioners,

v.

NATHAN VASQUEZ, IN HIS OFFICIAL CAPACITY AS
MULTNOMAH COUNTY DISTRICT ATTORNEY, AND DAN
RAYFIELD, IN HIS OFFICIAL CAPACITY AS THE
ATTORNEY GENERAL OF OREGON,
Respondents.

**On Petition for a Writ of Certiorari to the U.S.
Court of Appeals for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE* ANIMAL
ADVOCACY ORGANIZATIONS
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTERESTS OF THE <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	3
UNDERCOVER RECORDINGS HAVE EXPOSED ANIMAL CRUELTY AND SPURRED PUBLIC AND GOVERNMENTAL ACTION	3
1. HSUS's Undercover Investigation into the Hallmark/Westland Meat Co. Slaughterhouse	6
2. PETA's Undercover Investigation into a Hormel Pig Farm	8
3. Mercy For Animals' Undercover Investigation into Sparboe Egg Farms	9
CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<i>PETA v. Wildlife in Need and Wildlife In Deed, Inc.</i> ("WIN"), Case No. 4:17-cv-00186 (S.D. Ind. Sept. 15, 2020).....	14
--	----

STATUTES

Meat Inspection Act, Pub. L. No. 59-242, 34 Stat. 1260 (1907).....	5
Pure Food and Drug Act, Pub. L. No. 59-384, 34 Stat. 768 (1906).....	5

OTHER AUTHORITIES

<i>22 Charges Filed Based on PETA Investigation at Hormel Supplier</i> , PETA (Oct. 22, 2008), http://peta.org/blog/22-charges-filed-based-peta- investigation-hormel-supplier	9
Ana Arruda et al., <i>Dogs Barking and Babies Crying: The Effect of Environmental Noise on Physiological State and Cognitive Performance</i> , 25 NOISE & HEALTH 247 (2023).....	14
Andrew Martin, <i>Largest Recall of Ground Beef Is Ordered</i> , N.Y. TIMES (Feb. 18, 2008), https://www.nytimes.com/2008/02/18/business/18re- call.html	7
BERNARD ORESTE UNTI, PROTECTING ALL ANIMALS: A FIFTY-YEAR HISTORY OF THE HUMANE SOCIETY OF THE UNITED STATES (2004)	5
BROOKE KROEGER, UNDERCOVER REPORTING: THE TRUTH ABOUT DECEPTION (2012).....	5

Caitlin O’Kane, <i>Fair Oaks Farms Under Investigation After Undercover Video Exposes Animal Abuse</i> , CBS NEWS (June 7, 2019), https://www.cbsnews.com/news/after-undercover-video-exposes-animal-abuse-at-fair-oaks-farms-grocery-store-removes-products	12
Colleen Jenkins, <i>Butterball Turkey Facility Searched for Abuse of Birds</i> , REUTERS (Dec. 29, 2011), https://www.reuters.com/article/world/us/butterball-turkey-facility-searched-for-abuse-of-birds-idUSTRE7BS16W	11
Dana Ford, <i>McDonald’s, Target Drop Egg Supplier After Animal Cruelty Report</i> , CNN (Nov. 19, 2011), https://www.cnn.com/2011/11/19/business/sparboe-farms-animal-cruelty/index.html	10
David Greenberg, <i>How Teddy Roosevelt Invented Spin</i> , THE ATLANTIC (Jan. 24, 2016), https://bit.ly/3pHlzW7	4
<i>Feds Close Central Valley Slaughterhouse Over Undercover Video</i> , CBS NEWS (Aug. 20, 2012), https://www.cbsnews.com/sanfrancisco/news/feds-close-central-valley-slaughterhouse-over-undercover-video	11
<i>FIRE Joins Animal Advocates, Free Speech Groups Urging Ninth Circuit to Affirm Ruling that Allows Undercover Audio Recording</i> , FIRE (Apr. 24, 2024), https://www.thefire.org/news/fire-joins-animal-advocates-free-speech-groups-urging-ninth-circuit-affirm-ruling-allows	13
<i>Graphic Abuse of Pigs Caught on Tape</i> , CBS NEWS (Sept. 17, 2008),	

https://www.cbsnews.com/news/graphic-abuse-of-pigs-caught-on-tape	8, 9
Hope Yen, <i>Graphic Video Shows Possible Abuse of Sick Cows at Slaughterhouse; Feds to Investigate</i> , KPIC (Jan. 30, 2008), https://kpic.com/news/nation-world/graphic-video-shows-possible-abuse-of-sick-cows-at-slaughterhouse-feds-to-investigate	7
<i>Investigation of Tyson Grower Reveals Mass, Systemic Cruelty</i> , ANIMAL OUTLOOK, https://www.animaloutlook.org/investigations/investigation-of-tyson-grower-reveals-mass-systemic-cruelty	13
Jan Dutkiewicz, <i>You’re Wrong About PETA</i> , VOX (Aug. 8, 2024), https://www.vox.com/future-perfect/364284/peta-protests-animal-rights-factory-farming-effective	6
Jon Seltzer, <i>Westland/Hallmark: 2008 Beef Recall A Case Study by The Food Industry Center</i> , FOOD INDUSTRY CENTER (Jan. 2010), https://www.r-calfusa.com/wp-content/uploads/food-safety/110804MNCASEStudyLargestMeatRecalls.pdf	7
Justin Wm. Moyer, <i>‘Her Head Has Been Torn Off’: Activists’ Film Alleges Abuse at Costco-Linked Cage-Free Egg Farm</i> , WASH. POST (Oct. 20, 2016), https://www.washingtonpost.com/news/animalia/wp/2016/10/20/her-head-has-been-torn-off-activists-film-alleges-abuse-at-costco-linked-cage-free-egg-farm	11
Karen Olsson, <i>Welcome to The Jungle</i> , SLATE (July 10, 2006), https://bit.ly/3um0Mur	4

Mercy for Animals, <i>McDonald's Cruelty: The Rotten Truth About Egg McMuffins</i> , YOUTUBE (Nov. 17, 2011), http://bit.ly/4kpX7oC	10
Mitch Seavey, <i>PETA Spies, PETA Lies</i> , MUST READ ALASKA (Oct. 27, 2019), https://mustreadalaska.com/peta-spies-peta-lies ; Craig Medred, <i>Fake News</i> , (Apr. 6, 2019), https://craigmedred.news/2019/04/06/fake-news .	12
<i>Mother Pigs and Piglets Abused by Hormel Supplier</i> , PETA, https://investigations.peta.org/mother-pigs-piglets-abused-hormel-supplier	8, 9
Pascal Belin et al., <i>Human Cerebral Response to Animal Affective Vocalizations</i> , 275 PROC. BIOL. SCI. 473 (2007)	14
<i>Restaurants, Schools Respond to Cow Slaughter Scandal by Banning Slaughterhouse's Beef</i> , FOX NEWS (Feb. 2, 2008), https://www.foxnews.com/story/restaurants-schools-respond-to-cow-slaughter-scandal-by-banning-slaughterhouses-beef	7
<i>The Investigation That Sparked a Movement</i> , https://www.peta.org/blog/9-11-remembering-silver-spring-monkeys	5
<i>Video Triggers Probe of School-Lunch Meat Supplier</i> , COLUMBUS DISPATCH (Jan. 31, 2008), https://www.dispatch.com/story/news/2008/02/01/video-triggers-probe-school-lunch/23544307007	7
<i>Warning: Disturbing Footage. Undercover Investigation at Chinos Hallmark/Westland Slaughterhouse</i> , ANIMAL LEGAL DEFENSE FUND (Jan. 27, 2009), https://bit.ly/43Cqcr	8

INTERESTS OF THE *AMICI CURIAE*

Amici Curiae are four animal advocacy organizations that have engaged in or relied upon undercover investigations to expose animal cruelty and spur change.¹ These investigations have often used surreptitious audio and audiovisual recordings.

Animal Outlook is a national nonprofit 501(c)(3) animal advocacy organization. Its mission is to strategically challenge animal agribusiness through undercover investigations, legal advocacy, corporate and food system reform, and the dissemination of information about the many harms of animal agriculture, empowering everyone to choose vegan. Animal Outlook has conducted dozens of undercover investigations that have exposed cruel conditions, prompted regulatory and law enforcement action, and helped shift the public understanding of what takes place behind the closed doors of factory farms and slaughterhouses.

Direct Action Everywhere is an international grassroots network of animal rights activists. The organization employs nonviolent direct action, including undercover investigations and open rescues, to expose animal cruelty and advocate for systemic change in the treatment of animals. Its investigations have uncovered a range of abuses, including the continued use of extreme confinement

¹ No counsel for a party authored any part of this brief, nor did any person or entity, other than *Amici* and their counsel, contribute money for preparing or submitting this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief.

at a major Utah pig farm, the mass killing of pigs through ventilation shutdown (a method that effectively roasts animals alive), and the use of gas chambers at a slaughterhouse in Los Angeles.

Mercy for Animals is a nonprofit 501(c)(3) organization. Its mission is to end industrial animal agriculture by constructing a just and sustainable food system. Through undercover investigations, corporate campaigns, and policy advocacy, Mercy for Animals has exposed widespread cruelty in factory farms and slaughterhouses and secured meaningful reforms from some of the world's largest food companies. Its work has helped bring public attention to routine industry practices such as extreme confinement, brutal handling, and inhumane slaughter, advancing both legal and cultural change in the treatment of farmed animals.

People for the Ethical Treatment of Animals, Inc. (PETA) is a nonprofit 501(c)(3) organization. It is the largest animal liberation organization in the world, and PETA entities have more than 9 million members and supporters globally. PETA opposes speciesism, a human-supremacist worldview, and focuses its attention on the four areas in which the largest numbers of animals suffer the most intensely for the longest periods of time: in laboratories, the food industry, the clothing trade, and the entertainment business. PETA's undercover investigations have exposed widespread abuse and neglect in each of these sectors, from the mistreatment of animals in taxpayer-funded laboratories to the extreme abuse of farmed animals to the beating of elephants in circuses. These investigations have led to criminal charges, facility

closures, corporate policy changes, and a greater public reckoning with the hidden realities of animal exploitation.

INTRODUCTION AND SUMMARY OF ARGUMENT

Undercover investigations, in which an animal advocate secretly records audio and video inside a factory farm, slaughterhouse, roadside zoo, or research lab, have been a vital tool for informing the public about the hidden abuse of animals, prompting legislative and regulatory reforms, and improving the treatment of animals. This brief, submitted by organizations that conduct or rely on such investigations, explains why these recordings matter. It features three undercover investigations that showcase the importance of audiovisual recording, though there are many more examples. Audio in particular is uniquely valuable in these investigations: it is undeniable, reveals how systemic cruelty often is, and evokes a deep emotional response in audiences. By requiring notice and consent before recording, Oregon's eavesdropping statute effectively eliminates undercover investigations as we know them, depriving animal advocates of a critical tool and depriving the public of a rare and essential window into how animals are treated behind closed doors.

UNDERCOVER RECORDINGS HAVE EXPOSED ANIMAL CRUELTY AND SPURRED PUBLIC AND GOVERNMENTAL ACTION

Undercover investigations, which typically involve surreptitious audio and audiovisual

recordings, have been an essential tool for animal advocacy organizations. Factory farms and laboratories that mistreat animals operate largely out of public view. These facilities strictly limit access to journalists and the general public, despite their central roles in our food and health systems and the deep public interest in how animals are treated. As a result, undercover investigations are often the only way to find out what is really happening inside.

In an undercover investigation, an investigator is often hired to work at a factory farm, slaughterhouse, roadside zoo, animal laboratory, or similar facility and records what they see and hear: animals being abused and crying out in anguish while workers ignore their suffering or even callously encourage it. Undercover investigations have been crucial in exposing abuse, informing the public, and pushing officials to act. The information they uncover is truthful, important, and directly tied to a matter of public concern.

Undercover investigations are a time-honored tool of animal advocacy organizations. At the turn of the 20th century, written eyewitness accounts of the meat-packing industry triggered a nationwide debate that led to a regulatory regime to protect public health and ensure worker safety.² The most famous account of the violence of the stockyards was Upton Sinclair's 1906 novel *The Jungle*, which was based on weeks spent undercover in Chicago's meatpacking plants.

² See, e.g., David Greenberg, *How Teddy Roosevelt Invented Spin*, THE ATLANTIC (Jan. 24, 2016), <https://bit.ly/3pHlZW7/>; Karen Olsson, *Welcome to The Jungle*, SLATE (July 10, 2006), <https://bit.ly/3um0Mur>.

By exposing the industry's harsh, inhumane, and unsanitary working conditions, the novel produced an unprecedented response, including passage of the Meat Inspection Act and the Pure Food and Drug Act.³

In the postwar decades, the Humane Society of the United States (HSUS) began conducting field investigations, documenting mistreatment of animals in research labs and slaughterhouses.⁴ And then in the 1980s, a new wave of animal rights organizations made undercover work central to their mission. Groups like PETA—founded in 1980 in response to animal abuse in laboratories—embraced modern investigative tools, using hidden cameras and microphones to capture not just images, but the unmistakable sounds of suffering and complicity. PETA's 1981 investigation of the Silver Spring monkeys led to the first-ever cruelty conviction of an experimenter,⁵ while its 1985 release of *Unnecessary Fuss*, featuring researchers laughing during traumatic surgeries, helped galvanize a national

³ See BROOKE KROEGER, UNDERCOVER REPORTING: THE TRUTH ABOUT DECEPTION 83–91 (2012); Meat Inspection Act, Pub. L. No. 59-242, 34 Stat. 1260 (1907) (codified as amended at 21 U.S.C. §§ 601–695); Pure Food and Drug Act, Pub. L. No. 59-384, 34 Stat. 768 (1906) (codified as amended at 21 U.S.C. §§ 301–399f),

⁴ BERNARD ORESTE UNTI, PROTECTING ALL ANIMALS: A FIFTY-YEAR HISTORY OF THE HUMANE SOCIETY OF THE UNITED STATES 6 (2004).

⁵ *The Investigation That Sparked a Movement*, <https://www.peta.org/blog/9-11-remembering-silver-spring-monkeys>.

movement.⁶ In the decades since, groups like Humane World for Animals (formerly HSUS), Mercy For Animals, Animal Outlook (formerly Compassion Over Killing), and Direct Action Everywhere have made undercover recording a centerpiece of their advocacy, using synchronized audio and video to document cruelty, raise public awareness of animal mistreatment, and catalyze industry-wide and legislative reforms. From the cries of downed cattle to the instructions of careless managers, these investigations have consistently revealed what would otherwise remain hidden.

The following three investigations show just how critical undercover investigations can be—and why audio, in particular, often makes all the difference.

1. HSUS’s Undercover Investigation into the Hallmark/Westland Meat Co. Slaughterhouse

In 2008, an undercover investigator with the Humane Society of the United States (now Humane World for Animals) documented systemic abuse at the Hallmark/Westland Meat Co. slaughterhouse in Chino, California. Hidden-camera footage revealed that “downer” cows—non-ambulatory animals too sick or injured to walk—were kicked, shocked with electric prods, and even hoisted with forklifts to move them toward slaughter in violation of federal

⁶ Jan Dutkiewicz, *You’re Wrong About PETA*, VOX (Aug. 8, 2024), <https://www.vox.com/future-perfect/364284/peta-protests-animal-rights-factory-farming-effective>.

regulations.⁷ The public response was immediate. News organizations from *Fox News*⁸ to *The New York Times*⁹ covered the scandal. Given significant concerns about food safety, the USDA ordered the recall of 143 million pounds of beef—up to then, the largest recall in U.S. history¹⁰—and California enacted a law banning the slaughter of downed cattle for human consumption.¹¹ Two employees were convicted of criminal animal abuse, and Westland/Hallmark ultimately went out of business.¹²

The audio recording was essential to the effectiveness of the Hallmark/Westland investigation. Viewers not only saw the abuse—they heard it. The cows’ deep groans as they were repeatedly stabbed

⁷ Hope Yen, *Graphic Video Shows Possible Abuse of Sick Cows at Slaughterhouse; Feds to Investigate*, KPIC (Jan. 30, 2008), <https://kpic.com/news/nation-world/graphic-video-shows-possible-abuse-of-sick-cows-at-slaughterhouse-feds-to-investigate>; *Video Triggers Probe of School-Lunch Meat Supplier*, COLUMBUS DISPATCH (Jan. 31, 2008), <https://www.dispatch.com/story/news/2008/02/01/video-triggers-probe-school-lunch/23544307007>.

⁸ *Restaurants, Schools Respond to Cow Slaughter Scandal by Banning Slaughterhouse’s Beef*, FOX NEWS (Feb. 2, 2008), <https://www.foxnews.com/story/restaurants-schools-respond-to-cow-slaughter-scandal-by-banning-slaughterhouses-beef>.

⁹ Andrew Martin, *Largest Recall of Ground Beef Is Ordered*, N.Y. TIMES (Feb. 18, 2008), <https://www.nytimes.com/2008/02/18/business/18recall.html>.

¹⁰ *Id.*

¹¹ Jon Seltzer, *Westland/Hallmark: 2008 Beef Recall A Case Study by The Food Industry Center*, FOOD INDUSTRY CENTER, at 71 (Jan. 2010), <https://www.r-calfusa.com/wp-content/uploads/food-safety/110804MNCASEStudyLargestMeatRecalls.pdf?>

¹² *Id.* at 4.

and prodded are arguably the most affecting part of the video.¹³ Indeed, they are the clearest indication that these non-ambulatory cows, who are collapsed on the floor and largely immobile, are suffering immensely from the mistreatment. Because we are less adept at reading pain on the face of an animal than a human, audio is indispensable for recognizing their suffering. In the videos, workers can also be heard talking as they abused the cows.¹⁴ If the footage were silent—as would be required under Oregon’s eavesdropping statute to protect the workers’ conversations—the most arresting part of the investigation would have been lost entirely.

2. PETA’s Undercover Investigation into a Hormel Pig Farm

In 2008, a PETA investigator went undercover at a pig breeding facility in Iowa that supplied pork to Hormel Foods. The hidden-camera footage revealed widespread and deliberate abuse: workers beating sows with metal rods, kicking pigs, and violently slamming piglets headfirst into the ground.¹⁵ In one particularly disturbing scene, a supervisor explains how he deals with a struggling sow: “I grab one of these rods and jam it in her [anus].”¹⁶ The footage also

¹³ *Warning: Disturbing Footage. Undercover Investigation at Chinos Hallmark/Westland Slaughterhouse*, ANIMAL LEGAL DEFENSE FUND (Jan. 27, 2009), <https://bit.ly/43Cqcro>.

¹⁴ *Id.*

¹⁵ *Mother Pigs and Piglets Abused by Hormel Supplier*, PETA, <https://investigations.peta.org/mother-pigs-piglets-abused-hormel-supplier>.

¹⁶ *Graphic Abuse of Pigs Caught on Tape*, CBS NEWS (Sept. 17, 2008), <https://www.cbsnews.com/news/graphic-abuse-of-pigs-caught-on-tape>.

documented the use of electric prods on immobilized pigs, the spraying of paint into pigs' nostrils, and other abusive acts that shocked the public.¹⁷ The response was swift and sweeping: Iowa prosecutors filed 22 charges against six individuals, including supervisors—a rare move in animal cruelty cases.¹⁸

The role of audio in this investigation was especially significant. It captured not only the pigs' screams of distress, but also workers encouraging the violence and mocking the animals. One employee was recorded hitting a sow with a metal rod and saying to the investigator: "Hurt 'em! There's nobody works [sic] for PETA out here. . . . I hate them. These [animals] deserve to be hurt! Hurt, I say!"¹⁹ Another was recorded saying, "Don't be afraid to hurt 'em."²⁰ These candid admissions demonstrated not just cruelty but a culture of impunity. The sounds of squealing pigs and the workers' own words made the abuse impossible to minimize. Had the investigator been required to announce their recording, they would have captured none of this evidence and likely would have faced immediate danger from workers who openly expressed hatred for PETA.

3. Mercy For Animals' Undercover Investigation into Sparboe Egg Farms

In 2011, Mercy For Animals conducted an undercover investigation at Sparboe Egg Farms, a

¹⁷ PETA, *supra* note 15.

¹⁸ *22 Charges Filed Based on PETA Investigation at Hormel Supplier*, PETA (Oct. 22, 2008), <http://peta.org/blog/22-charges-filed-based-peta-investigation-hormel-supplier>.

¹⁹ CBS NEWS, *supra* note 16.

²⁰ PETA, *supra* note 15.

major egg supplier to companies like McDonald's and Target. The investigation revealed disturbing practices across facilities in Iowa, Minnesota, and Colorado.²¹ Undercover footage documented hens crammed into tiny battery cages, workers burning off the beaks of chicks without pain relief, and decomposed birds left in cages with live hens still laying eggs.²² The public release of this footage led McDonald's and Target to sever ties with Sparboe Farms,²³ while the Food and Drug Administration conducted immediate inspections of Sparboe facilities and found "serious violations" that risked public health, including potential salmonella contamination.²⁴

The audio component of the investigation played a key role in communicating the severity of the abuse. At one point, a worker told the undercover investigator that some of his coworkers "torture" the animals: "They get mad and they just whack it with a f-ing hook."²⁵ The video also captures the constant background clamor of distressed hens—screeching, flapping, and struggling in overcrowded cages. Mercy For Animal's use of synchronized audio and video transformed what could have been dismissed as isolated images into a compelling, immersive record

²¹ Dana Ford, *McDonald's, Target Drop Egg Supplier After Animal Cruelty Report*, CNN (Nov. 19, 2011), <https://www.cnn.com/2011/11/19/business/sparboe-farms-animal-cruelty/index.html>.

²² *Id.*; Mercy for Animals, *McDonald's Cruelty: The Rotten Truth About Egg McMuffins*, YOUTUBE (Nov. 17, 2011), <http://bit.ly/4kpX7oC>.

²³ Ford, *supra* note 21.

²⁴ *Id.*

²⁵ Mercy for Animals, *supra* note 22, at 2:02.

of systemic cruelty. By allowing the public and regulators to hear not only the animals' distress but also the workers' own indifference, the audio made it clear that the abuse was normalized, not accidental. Without it, the footage would have lacked the same force, and the corporate and regulatory responses that followed may never have occurred.

* * *

These three investigations are representative of the immense value of undercover investigations, especially those that include surreptitious audio recordings. But they are far from isolated examples. Investigations have revealed turkeys being stomped and kicked at a Butterball plant,²⁶ cows being suffocated and dragged to slaughter at Central Valley Meat Co.,²⁷ a decapitated hen lying in the dirt at Pleasant Valley Farms,²⁸ and newborn calves screaming as they were kicked and force-fed at Fair Oaks Farms.²⁹ These are just a few of the many

²⁶ Colleen Jenkins, *Butterball Turkey Facility Searched for Abuse of Birds*, REUTERS (Dec. 29, 2011), <https://www.reuters.com/article/world/us/butterball-turkey-facility-searched-for-abuse-of-birds-idUSTRE7BS16W>.

²⁷ *Feds Close Central Valley Slaughterhouse Over Undercover Video*, CBS NEWS (Aug. 20, 2012), <https://www.cbsnews.com/sanfrancisco/news/feds-close-central-valley-slaughterhouse-over-undercover-video>.

²⁸ Justin Wm. Moyer, *'Her Head Has Been Torn Off': Activists' Film Alleges Abuse at Costco-Linked Cage-Free Egg Farm*, WASH. POST (Oct. 20, 2016), <https://www.washingtonpost.com/news/animalia/wp/2016/10/20/her-head-has-been-torn-off-activists-film-alleges-abuse-at-costco-linked-cage-free-egg-farm>.

²⁹ Caitlin O'Kane, *Fair Oaks Farms Under Investigation After Undercover Video Exposes Animal Abuse*, CBS NEWS (June 7,

investigations that have revealed what would otherwise remain hidden. In each, the ability to capture candid conversations and the sounds of animals in distress played a critical role in conveying the full reality of the abuse and spurring public, corporate, and legal action.

Surreptitious audio recording is essential for uncovering animal abuse and ensuring accountability. Comments like “Hurt ‘em!” and “I grab one of these rods and jam it in her [anus]” demonstrate a culture of impunity. When a worker confides that colleagues “torture” animals, it reveals that abuse is systemic rather than isolated. And when a worker explains that they were trained to act in a particular way, it shows that the abuse is not only tolerated but embedded in company policy. These candid admissions, vital to past investigations, would be impossible to capture under Oregon’s eavesdropping statute.

When confronted with an exposé, investigatory targets often deny responsibility or dismiss investigations as “lies and distortions.”³⁰ But recordings leave no doubt. They are often the clearest evidence that abuse was intentional and ongoing, which makes it harder for corporations to deflect and more likely that regulators or lawmakers will step in.

2019), <https://www.cbsnews.com/news/after-undercover-video-exposes-animal-abuse-at-fair-oaks-farms-grocery-store-removes-products>.

³⁰ See, e.g., Mitch Seavey, *PETA Spies*, *PETA Lies*, MUST READ ALASKA (Oct. 27, 2019), <https://mustreadalaska.com/peta-spies-peta-lies>; Craig Medred, *Fake News*, (Apr. 6, 2019), <https://craigmedred.news/2019/04/06/fake-news>.

Audio also plays a critical role in tracing abuse up the corporate chain. Often, corporations try to scapegoat low-level workers—who are themselves overworked, underpaid, and exposed to grueling and traumatic conditions—while shielding supervisors and executives from scrutiny. But audio can pierce that defense. For example, in a 2022 investigation by Animal Outlook at a Tyson-contracted facility, a company representative was recorded acknowledging that “free range” chickens rarely go outside and that the industry’s humane claims are largely a marketing ploy.³¹ These revealing statements show how deception and cruelty can be institutional, coordinated from the top down. Without audio, these broader systemic truths—linking ground-level abuse to corporate policy—would remain hidden.

Audio of distressed animals is often the *most* effective way to move the public. As Cheryl Leahy, then-Executive Director of Animal Outlook, has said: “One can certainly conceptualize the pain of an animal from a written description or silent video. But when one hears an animal’s cries, the listener feels that pain in a completely different, and much more impactful, manner.”³² Recent research confirms this. One MRI study found that hearing animals in distress activates the same emotional centers in the brain as hearing

³¹ *Investigation of Tyson Grower Reveals Mass, Systemic Cruelty*, ANIMAL OUTLOOK, <https://www.animaloutlook.org/investigations/investigation-of-tyson-grower-reveals-mass-systemic-cruelty>.

³² *FIRE Joins Animal Advocates, Free Speech Groups Urging Ninth Circuit to Affirm Ruling that Allows Undercover Audio Recording*, FIRE (Apr. 24, 2024), <https://www.thefire.org/news/fire-joins-animal-advocates-free-speech-groups-urging-ninth-circuit-affirm-ruling-allows>.

humans in distress.³³ People also exhibit physiological signs, like higher heart rate and increased sweat, in response to distressed animal calls.³⁴ For advocates seeking to reach the public, there is simply no substitute for the visceral impact of hearing animals' suffering. But in facilities like factory farms or slaughterhouses, it is often impossible to record the sounds of animals in distress without also capturing nearby human conversations.

Oregon's eavesdropping statute would effectively eliminate these unique benefits of audio recordings. Absent narrow content-based exceptions, the statute requires an individual to provide notice and obtain consent from all parties before recording a conversation. In effect, this requirement prevents capturing any meaningful audio during undercover investigations—workers' callous remarks, admissions of cruelty to animals, and the distressed cries of suffering animals. Requiring an undercover investigator to notify others of their investigative activities would operate as a chill on this vital reporting, and presumably result in the investigator being immediately removed from the premises at best, and serious threats to the investigator's physical safety at worst.³⁵ In practice, it would mean that

³³ Pascal Belin et al., *Human Cerebral Response to Animal Affective Vocalizations*, 275 PROC. BIOL. SCI. 473 (2007).

³⁴ Ana Arruda et al., *Dogs Barking and Babies Crying: The Effect of Environmental Noise on Physiological State and Cognitive Performance*, 25 NOISE & HEALTH 247 (2023).

³⁵ See, e.g., *PETA v. Wildlife in Need and Wildlife In Deed, Inc.* ("WIN"), Case No. 4:17-cv-00186 (S.D. Ind. Sept. 15, 2020), Dkt. 156 at 2 (showing threatening comments made against a PETA undercover investigator, including: "maybe an example needs to

recordings like the ones discussed in this brief would not be made, leaving the public, legislators, regulators, and animals worse off.

CONCLUSION

Undercover investigations have been crucial to advances in the humane treatment of animals. They have spurred reflection and discussion among the public and shined a spotlight on how our society treats animals. Oregon's eavesdropping statute undermines this vital tool by removing one of its most crucial components: the sound of distressed animals and the candid admissions of workers and supervisors. Without audio, some of the most affecting and probative parts of these investigations would be lost. For these reasons, *Amici* respectfully urge the Court to grant certiorari and vindicate the First Amendment rights of undercover investigators, whistleblowers, and reporters.

Respectfully submitted.

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be made out of said terrorist. 187.” and an explanation that “187” is slang for “murder”).