

March 9, 2023

William McManus
 Chief of Police
 San Antonio Police Department
William.McManus@sanantonio.gov

Jose Niño
 Deputy City Attorney, Prosecution Division
 San Antonio City Attorney Office
Jose.Nino@sanantonio.gov

Re: Unconstitutional Issuance of Citation No. X1546865 on February 22, 2023, to Gabriel Ochoa in Violation of the First Amendment

Dear Chief McManus and Deputy City Attorney Niño,

I am writing on behalf of People for the Ethical Treatment of Animals (“PETA”) and staff member Jesus Gabriel Ochoa Perez (Gabriel Ochoa) concerning the unlawful and unconstitutional issuance of a citation to Mr. Ochoa under San Antonio Code Ordinance Section 21-3 (“Sec. 23-1”). PETA and Mr. Ochoa demand that the San Antonio Police Department (“SAPD”) withdraw the citation (no. X1546865) in light of its clear violation of the First Amendment. If the citation is not withdrawn, Mr. Ochoa is prepared to pursue other available legal action to enforce his constitutional rights.

The relevant facts are as follows:

- On February 22, 2023, Mr. Ochoa arrived at Alamo Plaza (the “Plaza”) in San Antonio on a sidewalk near the entrance to the Plaza to hand out PETA leaflets with the title, “Why go vegan? To honor God.” The leaflets also included bible verses, vegan recipes, and language urging members of the public to choose to practice compassion to animals as part of their religious observance. *See* Ex. 1, PETA Leaflet.
- Mr. Ochoa left the property and ceased distributing leaflets when requested to do so by SAPD, despite being on what appeared to be a public sidewalk at the Plaza. Before that time, Mr. Ochoa handed out one of the leaflets described above to one member of the public.
- Despite Mr. Ochoa’s lawful actions and compliance with police directions, Park Police officer Rodolfo Robles approached him, told him that someone informed him that Mr. Ochoa had distributed leaflets, and issued him a citation under Sec. 23-1, which prohibits certain leafletting activities.

The facts clearly demonstrate that Mr. Ochoa did not violate Sec. 23-1. The language of the ordinance, in relevant part, is as follows:

PEOPLE FOR
 THE ETHICAL
 TREATMENT
 OF ANIMALS
 FOUNDATION

Washington
 1536 16th St. N.W.
 Washington, DC 20036
 202-483-PETA

Los Angeles
 2154 W. Sunset Blvd.
 Los Angeles, CA 90026
 323-644-PETA

Norfolk
 501 Front St.
 Norfolk, VA 23510
 757-622-PETA

PETA FOUNDATION IS AN
 OPERATING NAME OF FOUNDATION
 TO SUPPORT ANIMAL PROTECTION.

AFFILIATES:

- PETA U.S.
- PETA Asia
- PETA India
- PETA France
- PETA Australia
- PETA Germany
- PETA Netherlands
- PETA Foundation (U.K.)

(b) It shall be unlawful for any person to distribute or cause to be distributed ... any handbill upon any private property if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous place upon or near the main entrance to the premises, a weatherproof card ... bearing the words “no solicitation,” “no advertisements,” “no handbills,” or any similar notice indicating in any manner that the occupants of such premises do not desire to have any such handbills left upon their premises.

(c) This section does not apply to any department, branch or agency of federal, state, or municipal government and any religious, political or charitable handbills.

First, Mr. Ochoa’s actions did not run afoul of subsection (b). The sidewalk near the entrance of the Plaza where Mr. Ochoa was located was public property, as acknowledged by police at that time. In any event, he stopped his activities once he was asked to by police after having disseminated a single leaflet and continued to follow all SAPD directions.

Even if subsection (b) did apply to Mr. Ochoa’s conduct, subsection (c) explicitly states that the ordinance does not apply to any religious or charitable handbills. As detailed, the leaflet at issue was both religious and charitable in nature. It was created and used by PETA LAMBS, a program intended to be a resource for Christians who want to learn more about how the faith should influence their relationship with animals. Distributed as part of PETA Latino’s and PETA LAMBS’ Lent campaign, the leaflet encouraged religious practitioners and others to go vegan to “honor God.” It invoked Bible verses and religious discourse to highlight animals’ worth through a spiritual lens. The leaflet simultaneously advocated for a vegan diet to improve the lives of animals, a theme central to PETA’s and PETA LAMBS’ advocacy work to which they are dedicated. Furthermore, PETA is a charitable non-profit animal rights organization, and the leaflet directs readers to the organization, website, and contact information to further engage with PETA and its mission.

It is well established that leafleting is an expressive activity protected by the First Amendment, and that sidewalks are areas historically associated with the free exercise of speech deserving of the strongest constitutional protections. *See United States v. Grace*, 461 U.S. 171, 176-77 (1983). Accordingly, general laws banning speech, including distributing leaflets, on public sidewalks have been found to be unconstitutional. *Id.* at 180 (holding that a statute prohibiting expressive activity including leafleting on sidewalks surrounding the Supreme Court build was unconstitutional). *See also Henderson v. Lujan*, 964 F.2d 1179 (D.C. Cir. 1992) (holding that National Park Service’s ban of leafleting on sidewalks near Vietnam Veterans Memorial was unconstitutional).

Mr. Ochoa, in handing out a leaflet on the sidewalk near the Plaza entrance, was exercising his basic and highly-protected right to free speech in a public space, as recognized extensively by courts and as supported by even the ordinance under which he was improperly cited. It is abundantly clear that the SAPD’s action and citation effectively banned his speech in violation of the First Amendment.

In addition to the general prohibition of restricting speech in public areas such as sidewalks, the government is never permitted to suppress expression merely because public officials oppose the speaker's view. *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 677-78 (1998). Similarly, the Supreme Court has specified that viewpoint discrimination occurs whenever a government targets a "particular view taken by speakers on a subject." *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) (also stating that "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.").

As detailed, Mr. Ochoa's conduct was completely lawful under Sec. 23-1, and his activities were protected by the First Amendment. Considering the ordinance explicitly exempts religious and charitable handbills from its reach, the only apparent explanation for the citation—other than broadly and unlawfully banning leafleting on public sidewalks outside the Plaza—is that SAPD sought to restrict and retaliate against Mr. Ochoa's particular viewpoint, namely advocating for compassion to animals and encouraging vegan diets. In other words, the SAPD officers restricted Mr. Ochoa's speech because they did not agree or approve of the specific view expressed in the "Why go vegan? To honor God" leaflet, which is a paradigmatic instance of unlawful viewpoint discrimination.

In light of the foregoing, PETA and Mr. Ochoa demand that the SAPD withdraw the citation issued to Mr. Ochoa on February 22, 2023, as it was issued in clear violation of the First Amendment. Absent such action, Mr. Ochoa is prepared to take legal action to enforce his constitutional rights.

Thank you for your attention to this matter.

Sincerely,



Mary Maerz
Counsel, PETA Foundation



Exhibit 1

Easiest Vegan Mac 'n' Cheese Ever

1 clove garlic
1 tsp. turmeric
1/2 tsp. salt
1/4 cup nutritional yeast
1 cup cashews, soaked for 2 hours, rinsed, and drained
1/4 cup water
1 8-oz. pkg. pasta, cooked according to package instructions

- Place all ingredients, except the pasta, in a blender and process until smooth.
- Pour over the pasta and stir until well coated. Serve warm.

Makes 6 servings

Vegan Fried 'Chicken'

1 tsp. salt
Pepper, to taste
1/2 tsp. onion powder
1 tsp. garlic powder
2 cups flour
3 Tbsp. yellow mustard mixed with 1/2 cup water
2 Tbsp. baking powder
1 lb. vegan chicken chunks
Oil for frying

- Combine the salt, pepper, onion powder, garlic powder, and flour in a bowl.
- Transfer 1/3 cup in to a separate bowl and add the mustard-water mixture. Stir well.
- Add the baking powder to the remaining flour mixture.

- Dip the vegan chicken chunks into the batter then coat in the flour mixture. Fry, turning as needed, in hot oil until golden brown.

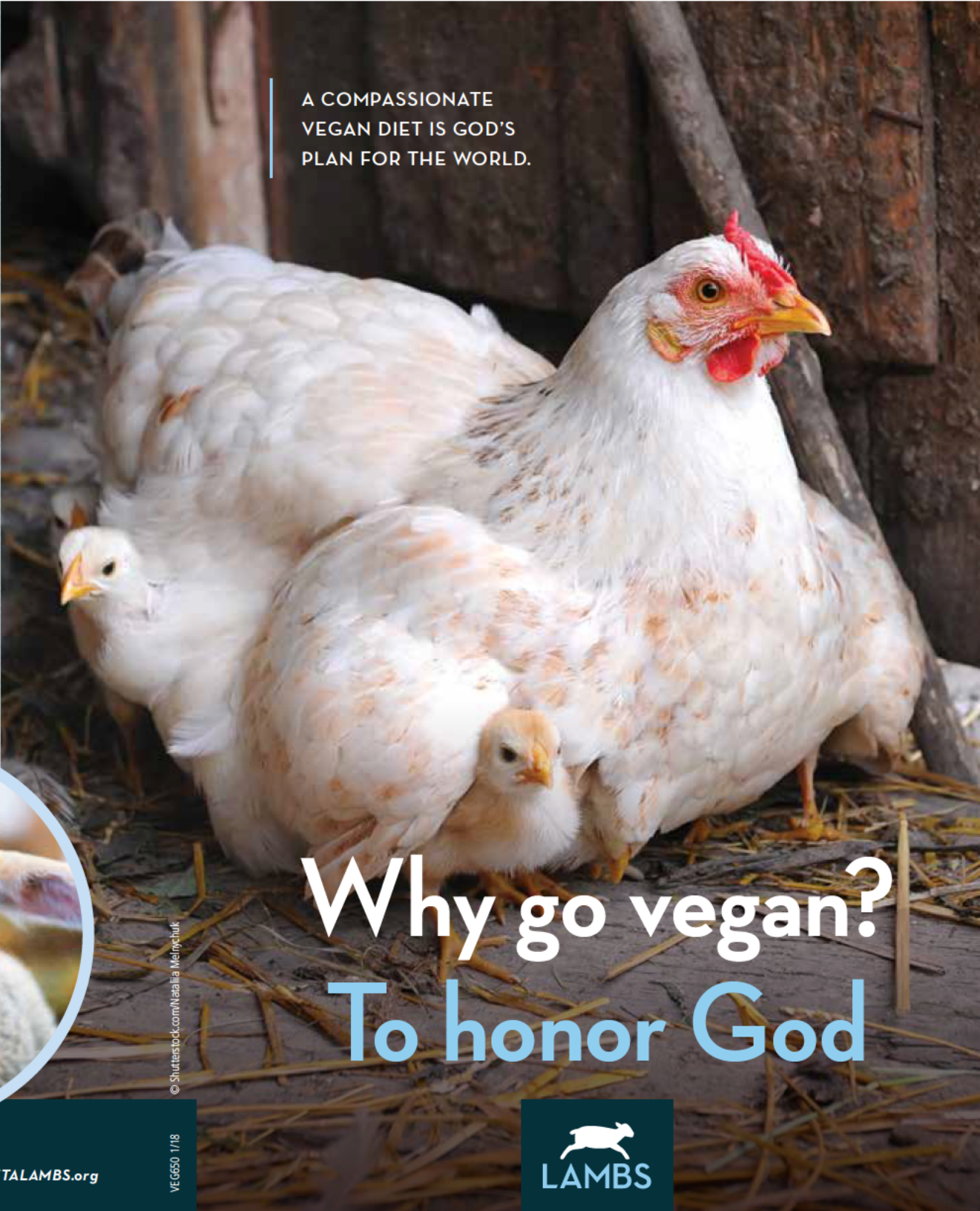
Makes 4 servings

World's Easiest Cookies

2 cups almond flour
1/2 tsp. baking powder
1/3 cup maple syrup
2 tsp. vanilla extract

- Preheat the oven to 350°F and line a baking sheet with parchment paper.
- Combine the almond flour and baking powder in a bowl. Stir in the maple syrup and vanilla. (The dough should be sticky and hold together well.)
- Drop rounded tablespoonfuls of dough onto the baking sheet about 1 inch apart. Bake until the edges are golden brown, about 12 minutes.

Makes about 16 cookies



A COMPASSIONATE
VEGAN DIET IS GOD'S
PLAN FOR THE WORLD.

Why go vegan? To honor God

Blessed Are the Merciful

“ God said, ‘See, I have given you every plant yielding seed that is upon the face of all the earth, and every tree with seed in its fruit; you shall have them for food. And to every beast of the earth, and to every bird of the air, and to everything that creeps on the earth, everything that has the breath of life, I have given every green plant for food.’ And it was so. God saw everything that he had made, and indeed, it was very good. ”

—Genesis 1:29-31a

“ And the king will reply, ‘Truly I tell you, whatever you do unto the *least among my brothers and sisters*, you do as unto me.’ ”

—Matthew 25:40

We feel God's loving presence every day, but have you ever noticed how His presence is reflected in the lives of animals?

Hens cluck to their chicks, who chirp back from inside the shells. Not only are chickens devoted parents, they're also inquisitive, social individuals who like being with others of their own species. Pigs are sociable, too, and extremely intelligent. They form strong bonds and are very protective of their babies. Cows have a wide range of personalities—some are playful, while others are bossy—and they never forget a face. They form friendships with some but avoid others, and mother cows have a deep emotional connection with their calves.

Animals share another connection: They all want to be left in peace, just as our Creator intended in the Garden of Eden. Factory farms deny



Mother pigs are kept inside crates so small that they can't even nuzzle their piglets.



Male calves, who are useless to the dairy industry, are often killed for veal.



Chickens are not protected from abuse by any federal laws.