IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAFEHOUSE, a Pennsylvania nonprofit corporation,
Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,
Counterclaim Defendant,

U.S. DEPARTMENT OF JUSTICE; MERRICK B. GARLAND, in his official capacity as Attorney General of the United States; JACQUELINE C. ROMERO, in her official capacity as U.S. Attorney for the Eastern District of Pennsylvania,
Third-Party Defendants.

UNITED STATES OF AMERICA,
Plaintiff,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; JOSE BENITEZ, as President and Treasurer of Safehouse,
Defendants.

Civil Action No.: 2:19-cv-00519

(Honorable Gerald A. McHugh)

SAFEHOUSE'S MEMORANDUM OF LAW IN OPPOSITION TO EXPEDITED MOTION TO INTERVENE

INTRODUCTION

This Court should deny the Proposed-Intervenors' Expedited Motion to Intervene as Party-Plaintiffs. (Dkt. 192.) Safehouse is mindful of the well-intended concerns that Proposed-Intervenors have raised throughout this litigation regarding the opening of an overdose prevention center in the City of Philadelphia. Safehouse is committed to addressing those concerns to the extent possible and ensuring that its overdose prevention center would be operated in a manner that promotes not only public health but also community safety. Proposed-Intervenors, however, have not sought to raise their concerns in a procedurally viable manner.

First, they seek to intervene in the government's lawsuit for a declaratory judgment regarding the application of 21 U.S.C. § 856(a) to Safehouse's proposed services. But the government's sole claim in that lawsuit has been resolved, and in any event, Proposed-Intervenors plainly lack standing to intervene because the federal government has exclusive authority to enforce federal criminal law, including the Controlled Substance Act.

The only matter that is still pending before this Court is Safehouse's pending counterclaims. Safehouse seeks a ruling that providing supervised consumption services to prevent overdose deaths in Philadelphia is an exercise of the sincerely held religious faith of Safehouse's Board and its Executive Director, Jose Benitez. Accordingly, by virtue of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, Safehouse's proposed services would not violate federal law; moreover, they are protected by the First Amendment to the U.S. Constitution. Proposed-Intervenors lack standing to intervene in what is now only a religious liberty lawsuit. Proposed-Intervenors have also failed to follow Federal Rule of Civil Procedure 24(c) by not submitting a complaint- or answer-in-intervention—likely because they lack cognizable claims. And Proposed-Intervenors would not qualify for mandatory or

permissive intervention, if they were to seek intervention to defend the government against these counterclaims.

Proposed-Intervenors and other interested parties have an important voice in these critical issues facing our communities and the City of Philadelphia. The Proposed-Intervenors (along with 132 amici *supportive* of supervised consumption services, including members of the faith community, families of those who have lost loved ones to overdose death, local community groups, law enforcement officials, and national public health and medical organizations) have participated as amici curiae at every stage of the prior proceedings, and could choose to do so in future proceedings. Proposed-Intervenors and other amici here have actively participated in the public discussion of the impact of the tragic consequences of the opioid and overdose crises on them and their constituencies, including the value of proposed solutions to these crises. Intervention in this lawsuit, however, is not the appropriate mechanism for such engagement. The Proposed-Intervenors' Motion to Intervene should accordingly be denied.

ARGUMENT

1. The Government's Declaratory Judgment Lawsuit Is Final and Not Pending.

Proposed-Intervenors' motion seeks to intervene as a *plaintiff* in the U.S. Government's lawsuit seeking a declaratory judgment that Section 856 applies to Safehouse's proposed supervised consumption services. But that lawsuit is now final. *See* Dkt. 158. So for that reason, alone, the Proposed-Intervenors' motion should be denied.

2. The Proposed Intervenors Failed to Follow Rule 24(c).

The expedited motion should be rejected for the additional, independent reason that Proposed-Intervenors have failed to comply with the mandatory procedural requirements of Rule 24(c), which requires that a motion to intervene "be accompanied by a pleading that sets out the

claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). Proposed-Intervenors failed to do so. This is not a minor procedural defect; it is a fundamental omission that effectively prevents this Court and the parties from understanding "the claim or defense for which intervention is sought." *Id.*

For example, Proposed-Intervenors claim to be seeking "to intervene party-plaintiffs." But it is entirely unclear what that means. The only Plaintiff in this action is the federal government. And the only "claim" the government has asserted in this action—a declaratory judgment count regarding the proper interpretation of 21 U.S.C. § 856(a)—has been fully resolved by the Third Circuit and is no longer in dispute. There are no active claims on the Plaintiff's side of the "*v.*" for "which intervention is sought." Fed. R. Civ. P. 24(c). Insofar as they intend to intervene to assert "claims under Pennsylvania's nuisance law" (Mot. at 11), it was incumbent on them to plead such claims—and to explain the basis for this Court's jurisdiction to adjudicate them—and submit such a pleading along with their "expedited motion."

The motion should be denied on this basis.

3. The Proposed-Intervenors Have Not Established Standing to Intervene.

Proposed-Intervenors also lack standing to intervene. "An intervenor of right must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff requests." *Town of Chester, N.Y. v. Laroe Ests., Inc*., 581 U.S. 433, 439 (2017); *see Wittman v. Personhuballah*, 578 U.S. 539, 543-44 (2016) (explaining that an "intervenor cannot step into the shoes of the original party . . . unless the intervenor independently fulfills the requirements of Article III") (internal quotations omitted). Proposed-Intervenors have not attempted to satisfy

their burden of establishing standing and wrongly contend that "they need not establish" their standing because they "seek no further relief than the Government does." Mot. at 6 n.2.

It is clear from their motion that the relief Proposed-Intervenors are seeking through intervention goes well beyond the narrow declaratory relief regarding an interpretation of Section 856(a) that the government originally sought in this action. Indeed, Proposed-Intervenors say that they are attempting to intervene to "seek full relief against the construction of the proposed injection cites [sic], 'full stop.'" Mot. at 10. That is a form of injunctive relief that the government has never sought in this declaratory judgment action—and therefore it is a form of relief that Proposed-Intervenors must establish their Article III standing to seek. Moreover, insofar as Proposed-Intervenors are seeking to intervene to assert "claims under Pennsylvania's nuisance law," those claims also go well beyond any claims or relief that the government has sought here. Mot. at 5, 7, 11. Because Proposed-Intervenors are seeking relief that is broader than the declaratory relief sought by the government—for which they have made no effort to establish their standing—their expedited motion should be denied for lack of Article III standing.[1] And because Proposed-Intervenors suggest they wish to advance a claim under state law, it is also incumbent on them to explain on what basis this federal court could exercise subject matter jurisdiction over such a claim.

Nor can Proposed-Intervenors intervene as counterclaim-defendants for the purpose of asserting unspecified defenses to Safehouse's counterclaims under RFRA and the First Amendment. Because they failed to submit a proposed complaint-in-intervention or answer-in-

[1] It is possible that what the intervenors really seek is to be heard, either by the Department of Justice or by this Court, in connection with any potential settlement of this matter. But no such claim is ripe. The proposed intervenors do not say they have a complaint against the government for denying them an audience. Nor is there any settlement before the Court against which they might seek intervention to lodge objections.

intervention—as required under Rule 24(c)—it is unclear whether the affirmative relief they would seek as defendants differs from the relief that the government is seeking here; if so, they lack standing to intervene as defendants. *Commonwealth of Pennsylvania v. President United States of Am.*, 888 F.3d 52, 57 (3d Cir. 2018) ("Because the Little Sisters moved to intervene as defendants *and seek the same relief as the federal government*, they need not demonstrate Article III standing." (emphasis added)). In any event, even if Proposed-Intervenors were seeking the same relief as the government, they would still lack authority to intervene for the purpose of enforcing federal criminal law and defending against Safehouse's counterclaims, which are based on the premise that a criminal statute—21 U.S.C. § 856(a)—*cannot* apply to Safehouse consistent with the requirements of RFRA and the First Amendment. That is because, as a matter of law, private parties lack standing and legal authority to "enforce" and "defend" federal criminal law—as Proposed-Intervenors admit they seek to do here. Mot. at 11; *see, e.g.*, *Bey v. La Casse*, 2021 WL 1143690, at *9 (S.D.N.Y. Mar. 22, 2021) ("Because Plaintiff has no right or authority to compel anyone's prosecution or to enforce federal criminal laws, she lacks standing to bring such a claim."); *Walzer v. Town of Orangetown*, 2015 WL 1539956, *6 (S.D.N.Y. Apr. 7, 2015) (holding that private citizens lack standing to contest the non-prosecution of alleged violators of federal criminal law); *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.").

The expedited motion should be denied for lack of standing (if it is not rejected for other threshold reasons).

4. Mandatory and Permissive Intervention Is Unwarranted

Proposed-Intervenors are not entitled to intervene as a matter of right under Rule 24(a). Mot. at 4-10. The government is, by law, the sole party that may determine the enforcement of federal law, and therefore is the designated entity to represent the asserted interests. Intervention as a matter of right is not permitted, where, as here, "existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

There is likewise no basis for this Court to permit Proposed-Intervenors to intervene permissively under Rule 24(b). Safehouse is seeking to vindicate its religious freedom rights to operate an overdose prevention center that includes supervised consumption and, in the process, to save lives of its community members, who are tragically lost every day from preventable opioid overdose death. Proposed-Intervenors do not have "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). And while they failed to attach any pleading to their motion (as they were required to do), the only claims and defenses at issue here are those relating to Safehouse's counterclaims under RFRA and the First Amendment. The counterclaims do not implicate any of the questions of law or fact that are cited in Proposed-Intervenors' motion, such as "claims under Pennsylvania's nuisance law" (which are not at issue here) or facts relating to property values and public safety (which are not relevant to whether enforcement of Section 856(a) against Safehouse would violate statutory and constitutional rights to religious liberty). Mot. at 11. Permissive intervention is unwarranted here.

CONCLUSION

For these reasons, this Court should deny the expedited motion to intervene.

April 25, 2023

Respectfully submitted,

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