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; TODD BLANCHE, in his official capacity as Acting Attorney General of the United States; DAVID METCALF, in his official capacity as U.S. Attorney for the Eastern District of Pennsylvania, *Third-Party Counterclaim Defendants*.	Civil Action No.: 2:19-cv-00519

SAFEHOUSE'S BRIEF IN OPPOSITION
TO MOTION TO DISMISS COUNTERCLAIMS

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INTRODUCTION

The Department of Justice has now litigated against Safehouse for more than seven years for the express purpose of preventing Safehouse from opening an overdose-prevention facility. Safehouse is currently bound by a precedential opinion serving that purpose. DOJ has never disavowed its threat of prosecution, it reaffirms that threat in its motion to dismiss, and its own 2019 declaratory-judgment complaint remains pending against Safehouse to this day. Throughout, DOJ has insisted this controversy is real enough to justify a federal lawsuit that it initiated, but now argues, for the first time and only after the Third Circuit revived Safehouse's religious-liberty counterclaims, that no controversy exists at all. DOJ cannot have it both ways. Safehouse's counterclaims arise from the same controversy that DOJ put to this Court when it sought a declaratory judgment and requires no additional jurisdictional showing.

DOJ's jurisdictional arguments are meritless in any event. The case has not become moot simply because Safehouse has refrained from taking substantial steps to open an overdose-prevention facility—and thereby potentially expose itself to federal criminal liability—while this case and its religious-liberty claims remain pending. Safehouse has alleged its intent to move expeditiously forward with opening an overdose-prevention center after the federal law impediments are removed. That suffices to maintain jurisdiction over this controversy.

Nor does the passage of a Philadelphia zoning ordinance purporting to restrict the operation of overdose-prevention centers in certain council districts undercut justiciability. The standing requirement of redressability does not require that relief remove every burden on the Safehouse project: the judgment Safehouse seeks will address federal criminal liability, the primary obstacle to the exercise of Safehouse's rights. Moreover, the zoning ordinance does not moot Safehouse's claims or preclude Safehouse from establishing an overdose-prevention center. It does not cover all districts within the City of Philadelphia—much less have any application to surrounding counties. In the areas it covers, the ordinance is subject to variance procedures. Safehouse has conceded neither the zoning ordinance's validity nor its application to Safehouse's religiously motivated activities. And whatever local administrative hurdles a zoning restriction on *land use* may pose, they are patently different in kind and degree to a federal criminal prohibition on *Safehouse* itself. The existence of a zoning ordinance thus by no means makes it "impossible for a court to grant any effectual relief" by avoiding federal criminal exposure. *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

The merits of DOJ's motion are also familiar and unconvincing. DOJ again asks this Court to do what the Third Circuit and binding precedent forbid: to resolve on the pleadings fact-bound questions about the sincerity and religious character of Safehouse's beliefs, to recharacterize Safehouse's religious convictions as "socio-political" because they are informed by medical evidence, and to defeat a substantial-burden claim by speculating that Safehouse's board members could express their faith some other way. Each of these arguments asks the Court to weigh facts, draw inferences against the non-moving party, and apply legal tests the Supreme Court and Third Circuit have squarely repudiated, including in this very case. The Third Circuit's decision in *Davis v. Wigen*, 82 F.4th 204 (3d Cir. 2023), and the Supreme Court's decisions in *Holt v. Hobbs*, 574 U.S. 352 (2015), *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), and *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006), foreclose each of them.

At its core, DOJ continues to confront Safehouse and its board members with a heart-wrenching choice: cast vulnerable people suffering from addiction outside at the very moment they are most likely to die of overdose, or risk federal prison for allowing them to remain sheltered and within immediate reach of lifesaving medical care. (Safehouse's Third Amended Counterclaims

("TAC") ¶¶ 137, 146-48, ECF No. 247.) That choice substantially burdens Safehouse's religious exercise, and DOJ's selective enforcement of Section 856—which DOJ has not applied to any other entity based solely on simple use, and which it administers on an announced "district-by-district" basis—triggers strict scrutiny, which DOJ does not even attempt to satisfy in its motion papers. (TAC ¶¶ 93, 171; DOJ Motion to Dismiss ("Mot.") at 57 n.16.) The motion to dismiss should be denied in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Opioid Crisis and Safehouse's Overdose-Prevention Model.

Philadelphia is in the midst of a public-health emergency. (TAC ¶¶ 17-18.) More than 2,300 people died of opioid overdose in Philadelphia in 2018–2019—when this case began—and more than 10,000 people in Philadelphia have died of overdoses since 2017, with tens of thousands more continuing to suffer from opioid use disorder. (TAC ¶¶ 18, 52, 149.) Extensive public-health research demonstrates that overdose-prevention centers reduce overdose deaths in their immediate vicinity, reduce public drug use and discarded syringes, reduce the transmission of HIV and Hepatitis C, lower healthcare and criminal-justice costs, and increase entry into long-term treatment—without increasing crime. (TAC ¶¶ 43-49.)

Safehouse, a Pennsylvania nonprofit corporation formed in 2018, seeks to open an overdose-prevention center offering medically supervised consumption and observation, sterile consumption equipment, wound care, primary care, counseling, medication-assisted treatment, naloxone, and wraparound services such as housing and benefits assistance. (TAC ¶¶ 11, 30, 38, 65.) Safehouse's medical professionals will not distribute, dispense, or administer controlled substances; they will supervise consumption for the singular purpose of reversing overdoses with naloxone, respiratory support, and other lifesaving care. (TAC ¶¶ 64-66.) Medical supervision at the moment of consumption is often the difference between life and death, because fentanyl can cause respiratory failure within minutes, and because naloxone works only if someone is present to administer it before a person loses consciousness. (TAC ¶¶ 80-82.)

B. DOJ's Threats and This Declaratory-Judgment Action.

In November 2018, not long after Safehouse formed, the U.S. Attorney of the Eastern District of Pennsylvania sent Safehouse a letter declaring DOJ's intent to pursue "appropriate legal remedies" for a purported violation of the Controlled Substances Act (the "CSA"), and the Deputy Attorney General publicly warned that operators of such facilities could face "up to 20 years in prison." (TAC ¶¶ 50-51.) On February 5, 2019, DOJ filed this declaratory-judgment action under 21 U.S.C. § 856(e), seeking a declaration that Safehouse's model would violate Section 856(a)(2). (TAC ¶ 52.)

DOJ's threats of civil and criminal enforcement "have persisted throughout the pendency of this litigation and persist to this date." (TAC ¶ 54.) Indeed, during the past seven-plus years, the DOJ has never withdrawn, retracted, or otherwise softened its November 2018 threat to enforce the CSA against Safehouse if Safehouse were to begin operating an overdose-prevention center in the Philadelphia area. And DOJ itself admits that "Safehouse is subject to threatened enforcement by DOJ if Safehouse actually operates an injection site." (Mot. at 13.)

C. Safehouse's Religious Mission.

Since its formation in 2018—before DOJ filed suit—Safehouse's publicly posted mission statement has declared: "The leaders and organizers of Safehouse are motivated by the Judeo-Christian beliefs ingrained in us from our religious schooling, our devout families and our practices of worship. At the core of our faith is the principle that preservation of human life overrides any other considerations." (TAC ¶ 136.)

Safehouse exists and acts through its Board, whose religious beliefs are the beliefs of the corporation. (TAC ¶¶ 143, 155-56.) Safehouse's board members are adherents of faiths in the Judeo-Christian tradition who believe, based on deeply held religious convictions rooted in scripture, that they are obligated to "preserve life, provide shelter to [their] neighbors, and to do everything possible to care for the sick," and that providing overdose-prevention services effectuates that obligation. (TAC ¶¶ 137, 140-46.) Those convictions are grounded in specific scriptural sources drawn from the Old and New Testaments, and in the belief that "human life has inherent value because God created all living things." (TAC ¶¶ 143-45.)

Board President José Benitez was raised and educated as a Roman Catholic and has devoted his professional life to serving people who use drugs. He is "committed to opening an overdose prevention center . . . once the legal barriers to doing so are removed" as "an exercise of his sincerely held religious beliefs." (TAC ¶¶ 141-42.)

In January 2026, after DOJ "called into question whether Safehouse's overdose prevention service model constitutes the sincere exercise of religion," the Board formally adopted an official mission statement and amended its bylaws to reiterate that Safehouse "acts for charitable and religious purposes"—reaffirming the religious mission Safehouse has continuously professed since 2018. (TAC ¶¶ 150-54.)

D. Safehouse's Commitment to Go Forward and Its Counterclaims.

Safehouse remains "committed to opening and operating a supervised consumption facility as soon as feasible once the legal barriers are removed"; prevailing in this litigation will remove a primary legal barrier. (TAC ¶¶ 10, 138.)

Throughout this litigation, Safehouse has consistently maintained—via counterclaims and affirmative defenses to DOJ's claims—that DOJ's threatened enforcement of the CSA violates

Safehouse's religious-freedom rights. Safehouse's operative Third Amended Counterclaims specifically assert that DOJ's threatened enforcement of Section 856 violates RFRA and the Free Exercise Clause of the First Amendment to the U.S. Constitution. (TAC ¶¶ 185-203.)

E. The Third Circuit's Remand.

In 2021, the Third Circuit held that Safehouse's model would violate Section 856(a)(2) and remanded for consideration of the RFRA counterclaim. *United States v. Safehouse*, 985 F.3d 225 (3d Cir. 2021) ("*Safehouse I*"). Safehouse amended its pleading post-remand to assert counterclaims for First Amendment violations as well. This Court dismissed Safehouse's counterclaims on the grounds that Safehouse, as nonprofit entity, could not invoke RFRA or the Free Exercise Clause without formal incorporation as a religious entity. Safehouse appealed, and the Third Circuit reversed, holding that "RFRA's plain text and Free Exercise doctrine are clear that those statutory and constitutional protections [for action predicated on religious beliefs] extend to non-natural persons, including so-called non-religious entities." *United States v. Safehouse*, 146 F.4th 315, 319 (3d Cir. 2025) ("*Safehouse II*"). The court "express[ed] no view about whether threatened prosecution of Safehouse substantially burdens its exercise of religion," and remanded for this Court to consider "whether Safehouse has plausibly pleaded RFRA and Free Exercise counterclaims." *Id.* at 319, 321.

F. DOJ's Current Motion.

On remand, Safehouse filed its TAC. DOJ now moves to dismiss the TAC with prejudice under Rules 12(b)(1) and 12(b)(6). DOJ raises for the first time a jurisdictional theory premised on a 2023 Philadelphia zoning ordinance, and it renews its merits arguments that Safehouse's beliefs are not religious and that Section 856 is generally applicable.

LEGAL STANDARDS

On a Rule 12(b)(6) motion, the Court must "accept all factual allegations as true [and] construe the complaint in the light most favorable to the [counterclaimant]." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008). A complaint survives if it pleads "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The plausibility standard "is not akin to a probability requirement"; it asks only for "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. The Court may not weigh competing facts, resolve disputed inferences against the pleader, or test the strength of the evidence when resolving a motion to dismiss. For the RFRA and Free Exercise claims, "[a]t the pleadings stage, a court asks only whether the plaintiff has plausibly alleged each element of his prima facie case." *Davis v. Wigen*, 82 F.4th 204, 211 (3d Cir. 2023).

"A 12(b)(1) challenge can be either facial or factual." *Huertas v. Bayer US LLC*, 120 F.4th 1169, 1174 n.7 (3d Cir. 2024). A facial challenge—which is what DOJ presents here—"attacks the complaint on its face without contesting its alleged facts"; such a challenge is governed by the same standard as a Rule 12(b)(6) motion: the Court accepts the pleaded allegations as true and asks only whether they suffice to establish jurisdiction. *Id.*; *see In re Schering-Plough Corp. Intron/Temodar Consumer Class Action*, 678 F.3d 235, 243 (3d Cir. 2012).

ARGUMENT

I. The Court Has Subject-Matter Jurisdiction Over Safehouse's Counterclaims.

DOJ's lead argument is that Safehouse lacks Article III standing and that, in the alternative, a 2023 City zoning ordinance moots the counterclaims. Both theories rest on the same flawed premise: that the City's zoning ordinance, not DOJ's threatened federal prosecution, is the sole legally relevant barrier to Safehouse's religious exercise. That premise is wrong as a matter of fact and law. DOJ itself created this controversy and continues to threaten Safehouse with federal criminal and civil enforcement; that threat is a concrete, traceable, redressable injury regardless of a partial local-law impediment.

A. DOJ's Own Declaratory-Judgment Action and Unretracted Enforcement Threat Establish a Live Article III Controversy.

DOJ's standing argument fails for three independent reasons.

First, Safehouse's counterclaims arise from the same controversy DOJ itself placed before this Court, and no separate standing showing is required. Safehouse is the named defendant in the government's still-pending declaratory-judgment action, which seeks a declaration that Safehouse's proposed conduct violates federal criminal law. Safehouse's RFRA and Free Exercise counterclaims are defensive in nature, and seek to resolve the identical dispute from the other side: they ask this Court to declare that, even if Section 856 reaches Safehouse's conduct, enforcement would violate Safehouse's statutory and constitutional rights. (TAC ¶¶ 7, 9-10.) Safehouse has also asserted its First Amendment position as an affirmative defense to DOJ's complaint. (TAC at 48.) Safehouse has set forth counterclaims for a declaratory judgment but does not seek any other relief or advance any other claims against the government. The counterclaims and the complaint thus present different legal theories bearing on a single, concrete question—whether DOJ may lawfully prevent Safehouse from opening an overdose-prevention site—and that shared question is the "case or controversy" Article III requires. Indeed, a defendant's counterclaims seeking declaratory relief about the legality of the same conduct the plaintiff has placed at issue require no independent jurisdictional showing, because they are "merely another aspect of th[e] controversy" the plaintiff initiated. *See, e.g.*, *Integrity Magnesia Corp. v. Mifflin, McCambridge Co.*, 28 F.R.D. 596, 596 (E.D. Pa. 1961); *see also Cordance Corp. v. Amazon.com, Inc.*, 521 F. Supp. 2d 340, 343

(D. Del. 2007) (where a party "has actually been charged" with the conduct at issue "there is, necessarily, [a] case or controversy adequate to support jurisdiction" over its declaratory counterclaims). And just as a declaratory-judgment plaintiff cannot defeat a defendant's related counterclaim by narrowing or withdrawing its own claims, *see Tyco Fire Prods. LP v. Victaulic Co.*, No. 10-4645, 2012 WL 39956, at *5-6 (E.D. Pa. Jan. 6, 2012), the government cannot manufacture a jurisdictional defect in Safehouse's defensive counterclaims when it is DOJ's own suit—and the ruling it obtained from the Third Circuit—that created the legal jeopardy Safehouse now challenges. *See United States v. Vazquez*, 145 F.3d 74, 81 (2d Cir. 1998) ("In light of the pendency of the government's suit against [the defendant], the district court should not have dismissed [the] counterclaims for lack of standing."). It would be a strange rule that permits the government to prosecute a seven-year-old declaratory-judgment action to establish that Safehouse's proposed conduct is criminal and obtain a ruling supporting its construction of the statute while denying that the Court has jurisdiction to adjudicate Safehouse's religious-liberty defenses and counterclaims, arising from that very determination, that would declare that same conduct to be lawful.

Second, even if Safehouse must independently satisfy Article III as the "plaintiff" on its counterclaims, DOJ's specific, unretracted threat of prosecution establishes a credible threat of enforcement that confers pre-enforcement standing. In the pre-enforcement context, a plaintiff establishes injury by alleging "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and . . . a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). "[A] plaintiff [need not] expose himself to liability before bringing suit to challenge the basis for the threat." *MedImmune, Inc. v. Genentech, Inc.*, 549

U.S. 118, 128-29 (2007). A specific prior threat, coupled with the government's failure to disavow enforcement, is powerful evidence of a credible threat. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Holder v. Humanitarian Law Project*, 561 U.S. 1, 15-16 (2010); *Driehaus*, 573 U.S. at 164-65.

Here, the threat is not merely credible—it is admitted and ongoing. The record of DOJ's enforcement threat is unambiguous. In November 2018, the U.S. Attorney sent Safehouse a letter declaring DOJ's intent to pursue "appropriate legal remedies" for a purported CSA violation. (TAC ¶ 50.) Weeks later, the Deputy Attorney General publicly warned that operators of such facilities could face "up to 20 years in prison." (TAC ¶ 51.) The statute backs up that warning: a violation of Section 856 carries imprisonment of up to twenty years, fines of up to $2,000,000, and forfeiture of any property used in or derived from the offense. 21 U.S.C. § 856(b), (d); (TAC ¶ 53). In February 2019, DOJ escalated from threat to action, filing this declaratory-judgment lawsuit to establish that Safehouse's proposed conduct is a federal crime. (TAC ¶ 52.) And in the more than seven years since, ***DOJ has never withdrawn, qualified, or disavowed any of those threats—indeed, it reaffirms in its present motion that it will enforce Section 856 if Safehouse opens***. (TAC ¶ 54; Mot. at 13.) These facts—a specific written threat, a public warning of severe criminal penalties, the filing of an enforcement-driven lawsuit, and an unwavering refusal to disavow—confirm a controversy "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune*, 549 U.S. at 127. That showing far exceeds what pre-enforcement standing requires. A credible threat exists where the enforcing authority "has already articulated that [the plaintiff] is subject to the prohibitions in the statute" and has not disavowed enforcement. *N.J. Bankers Ass'n v. Att'y Gen. N.J.*, 49 F.4th 849, 856 (3d Cir. 2022); *cf. Greenberg v. Lehocky*, 81 F.4th 376, 386-87 (3d Cir. 2023) (finding no credible threat where disciplinary authorities specifically disavowed enforcement against the plaintiff's planned conduct).

Third, because Safehouse is the direct object of DOJ's enforcement action, traceability and redressability are straightforward. When a plaintiff "is himself an object of the [challenged government] action . . . there is ordinarily little question that the action . . . has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). That is the easy case for standing. DOJ's authorities come from the harder category—cases where the plaintiff's injury depends not on the government's direct action against the plaintiff, but on "the unfettered choices made by independent actors not before the courts." *Id.* at 562. That is not this case, however. Safehouse is the paradigmatic direct target. The Third Circuit has held that when the plaintiff is the direct target of an enforcement threat, the credible threat of prosecution "is traceable to the [enforcing authority's] enforcement of the [law], and enjoining enforcement would redress that injury." *Schrader v. District Attorney of York County*, 74 F.4th 120, 125 (3d Cir. 2023); *accord N.J. Bankers*, 49 F.4th at 856. The Supreme Court recently reaffirmed this principle: the government "generally may not target a business or industry through stringent and allegedly unlawful regulation, and then evade the resulting lawsuits by claiming that the targets of its regulation should be locked out of court as unaffected bystanders" that lacked Article III standing. *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 125 (2025). That is precisely what DOJ attempts here.

B. Safehouse Has Standing Whether Measured as of Its Original Counterclaims or Purely Under the Third Amended Counterclaims.

Safehouse has standing regardless of the date on which it is measured, so the Court need not resolve DOJ's contention (at 9-10) that *Lutter v. JNESO*, 86 F.4th 111 (3d Cir. 2023), fixes the relevant date for assessing Safehouse's standing as April 13, 2026—the date on which the TAC was filed. DOJ's threatened enforcement was live when Safehouse first counterclaimed, was live in April 2026, and remains live today. (TAC ¶ 54; Mot. at 13.) Safehouse alleges a continuing intention to open "as soon as feasible once the legal barriers are removed," including if it "prevails on either (or both) of its RFRA or First Amendment claims." (TAC ¶¶ 10, 138.) And DOJ concedes the threat. (Mot. at 13.) Nothing more is required.

As a threshold matter, *Lutter* would not shift the date. An amended complaint "does not restart the date for assessing standing"; it merely "provides additional information that can be used to evaluate standing as of the date that the lawsuit was filed." *Lutter*, 86 F.4th at 124-25. A later standing date applies only where supplemental allegations "substantively affect[]" the claims and relief sought. *Id.* at 125-26. The TAC's allegations—including the Board's January 2026 restatement of the religious mission Safehouse has publicly professed since its founding in 2018—confirm a pre-existing state of affairs rather than transform Safehouse's claims or requested relief, and so they are amendments, not supplements. *Id.* at 125; (TAC ¶¶ 136, 139, 152, 156.)

But even accepting DOJ's preferred date of April 13, 2026, Safehouse's standing is secure. DOJ's argument—that Safehouse has not identified a specific site, lease, option contract, or funding and has alleged only a generalized intent to open "in the Philadelphia area"—misstates the pleading standard for pre-enforcement religious-liberty claims. (Mot. at 11-12.) A pre-enforcement plaintiff need not consummate the very transaction the government threatens to criminalize before it may sue. *MedImmune*, 549 U.S. at 128-29; *Driehaus*, 573 U.S. at 158-59. The pre-enforcement doctrine exists precisely so that "it is not necessary that [a plaintiff] first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Steffel*, 415 U.S. at 459. Requiring Safehouse to acquire property and open its doors to establish standing would force it to "expose [itself] to liability"—a twenty-year felony, up to $2,000,000 in fines, and forfeiture—as the price of judicial review. *MedImmune*, 549 U.S. at 128-29; (TAC ¶ 53). That is exactly the "dilemma" the Declaratory Judgment Act exists "to ameliorate." *MedImmune*, 549 U.S. at 129.

DOJ's own conduct confirms the point. DOJ did not wait for Safehouse to acquire a site, sign a lease, or open before suing Safehouse. (TAC ¶¶ 7, 52.) DOJ cannot simultaneously maintain a live enforcement action premised on Safehouse's imminent operation and contend that Safehouse's defensive counterclaims—seeking a declaration that the same operation is lawful—are too speculative to adjudicate. *See Vazquez*, 145 F.3d at 81. The asymmetry DOJ proposes—its affirmative claim is justiciable, but Safehouse's defensive counterclaim is not—finds no support in logic, in justice, or in Article III. The relief Safehouse seeks would resolve the identical controversy DOJ itself placed before the Court.

DOJ's observation (at 14) that "Safehouse has now been organized for eight years but has taken no concrete preparatory steps toward operation" inverts the standing inquiry. The reason that Safehouse has not opened is that DOJ's threats, as endorsed by the Third Circuit's *Safehouse I* opinion, compel it to refrain—that is, the very injury Safehouse challenges is the cause of the purported inaction DOJ now invokes. *See Mack v. Yost*, 63 F.4th 211, 226-28, 230 n.15 (3d Cir. 2023) ("That [the Plaintiff] did stop praying at the commissary [in response to Defendants' alleged campaign to make him stop] does not end the matter . . . . It *is* the matter. It is the whole point."). A plaintiff does not forfeit standing by heeding the government's threat and a Court's opinion rather than defying it. The law does not somehow mandate civil disobedience. *MedImmune*, 549 U.S. at 129 (compliance "coerced" by threatened enforcement does not defeat jurisdiction); *see also Babbitt*, 442 U.S. at 298 (pre-enforcement plaintiff need not "await the consummation of threatened injury to obtain preventive relief"). Nor does Article III require Safehouse to build out the lawful portions of its proposed operation—syringe exchange, naloxone distribution, primary care—as a precondition to challenging DOJ's prohibition of a crucial, religiously motivated component of that operation: supervised consumption at the critical moment of overdose risk. Safehouse's religious exercise, as pleaded, encompasses the full model. (TAC ¶¶ 146, 186, 195.) Requiring Safehouse to open a partial facility that omits the very religious exercise it seeks to vindicate would turn the pre-enforcement doctrine on its head—a plaintiff would first have to build out every lawful component of its proposed operation before earning the right to challenge the government's prohibition of the one component that matters most. That is not the law. The relevant question is whether Safehouse intends to engage in the prohibited conduct if the legal barrier is removed, and the TAC answers that question unequivocally: Safehouse "remains committed to opening and operating a supervised consumption facility as soon as feasible once the legal barriers are removed." (TAC ¶ 10.)

The Supreme Court's decision in *Steffel v. Thompson* supplies the governing framework. There, the Court recognized that the passage of time or changed circumstances could theoretically eliminate a pre-enforcement controversy, but held that the relevant question is whether "subsequent events have so altered [the plaintiff's] desire to engage in" the challenged conduct "that it can no longer be said that this case presents a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." 415 U.S. at 459-60 (internal quotation marks omitted). Here, nothing has altered Safehouse's steadfast, unwavering desire to engage in the conduct DOJ seeks to prohibit. The TAC alleges—and DOJ does not meaningfully dispute—that Safehouse and its Board seek to engage in religious exercise "by opening an overdose prevention center in the Philadelphia area as soon as feasible." (TAC ¶ 138; *id.* ¶¶ 10, 141-42.) And the TAC plausibly alleges that the overdose crisis that animates Safehouse's mission has not abated. (TAC ¶¶ 17-18, 149.) Safehouse's purpose remains exactly what it was when DOJ sued: to open a facility providing religiously motivated, lifesaving overdose-prevention services. The controversy is as live and acute today as it was in 2019.

DOJ's reliance on *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293 (3d Cir. 2003), *O'Shea v. Littleton*, 414 U.S. 488 (1974), and the "imminence" footnote in *Lujan*, 504 U.S. at 564 n.2, is misplaced. (Mot. at 12-13.) Unlike Safehouse, the plaintiffs in those cases had never been the target of any government enforcement action or threat. No government official had warned the *Storino* plaintiffs that their proposed conduct would be prosecuted. *O'Shea* noted the "absence of allegations that any relevant criminal statute of the State of Illinois is unconstitutional on its face or as applied or that respondents have been or will be improperly charged with violating criminal law." 414 U.S. at 496. And the *Lujan* plaintiffs challenged the government's regulation of third parties, not any action directed at themselves. As in *Steffel*—where the plaintiff had standing to seek a declaratory judgment because he had been warned twice to stop and threatened with prosecution—Safehouse is the identified, warned, and sued target of the very enforcement it challenges. 415 U.S. at 459. A party who is "himself an object of the action" he challenges is the easiest case for standing, *Lujan*, 504 U.S. at 561—and Safehouse is not merely a likely object but the named defendant in the government's pending enforcement-driven suit. The actual probability of enforcement here is not "conjectural"; it is the express object of this litigation.

DOJ's own authorities underscore the point. DOJ relies on *National Shooting Sports Foundation v. Attorney General of New Jersey*, but there the government had *disavowed* enforcement, which "weigh[ed] against a credible threat of prosecution." 80 F.4th 215, 221 (3d Cir. 2023) ("[W]e consider what the enforcer has said about enforcement plans. . . . The Attorney

General has disavowed prosecuting the Foundation or its members just for participating in 'lawful commerce,' which is all the Foundation has said it wants to do."). Here, DOJ has done the opposite—it sued and has never disavowed—so the same doctrine cuts decisively in Safehouse's favor. DOJ's suggestion that Safehouse's years of organization without opening show a lack of intent likewise gets the matter backwards: Safehouse has not opened *because* DOJ sued to stop it and, since then, has consistently maintained that threat to prosecute it if it does. (TAC ¶¶ 10, 148.) The passage of time under the shadow of a credible enforcement threat confirms the threat's coercive force—it does not negate it. *MedImmune*, 549 U.S. at 129.

C. The City Zoning Ordinance Does Not Defeat Standing.

DOJ maintains that Philadelphia's 2023 "Narcotics Injection Sites Overlay District" ordinance independently bars Safehouse from operating and therefore breaks the causal chain to Section 856 and renders federal relief useless. (Mot. at 15-18; *see id.* at 7-9, 12-13.) That theory is both legally and factually flawed. As a matter of law, redressability does not require complete relief—removing the most severe layer of Safehouse's legal exposure satisfies Article III even if other barriers remain. And as a matter of fact, the ordinance does not bar Safehouse from operating: it does not cover the entire City, it is subject to variance, its validity is not conceded, and Safehouse is committed to saving lives wherever possible.

First, DOJ's theory fails as a matter of law because redressability does not require complete relief. "[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his *every* injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (emphasis in original). "[T]he ability 'to effectuate a partial remedy' satisfies the redressability requirement." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992)); *accord Massachusetts v. EPA*, 549 U.S. 497, 525-26 (2007) (reduction of injury "to some extent" suffices). The Third Circuit has applied this rule: "[w]ith respect to claims for legal or equitable relief, a favorable opinion need not relieve every injury; the judgment need only relieve a discrete injury." *Lutter*, 86 F.4th at 128 (quoting *Larson*, 456 U.S. at 243 n.15). The removal of even one obstacle to the exercise of one's rights, even if other barriers remain, is sufficient.

The federal courts of appeals have applied this principle directly to the zoning-plus-criminal-exposure scenario DOJ invokes. *Knight v. City of New York*, 164 F.4th 173 (2d Cir. 2026), is illustrative. There, the plaintiff sought to operate a business that was barred both by a challenged licensing requirement and by unchallenged city zoning laws. The Second Circuit squarely held that "[t]he possibility that [the plaintiff] could still be subject to enforcement proceedings under the City's zoning laws does not defeat redressability," because relief eliminating the threat of prosecution "would provide meaningful redress for an injury, not . . . relieve him of every injury." *Id.* at 179-80. In reaching this conclusion, the court "agree[d] with the well-reasoned view of the Seventh and Eighth Circuits that a district court's ability to reduce the plaintiff's aggregate criminal exposure can satisfy redressability." *Id.* at 180; *see Reps. Comm. for Freedom of the Press v. Rokita*, 147 F.4th 720, 729 (7th Cir. 2025) ("[R]emoving an additional layer of criminal liability [is] a form of redress sufficient to confer standing, even though the underlying behavior [is] still subject to prosecution"); *Animal Legal Def. Fund v. Reynolds*, 89 F.4th 1071, 1078 (8th Cir. 2024) (similar). As the Seventh Circuit rightly observed, "neither we nor the Supreme Court have ever held that a plaintiff who brings a pre-enforcement challenge against one criminal statute must also challenge all criminal or civil enforcement statutes that potentially bear upon the same conduct." *Schoenthal v. Raoul*, 150 F.4th 889, 902-06 (7th Cir. 2025). These principles foreclose DOJ's arguments regarding the zoning ordinance.

A favorable ruling here would eliminate the threat of a twenty-year federal felony, $2,000,000 in fines, and forfeiture. (TAC ¶ 53); 21 U.S.C. § 856(b), (d). That is the most severe layer of Safehouse's legal exposure by orders of magnitude, and removing it provides exactly the "meaningful" redress that Article III requires, even if that redress is only "partial" in the sense that this case does not involve a challenge to the zoning ordinance. *Knight*, 164 F.4th at 179-80. The local zoning ordinance—a partial land-use restriction enforced by a different sovereign, subject to variance, and carrying civil and administrative consequences for noncompliance—does not change that analysis. As *Knight* held on materially similar facts, "it is the lack of a dealer license—and the attendant threat of criminal prosecution . . .—that matters for purposes of the redressability of [the] asserted injury, not a local zoning restriction." *Id.* at 180. A favorable ruling would also redress Safehouse's distinct, ongoing chilling injury. DOJ's federal threat, not the City's zoning code, is what has "compelled" Safehouse to refrain from operating while thousands die from preventable overdoses. (TAC ¶¶ 148-49.)

A favorable ruling would also provide a distinct, concrete form of redress: it would lift the federal criminal cloud that deters third parties from associating with Safehouse. It is entirely predictable that landlords, funders, and clinicians would decline to lease space to, fund, or staff an enterprise the federal government has publicly branded a federal crime. A declaration that RFRA and the First Amendment bar federal enforcement would directly remove that deterrent. A causal chain running through the predictable reactions of third parties satisfies Article III. *Diamond Alt. Energy*, 606 U.S. at 121 (explaining that, "to show redressability, the plaintiff must simply 'show a predictable chain of events' that would likely result from judicial relief and redress the plaintiff's injury" (quoting *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 385 (2024))); *Dep't of Commerce v. New York*, 588 U.S. 752, 768 (2019) ("[R]espondents' theory of standing thus does not rest on mere speculation about the decisions of third parties; it relies instead on the predictable effect of Government action on the decisions of third parties." (citing *Bennett v. Spear*, 520 U.S. 154, 169-70 (1997))); *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 366 (3d Cir. 2014) (government conduct need not be "the very last step in the chain of causation" (quoting *Bennett*, 520 U.S. at 168-69)).

DOJ's authorities (at 14-17) do not support a contrary conclusion. In *Coastal Outdoor Advertising Group, LLC v. Township of East Hanover*, 397 F. App'x 794 (3d Cir. 2010) (not precedential), and *Harp Advertising Illinois, Inc. v. Village of Chicago Ridge*, 9 F.3d 1290 (7th Cir. 1993), the billboard plaintiffs' signs would have remained prohibited *by unchallenged provisions of the very same municipal sign code*—so an injunction against the challenged provision would have provided no relief whatsoever. Those cases stand for a narrow principle: redressability fails when a favorable ruling would leave the plaintiff in exactly the same position because other provisions of the same regulatory scheme independently and completely bar the desired conduct. That principle has no application here.

DOJ's traceability argument fails for the same reason. Traceability requires only that the injury be "the result of [the] statute's actual or threatened *enforcement*." *California v. Texas*, 593 U.S. 659, 670 (2021). Safehouse's injury—the threat of federal prosecution and the resulting inability to provide religiously motivated care—is directly traceable to DOJ's threatened enforcement of Section 856, and DOJ does not dispute that it is the source of that threat. Contrary to DOJ's suggestion (at 15), *California v. Texas* is not to the contrary: there, the plaintiffs' alleged injuries flowed from *other* provisions of the ACA that "operate[d] independently of" the unenforceable provision they challenged, breaking the causal chain. *Id.* at 678-79. Here, Safehouse challenges the very provision—Section 856—that is the source of its injury. *Warth v. Seldin*, 422

U.S. 490 (1975), is likewise nothing like this case; the *Warth* plaintiffs' inability to obtain housing flowed from market forces and the independent decisions of third-party developers, not from any threat directed at the plaintiffs themselves. *Id.* at 503-08. Safehouse, by contrast, is the direct and admitted target of DOJ's enforcement.

Second, DOJ's theory also fails on its own factual premise. DOJ treats the zoning ordinance as an absolute, independent bar to Safehouse's operation—but it is not. The ordinance does not prevent Safehouse's operation. By DOJ's own account, the ordinance leaves Philadelphia's Third Council District unaffected. (Mot. at 7-8 & n.1, 16.) The TAC, moreover, alleges that Safehouse seeks to open "in the Philadelphia area" (TAC ¶ 138)—not exclusively within the nine Council Districts covered by the zoning overlay. Nothing (except DOJ's threatened enforcement) prevents Safehouse from operating in the uncovered district, in adjacent communities outside the City, or in any location not reached by the ordinance. The ordinance is also subject to variance—a discretionary process that could authorize Safehouse's use even in covered districts. And Safehouse has not conceded the ordinance's validity or its application to Safehouse's religiously motivated operation; the same religious-liberty principles Safehouse presses in this case would supply defenses to the City's attempt to enforce the ordinance against it. The zoning ordinance is thus hardly an absolute, independent bar that defeats redressability.

D. The Zoning Ordinance Does Not Moot Safehouse's Counterclaims.

For similar reasons, DOJ is also incorrect that the 2023 ordinance mooted the case. *See West Virginia v. EPA*, 597 U.S. 697, 719 (2022) ("[T]he Government, not petitioners, bears the burden to establish that a once-live case has become moot.").

A case becomes moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party," and "even the availability of a partial remedy is sufficient to prevent [a] case from being moot." *Chafin*, 568 U.S. at 172, 178. The bar is high: "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.* at 172. DOJ cannot carry its heavy burden because effectual federal relief plainly remains available: this Court can declare that RFRA and the First Amendment bar DOJ from enforcing Section 856 against Safehouse and enjoin that enforcement. (TAC ¶¶ 183-84, 192-93, 203.) That relief would eliminate the federal criminal threat that DOJ itself continues to assert. (TAC ¶ 54.)

The enactment of a separate local zoning ordinance—which does not bind DOJ, does not eliminate federal criminal exposure, and does not cover the entire City—does not make relief against DOJ "impossible." *Chafin*, 568 U.S. at 172. DOJ's mootness theory is, at bottom, the redressability argument relabeled, and it fails for the same reasons set forth in Part I.C. Where the challenged federal enforcement threat continues and a court can still grant effectual partial relief against that threat, the existence of an additional local-law obstacle does not moot the federal controversy. *See Knight*, 164 F.4th at 179-80. The ordinance is not an intervening development that stripped this Court of its power to grant relief against DOJ's ongoing federal threat.

II. Safehouse's Counterclaim for Declaratory Judgment Plausibly Pleads a Complete RFRA Defense.

The counterclaim, as amended, properly pleads a claim for a declaratory judgment under RFRA which at very least is not subject to dismissal on the pleadings. To state a prima facie RFRA claim, "a plaintiff must allege that the government (1) substantially burdened (2) a sincere (3) religious exercise." *Davis*, 82 F.4th at 211 (quoting *Mack v. Warden Loretto FCI*, 839 F.3d 286, 304 (3d Cir. 2016)). "At the pleadings stage, a court asks only whether the plaintiff has plausibly alleged each element of his prima facie case." *Id.* at 211. The government's compelling-interest and least-restrictive-means defenses are not elements of Safehouse's claim; they are the government's burden to prove with admissible facts, raised only after a prima facie showing. *Id.*;

O Centro, 546 U.S. at 428-29. DOJ's three merits arguments—corporate form, secular motivation, and no substantial burden—each ask this Court to resolve factual disputes against Safehouse and to apply legal tests the Third Circuit has rejected.

A. The Third Circuit Has Already Held That Safehouse May Invoke RFRA.

DOJ's argument (at 37-40) that Safehouse's "corporate organization . . . demonstrates that its beliefs are not religious" is an effort to relitigate the precise question the Third Circuit already decided against it. That contention is foreclosed by the law of the case. This Court dismissed the prior counterclaims on the ground that "Safehouse is not a religious entity." *United States v. Safehouse*, 729 F. Supp. 3d 451, 454 (E.D. Pa. 2024) (Dkt. No. 236). The Third Circuit reversed, holding that "RFRA's plain text and Free Exercise doctrine are clear that those statutory and constitutional protections extend to non-natural persons, including so-called non-religious entities." *Safehouse II*, 146 F.4th at 319. DOJ's renewed insistence that Safehouse's "corporate organization" and its acknowledgment that it "is not itself a religious entity" defeat its claims is the same argument under (at best) a new label, and it cannot be squared with the Third Circuit's mandate.

The argument is also wrong on the merits. Safehouse need not be a church, recite a religious purpose in its original articles of incorporation, conduct worship, act on a purely theological rationale, or employ only coreligionists to invoke RFRA or the Free Exercise Clause. The Supreme Court rejected exactly that formalism in *Hobby Lobby*, where it examined the religious beliefs of a closely held corporation's owners rather than parsing corporate documents, and held that requiring incorporators to "forfeit all RFRA (and free-exercise) rights" upon incorporating would be untenable. 573 U.S. at 706-07; (TAC ¶¶ 143, 156-58). Familiar institutions confirm the point. A Catholic hospital does not cease to engage in religious exercise because it is incorporated, employs clinicians of many faiths, treats patients of all faiths, and provides scientifically grounded medical care; and a Jewish school or university does not lose its religious character because it teaches a secular curriculum and admits students who do not share its faith. So too here: Safehouse exists and acts through its Board, whose sincerely held religious beliefs are the beliefs of the corporation, and Pennsylvania law vests that Board with authority to manage Safehouse's affairs and to operate, at least in part, for religious purposes. (TAC ¶¶ 143, 155-58.)

Safehouse's Board reaffirmed its religious purpose by formally adopting its mission statement, "to save lives by providing a range of overdose prevention services. The leaders and organizers of Safehouse are motivated by the Judeo-Christian beliefs ingrained in us from our religious schooling, our devout families, and our practices of worship. At the core of our faith is the principle that preservation of human life overrides any other considerations." (TAC ¶ 152.) Safehouse's Board further amended its Bylaws to provide that Safehouse acts for "charitable and religious purposes, as reflected in the mission statement that has been adopted by the Board.'" (TAC ¶ 153.) Pennsylvania law confers on a nonprofit corporation's board the authority to govern and act on its behalf, providing that "the business and affairs of every nonprofit corporation shall be managed by or under the direction of, a board of directors." 15 Pa. Cons. Stat. § 5721. The Board has the authority to operate for the purpose of religious exercise under Pennsylvania law—regardless of whether Board members are treated like "owners" or "shareholders"—and its organizational beliefs are formally and expressly confirmed by its formal adoption of its mission statement encapsulating its religious purpose and motivation and by the amendments to its Bylaws.

DOJ's "markers of religiosity" checklist (at 38-39)—no worship, no coreligionist membership, no religious content in its provision of services—is borrowed from the Title VII "religious organization" analysis of *LeBoon v. Lancaster Jewish Community Center Ass'n*, 503 F.3d 217 (3d Cir. 2007). But *LeBoon* construed a statutory exemption available only to "religious organizations" under Title VII; it has no application to RFRA or the Free Exercise Clause, which protect a "person's exercise of religion," not a "religious entity's exercise." The Third Circuit rejected the checklist approach in its opinion in this very case. *Safehouse II*, 146 F.4th at 321 (holding that "RFRA's plain text and Free Exercise doctrine are clear that those statutory and constitutional protections extend to non-natural persons, including so-called non-religious entities"). DOJ cannot resurrect the entity-status requirement the Third Circuit rejected by relabeling it a "corporate organization" argument or by reframing the claim as belonging solely to Safehouse's board members.

B. Safehouse Plausibly Alleges Sincere Religious Exercise.

RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," 42 U.S.C. § 2000bb-2(4); 42 U.S.C. § 2000cc-5(7)(A), and "must be construed in favor of a broad protection of religious exercise." *Davis*, 82 F.4th at 211. A practice is protected where it has "profound religious significance" or is "an expression of [one's] faith." *Id.* at 212-13.

Safehouse easily satisfies this standard. The TAC alleges that Safehouse's mission is rooted in "Judeo-Christian beliefs," that "the preservation of human life overrides any other considerations," and that this principle is "rooted in scripture" drawn from the Old and New Testaments. (TAC ¶¶ 136, 143-45.) It identifies the specific scriptural commands underlying that conviction and alleges the board members' belief that "human life has inherent value because God created all living things." (TAC ¶¶ 143-45.) It alleges that Safehouse's board members are religious adherents who believe they are obligated to "preserve life, provide shelter to [their] neighbors, and to do everything possible to care for the sick," and that providing overdose-prevention services "effectuates their religious obligation." (TAC ¶¶ 140-42, 146.) Those beliefs "address[] fundamental and ultimate questions having to do with deep and imponderable matters" and are part of a comprehensive belief system dating back millennia, satisfying any threshold religiosity inquiry. *Africa v. Pennsylvania*, 662 F.2d 1025, 1032 (3d Cir. 1981) (pre-RFRA constitutional discussion).

That Safehouse's faith traditions do not, in DOJ's words (at 19), "explicitly direct[]" the operation of an overdose-prevention facility is irrelevant under the statute's plain language. RFRA protects religiously motivated conduct "*whether or not [it is] compelled by, or central to, a system of religious belief*." 42 U.S.C. § 2000cc-5(7)(A) (emphasis added); *Holt*, 574 U.S. at 361-62; *Davis*, 82 F.4th at 211. Congress adopted that capacious definition precisely to reject the pre-*Smith* First Amendment cases that had inquired into centrality and instructed that it "be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of th[e statute] and the Constitution." *Hobby Lobby*, 573 U.S. at 696; 42 U.S.C. § 2000cc-3(g). *Davis* applied that rule to hold that marriage—though "not required of every Christian"—was nonetheless protected because the plaintiffs alleged it had "profound religious significance for them" and was "an expression of" their faith. 82 F.4th at 212-13.

So too here: Safehouse alleges that operating an overdose-prevention center is the way its board members carry out a scripturally commanded duty to preserve life and shelter the vulnerable. (TAC ¶¶ 146, 186, 195.) DOJ's demand that Safehouse identify a faith tradition that *commands* or "explicitly directs" the operation of a supervised-consumption facility is exactly the centrality inquiry RFRA forecloses. The Court must, at least at this stage, accept as true Safehouse's allegations with respect to its exercise of religion. *Davis*, 82 F.4th at 211.

C. DOJ Cannot Resolve Sincerity, Motivation, or Religious Character on a Motion to Dismiss.

DOJ's argument that Safehouse's "true motivation is socio-political, scientific, or philosophical" is the precise argument the Third Circuit rejected in *Davis*. (Mot. at 20, 29-37.)

There, the government "challeng[ed] the sincerity of [the] [p]laintiffs' [asserted] beliefs" and argued they "did not actually want to marry for religious reasons." 82 F.4th at 213. The Court held that those arguments could not be entertained on a motion to dismiss because the court "must accept [the] [p]laintiffs' plausible allegations as true and draw all inferences in their favor. If [the government] wish[es] to challenge [the] [p]laintiffs' sincerity, [it] may do so at a later stage in the proceedings." *Id.* at 213; *see Cutter v. Wilkinson*, 544 U.S. 709, 725 n.13 (2005).

DOJ's effort to recharacterize Safehouse's religious convictions as secular fails for the additional reason that mixed motivations do not defeat a religious claim, whether statutory or constitutional. The Supreme Court rejected DOJ's premise in *Thomas v. Review Board*, where it held that a claimant's objection to fabricating tank turrets was protected even though he might also have harbored secular, political objections to manufacturing weapons; what mattered was that his objection was rooted, at least in part, in religious conviction. 450 U.S. 707, 714-16 (1981). In so holding, the Court admonished that "[c]ourts are not arbiters of scriptural interpretation" and clarified that the narrow inquiry is whether the claimant holds an "honest conviction" that the conduct is religiously grounded. *Id.* at 716 ("Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one."). As the Ninth Circuit put it in language courts repeatedly invoke, "the coincidence of religious and secular claims in no way extinguishes the weight appropriately accorded the religious one," and "the area of overlap is presumably protected." *Callahan v. Woods*, 658 F.2d 679, 684 (9th Cir. 1981); *see United States v. Hoffman*, 436 F. Supp. 3d 1272, 1284 (D. Ariz. 2020) ("The Ninth Circuit has explained that religious beliefs are deserving of protection even when they overlap with secular beliefs."). A belief is no less religious because it carries "a substantial political dimension." *Welsh v. United States*, 398 U.S. 333, 342-43 (1970) (construing conscientious objector provision of Selective Service Act).

The capacious definition of religious exercise was recently reaffirmed by the U.S. Supreme Court in *Catholic Charities Bureau, Inc. v. Wisconsin Labor & Industry Review Commission*, 605 U.S. 238 (2025). The Supreme Court rejected Wisconsin's refusal to grant Catholic Charities, Inc. a state tax exemption applicable to organizations "operated primarily for religious purposes." *Id.* at 242. The Wisconsin Supreme Court—echoing DOJ's motion to dismiss here—had found that Catholic Charities' provision of charitable social services was "neither inherently [n]or primarily religious," that it did not involve "worship services, religious outreach, ceremony, or religious education," that its activities serving people with mental and developmental disabilities were "secular in nature," and that both employment and services "are open to all participants regardless of religion." *Id.* at 245-46. The U.S. Supreme Court rejected Wisconsin's circumscribed view of religious belief and purpose, holding that it violates the First Amendment to require an organization to be engaged in "'distinctively religious activity,' in the context of providing charitable services" to show it is being "operated primarily for religious purpose." *Id.* at 252.

The principles applied in *Catholic Charities* apply with even greater force here because unlike the Wisconsin statute—which applies only where an organization is "operated *primarily* for the religious purpose"—RFRA does not require that religious belief be a claimant's sole or primary motive. It is enough that the challenged conduct constitutes a sincere exercise of religion, even where the claimant also has secular, commercial, humanitarian, or public-policy motivations. Indeed, the U.S. Supreme Court extended RFRA protection to for-profit corporations recognizing that the "central objective of for-profit corporations is to make money," but may nonetheless "further religious objectives as well." *Hobby Lobby,* 573 U.S. 682, 711–12. The Supreme Court in *Wisconsin v. Yoder* similarly held that the Constitution's Religion Clauses protect the Amish "way of life"—which combines "inseparable and interdependent" beliefs rooted in secular "mode of life" and "religious faith"—finding that "to have the protection of the Religion Clauses, the claims must be rooted in religious belief," and not "*purely* secular considerations." 406 U.S. 205, 215-16 (1972).

Applying those holdings here, that the religious beliefs motivating Safehouse—the sanctity of human life, the duty to shelter the vulnerable, the obligation to care for the sick—are also widely valued in secular society does not make them less religious; it reflects the widespread influence and adoption of these Judeo-Christian beliefs. Nor does DOJ's insistence that Safehouse's convictions are "really" public-health policy strip Safehouse's religious beliefs of protection, where Safehouse has pleaded that its mission to save lives through overdose-prevention services is motivated by its sincerely held religious beliefs and where the pleadings articulate the origin of those beliefs in the Safehouse and the Board's shared Judeo-Christian faiths. (TAC ¶¶ 136-158.) Only beliefs that are *purely* secular fall outside RFRA, *see Yoder*, 406 U.S. at 215-16, and the TAC plainly does not allege purely secular beliefs.

For similar reasons, DOJ's theory that Safehouse's reliance on medical science and harm-reduction evidence renders its beliefs secular is both legally wrong and inconsistent with common experience. As *Catholic Charities* demonstrates, courts have never required the faithful to ignore the world around them or to refrain from grounding their charitable and humanitarian works in real-world evidence. Religious exercise has long been understood to encompass acts of sanctuary, shelter, charity, and lifesaving care—even when extended to those engaged in conduct the law condemns, and even when the surrounding law is hostile. (TAC ¶¶ 137, 143-46.) That is because religious and medical commitments are frequently in harmony: a Catholic or Jewish hospital does not forfeit its religious mission because it practices evidence-based medicine, relies on public-health data, or employs doctors and nurses of other faiths or none.

Courts have thus repeatedly reaffirmed that faith-based action may be informed by social, medical, and economic evidence without losing its religious character. *See W. Presbyterian Church v. Bd. of Zoning Adjustment*, 862 F. Supp. 538, 546 (D.D.C. 1994) (feeding program was "[u]nquestionably . . . in every respect [a] religious activity and form of worship" even though it "happen[ed] to provide, at no cost to the city, a sorely needed social service"); *St. Timothy's Episcopal Church v. City of Brookings*, 726 F. Supp. 3d 1231 (D. Or. 2024) (church feeding ministry is religious exercise). In *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), the Supreme Court treated a faith-based agency's foster-care services—secular social services by any measure—as protected religious exercise. In *Hoffman*, the court held that humanitarian volunteers who left water and food for unauthorized border-crossing migrants in a federal wildlife refuge were engaged in sincere religious exercise under RFRA, even though their work overlapped with secular humanitarian and political aims, and even though leaving the supplies violated federal regulations. 436 F. Supp. 3d at 1281-89. Safehouse's calling to care for the most vulnerable, even those engaged in unlawful drug use, fits squarely within this tradition. DOJ's contrary logic would strip RFRA's protection from every faith-based hospital, clinic, shelter, and food program in the country the moment it consulted secular evidence about how best to serve those in need.

To the extent DOJ posits a factual dispute about Safehouse's "true motivation," that dispute cannot be resolved on a motion to dismiss. *Davis*, 82 F.4th at 212-13. That is confirmed by DOJ's own authorities. Each of the cases on which DOJ relies to recharacterize Safehouse's beliefs as secular was decided on a developed evidentiary record, not on the pleadings. *See United States v. Meyers*, 95 F.3d 1475, 1482-84 (10th Cir. 1996) (affirming, after an evidentiary hearing, the determination that "Church of Marijuana" beliefs were secular). The COVID-era decision in *Geerlings v. Tredyffrin/Easttown School District*, 2021 WL 4399672 (E.D. Pa. Sept. 27, 2021), which DOJ cites, likewise rested on an evidentiary hearing; DOJ's own brief concedes the point and asks this Court to do on the pleadings what *Geerlings* did only after developing a record. (Mot. at 32-33.) That request cannot be squared with *Davis*, which held that sincerity and religiosity "may [be] . . . challenge[d] . . . at a later stage in the proceedings," not on a motion to dismiss. 82 F.4th at 213.

DOJ's COVID-era Title VII cases are inapposite. (Mot. at 34-36.) Those plaintiffs could not articulate any religious—as opposed to medical or personal—basis for their objections. The courts dismissed those cases because the asserted beliefs—for example, that "nasal swab testing contains hazardous materials" (*Detwiler v. Mid-Columbia Med. Ctr.*, 2022 WL 19977290, at *4 (D. Or. Dec. 20, 2022)), or that vaccines are "toxic" (*McDowell v. Bayhealth Med. Ctr*., 2024 WL 4799870, at *2 (3d Cir. Nov. 15, 2024))—were secular on their face. Safehouse, by contrast, has pleaded its scriptural and doctrinal foundations in detail. (TAC ¶¶ 143-45.) The contrast underscores the point: where a plaintiff pleads a genuine religious foundation, the religious-character and sincerity questions are not resolved on the pleadings.

D. Safehouse Has Adequately Pleaded that DOJ's Threatened Enforcement Substantially Burdens Safehouse's Religious Exercise.

The TAC also more than adequately pleads that the government's threatened criminal enforcement action "substantially burdens" Safehouse's exercise of religion. Such a burden exists where the government "put[s] substantial pressure on an adherent to substantially modify his behavior and to violate his beliefs," or forces a choice between religious exercise and serious sanctions. *Washington v. Klem*, 497 F.3d 272, 280 (3d Cir. 2007); *Mack v. Yost*, 63 F.4th 211, 226-28, 233 (3d Cir. 2023). "There can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition." *Davis*, 82 F.4th at 212. The threat of criminal prosecution, imprisonment, and substantial fines is a paradigmatic substantial burden. *Hobby Lobby*, 573 U.S.

at 719-20, 726 (potential fines substantially burdened religious exercise); *Yoder*, 406 U.S. at 208, 218 ($5 fine sufficed).

The TAC alleges exactly that burden. DOJ has threatened Safehouse's board members with prosecution carrying up to twenty years' imprisonment, $2,000,000 in fines, and property forfeiture if they "allow those suffering from addiction to remain under their care and supervision and within their shelter at the time of consumption." (TAC ¶¶ 53, 148.) As a result, Safehouse and its board members "have been compelled to cast these vulnerable individuals outside of their facilities and have been unable to fulfill their deeply held religious obligation to do everything possible to provide them with critical lifesaving care." (TAC ¶ 148.) That is the textbook substantial burden: the government has placed Safehouse to the "choice of curtailing its mission or" violating the law, *Fulton*, 593 U.S. at 532, and has put "substantial pressure on [Safehouse] to substantially modify [its] behavior and to violate [its] beliefs," *Klem*, 497 F.3d at 280. The pressure here is not subtle. A threatened twenty-year prison term, multimillion-dollar fines, and property forfeiture are coercion of the most serious kind—graver penalties than the fines the Supreme Court found substantially burdensome in *Hobby Lobby*, 573 U.S. at 720, 726, and the $5 fine the Court in *Yoder* called a "grave interference," 406 U.S. at 207-08 & n.2, 218. (TAC ¶¶ 147, 187-89.)

DOJ's argument (at 20) that substantial burden is "a question of law" does not change the result. *Real Alts., Inc. v. Sec'y HHS*, 867 F.3d 338, 356 (3d Cir. 2017). Even treated as a legal question, the conclusion follows directly from Safehouse's well-pleaded, non-conclusory facts, which the Court must accept as true: a credible threat of a 20-year felony, multimillion-dollar fines, and property forfeiture that compels Safehouse to abandon exercise of its religious beliefs. *Davis*, 82 F.4th at 212 ("There can hardly be a more substantial burden on a religious practice or exercise than its outright prohibition."). *Real Alternatives* is not to the contrary; it holds only that a court need not credit a *conclusory* assertion of burden, and that an "independent obligation on a third party" cannot impose a substantial burden. 867 F.3d at 356-57, 364. Neither limitation applies here: Safehouse pleads the coercive mechanism in concrete detail, and the burden falls on Safehouse's own conduct—its inability to provide the care its faith commands—not on the independent acts of third parties.

a. *The threat of prosecution substantially burdens Safehouse's exercise of its religious beliefs to preserve lives by preventing needless overdose deaths and shelter the vulnerable.*

DOJ's argument (at 21) that there is "no affirmative obligation" on Safehouse's board members to take any action at all—and therefore no coercion under *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988)—mischaracterizes both the pleading and the law. First, *Lyng* is inapposite: it involved the incidental effects of the government's management of its *own* land on religious practices conducted there, not—as here—a direct criminal prohibition backed by the threat of imprisonment that forces the claimant to abandon the religious exercise itself, which Safehouse proposes to conduct on its own property. Moreover, the TAC alleges that the board members' faith, as they understand it, creates "*a duty* to do everything possible to keep people who use drugs alive, even for one more day," and "to give shelter to the vulnerable." (TAC ¶¶ 137, 146 (emphasis added).) DOJ's threats force them to violate that affirmative religious obligation by failing to offer medical care at the crucial time of drug consumption and by "cast[ing] [ ] vulnerable individuals outside." (TAC ¶ 148.) Forcing a religious adherent to abstain from action his faith mandates is precisely the coercion that constitutes a substantial burden under *Klem*.

That DOJ's threat operates by inducing Safehouse to refrain rather than by commanding it to act makes no difference. The Third Circuit rejected precisely that distinction in *Mack v. Yost*, holding that an adherent's religious exercise remains protected even where he himself ceases the practice under government pressure. 63 F.4th 211, 226-28, 231-33 n.15 (3d Cir. 2023). There, the inmate stopped praying at his prison work assignment and acknowledged he could make up the prayers later, consistent with his faith; the court held his prayers were "no less religious exercise because he heeded his imam's advice and ceased praying at the commissary altogether after" the officers "escalated their campaign of harassment against him." *Id.* at 227. As the Court explained, having stopped "does not end the matter. . . . It *is* the matter. It is the whole point." *Id.* at 230- n.15 (emphasis in original). So too here. Safehouse has not withheld overdose-prevention services because its faith permits that choice, but because DOJ has threatened grave consequences if it makes the opposite choice. (TAC ¶¶ 53, 148.)

Whether a religious adherent's faith in fact imposes such a duty is a question of the adherent's own beliefs, which, if sincerely held and religious in character, the Court may neither second-guess nor declare unreasonable. *Hobby Lobby*, 573 U.S. at 724 (federal courts "have no business addressing . . . whether the religious belief asserted in a RFRA case is reasonable"); *Thomas*, 450 U.S. at 716 ("Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.").

DOJ's suggestion that the City zoning ordinance negates the federal substantial burden also fails. RFRA asks whether the *federal government's* own action coerces the claimant to violate its beliefs. The existence of a partial, parallel local impediment does not diminish the coercive force of DOJ's independent federal threat of prosecution, which by itself forces the religious choice. Whether or not Safehouse also faces a local zoning obstacle, DOJ's threat of felony prosecution independently coerces Safehouse to abandon the religious exercise it pleads—and that is all RFRA requires.

In sum, Safehouse has plausibly alleged each component of substantial burden: a credible threat of criminal penalties, directed at Safehouse's religiously motivated conduct, that pressures Safehouse to choose between its faith and federal prosecution. DOJ's attempts to defeat that showing—by recharacterizing the burden as a question of law, by denying any affirmative religious obligation, and by pointing to the City's zoning ordinance—each fail for independent reasons. The substantial-burden element is satisfied.

b. *DOJ's "multitude of means" / "alternative means" argument is legally foreclosed and factually premature.*

DOJ's principal substantial-burden argument (at 22-29)—that Safehouse's board members can satisfy their faith through other means, such as "travel[ing] to areas of the City where drug use is prevalent" and offering aid outdoors—is foreclosed by *Holt v. Hobbs*, which "rejected the argument that 'the availability of alternative means of practicing religion is a relevant consideration'" under RLUIPA's (and thus RFRA's) substantial-burden inquiry. 574 U.S. 352, 361-62 (2015) (distinguishing the statutory analysis from the First Amendment analysis and concluding that "the District Court improperly imported a strand of reasoning from cases involving prisoners' First Amendment rights" into the statute by assessing alternative means). The statutory inquiry "asks whether the government has substantially burdened religious exercise . . . , not whether the . . . claimant is able to engage in other forms of religious exercise." *Id.* Because RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief," there is no "alternative means" test embedded in RFRA's substantial-burden analysis. *Id.* at 361; *Hobby Lobby*, 573 U.S. at 696; *Davis*, 82 F.4th at 211-12; *see Mack*, 63 F.4th at 226-28, 233.

DOJ's reliance on *Henderson v. Kennedy*, 253 F.3d 12 (D.C. Cir. 2001), and *United States v. Stimler*, 864 F.3d 253 (3d Cir. 2017), is misplaced. Neither supports resolving the "alternative means" question against a civil RFRA plaintiff on the pleadings. *See Davis*, 82 F.4th at 212. *Henderson* predates *Holt* and rests on the discredited premise that courts may probe whether a practice is "central" or "important" to a religion—a premise that cannot be reconciled with the plain text of RFRA. DOJ fails to contend with Safehouse's allegations when it attempts to distinguish *Holt*'s prohibition on considering "other forms of religious exercise" with what DOJ characterizes as a narrower inquiry into whether the *same* religious obligation can be fulfilled through alternative lawful means. (Mot. at 27-29.) But that distinction, to the extent it holds at all, is inapplicable to the allegations here. Safehouse's board members do not allege a generalized obligation to "care for the sick" that can be satisfied by any health-related or harm-reduction activity. Safehouse alleges a specific religious obligation to "do everything possible to keep people who use drugs alive, even for one more day" and to provide them "shelter . . . at the time of consumption of opioids, when those individuals are at greatest risk of overdose death." (TAC ¶¶ 137, 146, 148.) The TAC pleads that no measure short of direct medical supervision at the moment of consumption can fulfill that obligation, because fentanyl causes respiratory failure within minutes and naloxone works only if someone is present to administer it. (TAC ¶¶ 80-82.) Whether *Stimler*'s "alternative means of fulfilling the same obligation" framework survives *Holt*—which is doubtful—Safehouse has alleged that the alternatives DOJ identifies do not fulfill the same obligation. That is a factual dispute the Court must accept in Safehouse's favor. *See Castleberry v. STI Grp.*, 863 F.3d 259, 266 (3d Cir. 2017).

Stimler, moreover, was also decided on a *developed factual record* in a criminal case, where the defendants—convicted of kidnaping and assault—had *conceded* that nonviolent means existed to accomplish their goal (obtaining religious divorces for women oppressed by recalcitrant husbands). 864 F.3d at 268. Safehouse has made no such concession. To the contrary, it has pleaded the opposite—that there is no adequate alternative. The "alternatives" DOJ proposes—that Safehouse's board members can "travel to areas of the City where drug use is prevalent," remain nearby while individuals inject heroin and fentanyl in public, and offer aid only after an overdose has begun—are no alternatives at all. (Mot. at 28-29.) Safehouse has pleaded that there are *no* adequate substitutes for supervised consumption: because a person who overdoses loses consciousness and therefore cannot self-administer naloxone, and because fentanyl causes respiratory failure within minutes, "any measure short of direct supervision of opioid consumption [is] inadequate to prevent opioid overdose death." (TAC ¶¶ 80-82, 146.) DOJ's proposed alternatives also ignore the second half of Safehouse's pleaded religious obligation—to provide *shelter*, not merely emergency response—by demanding that Safehouse turn vulnerable people out of doors. (TAC ¶¶ 137, 146-48.)

Whether feasible alternatives exist that would satisfy Safehouse's religious duty is first legally inapposite, and, nevertheless, would be a factual question outside the scope of Rule 12(b)(6), which may be resolved only on a developed record. The "alternative means" argument thus provides no basis for dismissal of the TAC.

E. DOJ Cannot Satisfy Strict Scrutiny on a Motion to Dismiss.

Once Safehouse pleads a substantial burden on sincere religious exercise, the burden shifts to DOJ to "demonstrate[]" that applying Section 856 to Safehouse "is in furtherance of a compelling governmental interest" and "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1(b). That is DOJ's affirmative defense, akin to "strict scrutiny" in a First Amendment case, and Safehouse "need not plead facts" negating it. *O Centro*, 546 U.S. at 428-29. RFRA "requires the Government to demonstrate that the compelling interest test is satisfied through application of the challenged law 'to the person'—the particular claimant whose sincere exercise of religion is being substantially burdened." *Id.* at 430-31. "The

Government's mere invocation of the general characteristics of Schedule I substances . . . cannot carry the day," and RFRA "plainly contemplates that courts would recognize exceptions" to the CSA. *Id.* at 432, 434; (TAC ¶¶ 162, 166, 174-75). The CSA's existing exemptions—including the longstanding preferential religious exemption for peyote use by the Native American Church, 21 C.F.R. § 1307.31—confirm that uniform enforcement is not essential to the interests the government invokes and undermine any categorical compelling-interest defense. *O Centro*, 546 U.S. at 433; (TAC ¶¶ 163, 167). Like the prior motion, DOJ's brief reserves its statutory strict-scrutiny defenses rather than attempting to satisfy them. (Mot. at 57 n.16.)

III. Safehouse Plausibly Pleads a First Amendment Free Exercise Claim.

The TAC asserts not only a valid RFRA claim but also a First Amendment counterclaim and defense. To plead a Free Exercise violation, Safehouse must allege "that a government entity has burdened [its] sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022). "Failing either the neutrality or general applicability test is sufficient to trigger strict scrutiny," under which the government "must demonstrate that [its] course was justified by a compelling state interest and was narrowly tailored in pursuit of that interest." *Id.* at 525-26; *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). The Free Exercise Clause does "perhaps its most important work" by protecting "the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through the performance of (or abstention from) physical acts." *Kennedy*, 597 U.S. at 524 (internal quotation marks omitted). Safehouse has pleaded a burden on its sincere religious practice (*see* Part II.D), and DOJ's enforcement of Section 856 against Safehouse is not generally applicable for at least three independent reasons: DOJ permits comparable secular conduct, it administers an announced district-by-district authorization policy, and it operates against the backdrop of the CSA's discretionary exemption regime. Any one suffices to trigger strict scrutiny, which DOJ cannot satisfy.

A. *Smith v. City of Atlantic City* Supplies the Governing Third Circuit Framework.

The Third Circuit's recent decision in *Smith v. City of Atlantic City*, 138 F.4th 759 (3d Cir. 2025), supplies the controlling framework and is fatal to DOJ's motion. *Smith* holds that a policy fails general applicability—and triggers strict scrutiny—through any of three routes: (1) when the government "enumerates an exception" to the challenged policy; (2) when it "creat[es] . . . a formal mechanism for granting exceptions . . . regardless of whether any exceptions have been given"; or (3) when it "grants [exceptions] as a matter of practice." *Id.* at 769-70 (citing *Fulton*, 593 U.S. at 533, 537; *Tenafly Eruv Ass'n v. Borough of Tenafly*, 309 F.3d 144, 167-69 (3d Cir. 2002)). General applicability also fails where the government "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 593 U.S. at 533-34; *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Comparability is judged by "the risks various activities pose," not by whether the secular conduct is identical to the religious conduct. *Tandon*, 593 U.S. at 62. And *Smith* squarely forbids the government from defeating a Free Exercise claim by "divvy[ing] up its exemption regimes provision-by-provision" or by picking and choosing which comparable violations to tolerate and which to pursue. 138 F.4th at 770-71. Indeed, DOJ itself has endorsed this very principle. In its amicus brief filed just weeks ago in *St. Mary Catholic Parish v. Roy*, No. 25-581 (U.S.), DOJ argued that states cannot "use 'clever drafting' to 'divvy up [their] exemption regimes' and avoid strict scrutiny." U.S. Amicus Br. at 18-19, *St. Mary Catholic Parish v. Roy*, No. 25-581 (filed July 2026) (quoting *Smith v. City of Atlantic City*, 138 F.4th at 772). DOJ cannot embrace that principle before the Supreme Court while repudiating it here.

DOJ's suggestion (at 41) that the Third Circuit "already found" that enforcing Section 856 against Safehouse is rationally related to a legitimate interest is mistaken. The court of appeals addressed the statute's scope and an argument under the Commerce Clause, not the Free Exercise general-applicability question—which was not the prevailing Supreme Court doctrine when the 2021 decision was issued, and which the Third Circuit's own 2025 remand expressly left for this Court to decide in the first instance. *See Safehouse I*, 985 F.3d at 230-43; *Safehouse II*, 146 F.4th at 321.

B. DOJ's Announced "District-by-District" Enforcement Policy Plausibly Establishes Individualized Exemptions.

The TAC alleges that in 2023 "the DOJ announced to news organizations that it was implementing a policy of selectively enforcing Section 856(a) against providers of supervised consumption services on a 'district-by-district' basis," and that "[t]hat policy remains in place." (TAC ¶¶ 93, 171.) A policy of case-by-case, district-by-district authorization is a "formal mechanism for granting exceptions" that "invites the government to decide which reasons for not complying with the policy are worthy of solicitude." *Fulton*, 593 U.S. at 537; *Smith*, 138 F.4th at 769-70; *Spivack v. City of Philadelphia*, 109 F.4th 158, 172 (3d Cir. 2024). Where the government extends discretionary exceptions to secular actors, it "may not refuse to extend that system to cases of religious hardship without compelling reason." *Fulton*, 593 U.S. at 537; *Dahl v. Bd. of Trustees of W. Mich. Univ.*, 15 F.4th 728, 733 (6th Cir. 2021).

This case does not present garden-variety prosecutorial discretion. Safehouse alleges that in the more than three decades since Section 856 was enacted, the government has never enforced the statute against any entity based solely on simple use—and has threatened to do so only against Safehouse, the religiously motivated provider before this Court. (TAC ¶¶ 93, 171.) An enforcement pattern that has exempted every comparable secular actor while singling out the lone religious claimant is the antithesis of general applicability. *See Tenafly*, 309 F.3d at 167-69; *Smith*, 138 F.4th at 769-70. At the same time, it has for more than five years permitted the operation of a supervised consumption site in Rhode Island and two in New York City, all secular in their management. (TAC ¶¶ 45-46, 93, 171.) The Third Circuit's decision in *Smith v. City of Atlantic City* is directly on point: the government may pick and choose which violations to tolerate and which to pursue, but the mere creation of a regime that permits such selective treatment—"regardless of whether any exceptions have been given"—"destroys general applicability" and triggers strict scrutiny. 138 F.4th at 770-71.

DOJ's response (at 54-56)—that its prosecutorial decisions enjoy a "presumption of regularity" under *United States v. Armstrong*, 517 U.S. 456 (1996), and that Safehouse's theory is an impermissible back-door selective-prosecution claim—conflates two distinct doctrines. Selective-prosecution doctrine and the Free Exercise individualized-exemption doctrine operate on distinct legal tracks with different elements and different remedies, and the failure of one does not bar the other. Safehouse need not satisfy *Armstrong*'s demanding discriminatory-purpose standard to show that DOJ's enforcement regime lacks general applicability under *Fulton* and *Tandon*; it need only show a discretionary exemption mechanism or favorable treatment of comparable secular conduct. *See Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 365-66 (3d Cir. 1999) (Alito, J.) (discriminatory purpose may be inferred from selective exemptions, without examining officials' subjective motives). *Armstrong* itself confirms that the decision whether to prosecute "may not be based on . . . religion," 517 U.S. at 464, so the presumption of regularity cannot immunize an enforcement policy that allegedly does just that.

DOJ's contention (at 55-56) that the cited reporting describes only "evaluat[ion]," not "authorization," on a "district by district basis" merely disputes the meaning of Safehouse's allegation—a dispute the Court may not resolve in DOJ's favor at this stage, where it must accept as true Safehouse's allegation that DOJ "implement[ed] a policy of selectively enforcing Section 856(a)" on that basis and that "[t]hat policy remains in place." (TAC ¶¶ 93, 171.) The existence, scope, and operation of DOJ's enforcement policy are fact questions that cannot be resolved against Safehouse on the pleadings.

C. DOJ Cannot Isolate Section 856 from the Broader CSA and Its Enforcement Practices.

DOJ's threshold move is to define the relevant "policy" as narrowly as possible—insisting that Section 856 "by its terms . . . contains no exemptions at all" and that exemptions "found in unrelated portions of the broader statutory scheme" are irrelevant. (Mot. at 41.) That is not only false (the very first words of § 856(a) are "[e]xcept as authorized by this subchapter," referencing all of 21 U.S.C. §§ 801–904), it is also precisely the "divvy[ing] up [of] exemption regimes provision-by-provision" that the Third Circuit rejected in *Smith*, where the Court held that allowing the government to define the relevant policy at the narrowest possible level "would permit governments to subvert free exercise through clever drafting." 138 F.4th at 771. The Court there refused to let Atlantic City defend its grooming policy by pointing to a single enumerated exception while ignoring exceptions located in separate operational guidelines; the relevant regime included the related provisions that bore on the City's asserted safety interest. *Id.* at 769-72.

The Sixth Circuit reached the same conclusion in *Monclova Christian Academy v. Toledo-Lucas County Health Department*, 984 F.3d 477, 481-82 (6th Cir. 2020), explaining that "[a] myopic focus solely on the provision that regulates religious conduct would . . . allow for easy evasion of the Free Exercise guarantee." Tellingly, *Monclova* illustrated the point with a drug-statute example: a hypothetical federal ban on peyote alone, "viewed in the context of state law as a whole," would not be generally applicable if "secular actors" could "use comparable hallucinogenic drugs for recreational purposes." *Id.* at 482. The relevant inquiry is whether the government, "in pursuit of legitimate interests," has "imposed greater burdens on religious conduct than on analogous secular conduct." *Id.*; *Lukumi*, 508 U.S. at 542-43.

The relevant policy here is therefore not Section 856 read in isolation, but DOJ's enforcement of Section 856 against supervised-consumption providers, situated within the CSA's broader enforcement and exemption framework. Viewed at that proper level of generality—the level *Smith* and *Monclova* require—DOJ's policy is riddled with exceptions for secular and even religious conduct. DOJ's insistence on the narrowest possible frame is not a neutral reading of the statute; it is the "clever drafting" *Smith* forbids.

D. DOJ Treats Comparable Secular Conduct More Favorably and Has Never Enforced Section 856 Against Conduct Like Safehouse's.

DOJ identifies its asserted interest as "minimizing the harm to public health posed by concentrated illegal drug use." (Mot. at 41.) But DOJ permits and tolerates a range of secular conduct that implicates that interest in the same or a greater way, while threatening Safehouse alone for religiously motivated conduct. That disparity triggers strict scrutiny.

First, the TAC alleges that in "the 33 years since Section 856 was first enacted, the government has cited no examples of a criminal prosecution under Section 856 involving only simple possession or use," and that DOJ "in general does not prosecute under Section 856 for maintaining, controlling, or making available a place where controlled substances are simply possessed or used but not stored, distributed, or manufactured"—instead "exempt[ing] these offenses from prosecution as a matter of course and on an individualized basis." (TAC ¶¶ 93, 171.) A statute that is enforced against religiously motivated supervised consumption (a form of simple possession without distribution) but not against the myriad secular settings in which simple drug use occurs on premises is not, in its application, generally applicable. *See Tenafly*, 309 F.3d at 167-

69 (facially neutral ordinance enforced in a non-neutral manner failed general applicability); *Smith*, 138 F.4th at 769-70.

Second, DOJ has conceded in this very litigation that Section 856, by its terms, would *not* prohibit a supervised-consumption mobile van parked outside Safehouse's facility. *See Safehouse I*, 985 F.3d at 249 (Roth, J., dissenting) (noting DOJ's concession). DOJ has likewise maintained that the statute would not reach parents who allow a drug-addicted adult child to use narcotics in their home under parental supervision. *See id.* at 240 (majority opinion discussing parents hypothetical). Those secular arrangements present precisely the risk DOJ invokes against Safehouse—drug use occurring under supervision so that someone is present to reverse an overdose—yet DOJ treats them as lawful. The government cannot "prohibit religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way," *Fulton*, 593 U.S. at 533-34, and "it is no answer that a State treats some comparable secular . . . activities as poorly as or even less favorably than the religious exercise at issue," *Tandon*, 593 U.S. at 62; *see Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 17-18 (2020). DOJ's own representations are competent evidence of that disparate treatment.

DOJ's principal response—that these comparators are not identical to Safehouse's proposed facility—misstates the test. Comparability under *Tandon* turns on the *risk* secular conduct poses to the government's asserted interest, "not the reasons" for the conduct, and certainly not whether the secular activity takes an identical form. 593 U.S. at 62; *Monclova*, 984 F.3d at 480 (comparability "does not depend on whether the religious and secular conduct involve similar forms of activity" but on whether secular conduct "endangers [the government's] interests in a similar or greater degree than" the religious conduct does). At a minimum, whether DOJ's tolerated secular conduct is comparable is a factual question that cannot be resolved against Safehouse on the pleadings.

E. The CSA's Discretionary Exemptions Further Undermine General Applicability and DOJ's Strict-Scrutiny Defense.

The CSA contains multiple discretionary, individualized exemption mechanisms that the government may extend to secular actors, including the research exemption (21 U.S.C. § 872(e)), the registration-waiver provision (21 U.S.C. § 822(d)), the civil-penalty compromise provision for simple possession (21 U.S.C. § 844a), and the regulatory exemption for religious peyote use (21 C.F.R. § 1307.31). (TAC ¶¶ 163-64, 167-68.) Several of these are quintessential discretionary mechanisms: the registration-waiver provision empowers the Attorney General to "waive" requirements whenever he "finds it consistent with the public health and safety," 21 U.S.C. § 822(d), and the civil-penalty provision authorizes him to "compromise, modify, or remit, with or without conditions, any civil penalty" for simple possession, 21 U.S.C. § 844a. (TAC ¶ 163.) These are precisely the kind of standardless, individualized assessments that defeat general applicability under *Fulton*: a regime that "invites the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions" is not generally applicable "regardless of whether any exceptions have been given." 593 U.S. at 533, 537. Having created such a system for secular actors, the government "may not refuse to extend that system to cases of religious hardship without compelling reason." *Id.* at 535.

DOJ's rejoinder—that these exemptions are not "comparable" because none "relates to the use of specific facilities for illegal drug activity"—misapprehends the inquiry in the same way its response to Part III.D did. Under *Fulton*'s individualized-exemption branch, the existence of a discretionary mechanism is itself disqualifying; the question is not whether any particular exemption authorizes Safehouse's exact conduct, but whether the government has reserved to itself the discretion to decide which reasons for noncompliance are "worthy of solicitude." *Id.* And under the comparability branch, the test is whether secular conduct "undermines the government's asserted interests in a similar way," *Fulton*, 593 U.S. at 533-34; *Tandon*, 593 U.S. at 62—not whether the exempted secular activity is identical in form to Safehouse's proposed facility. Whether the CSA's discretionary exemptions are comparable to the exemption Safehouse seeks is, at minimum, a factual question unsuited to resolution on the pleadings.

These same exemptions independently defeat any strict-scrutiny defense. As the Supreme Court held in *O Centro*—a case arising under the very statutory scheme at issue here—"[t]he fact that the Act itself contemplates that exempting certain people from its requirements would be 'consistent with the public health and safety' indicates that congressional findings with respect to Schedule I substances should not carry the determinative weight, for RFRA purposes, that the Government would ascribe to them." 546 U.S. at 432-33; (TAC ¶¶ 165-66). The CSA's longstanding religious exemption for peyote use by the Native American Church, 21 C.F.R. § 1307.31, confirms that the government already "recognize[s] exceptions" to the CSA on religious grounds—"that is how the law works." *O Centro*, 546 U.S. at 434; (TAC ¶ 167). A government that has carved out secular and religious exceptions to the CSA cannot plausibly claim, on the pleadings, that denying Safehouse an exemption is essential to a compelling interest.

F. DOJ Has Not Carried Its Strict-Scrutiny Burden.

Because Safehouse has plausibly alleged that DOJ's enforcement policy is not generally applicable, strict scrutiny applies, and DOJ bears the burden of showing a compelling interest in "denying an exception" to Safehouse specifically and that enforcement is narrowly tailored. *Fulton*, 593 U.S. at 541; *Lukumi*, 508 U.S. at 546. "The question, then, is not whether the [government] has a compelling interest in enforcing its . . . policies generally, but whether it has such an interest in denying an exception" to Safehouse. *Fulton*, 593 U.S. at 541; (TAC ¶¶ 172, 174). That interest cannot be asserted "at a high level of generality" and must be measured against "the asserted harm of granting specific exemptions to particular religious claimants." *Id.*; *Smith*, 138 F.4th at 773. It is also essentially factual in nature and thus unsuited to resolution on the pleadings.

* * * * *

For the foregoing reasons, the DOJ's motion to dismiss should be denied in its entirety.

IV. In the Alternative, DOJ's Request for Dismissal with Prejudice Should Be Denied.

A. Any Jurisdictional Dismissal Must Be Without Prejudice.

DOJ asks the Court to dismiss the counterclaims "with prejudice," but its lead arguments are jurisdictional. A court that lacks subject-matter jurisdiction "perforce lacks jurisdiction to make any determination of the merits of the underlying claim," and therefore "the dismissal must be without prejudice." *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216-17 (10th Cir. 2006); *see also Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 736 (1st Cir. 2016); *Ali v. Hogan*, 26 F.4th 587, 600 (4th Cir. 2022); *JetBlue Airways Corp. v. CopyTele Inc.*, 629 F. App'x 44, 45 (2d Cir. 2015). If the Court were to accept any of DOJ's standing or mootness arguments, it could not enter a merits-preclusive dismissal *with prejudice*. *See MAO-MSO Recovery II, LLC v. State Farm Mut. Auto. Ins. Co.*, 935 F.3d 573, 581-82 (7th Cir. 2019).

B. Any Rule 12(b)(6) Dismissal Should Be Without Prejudice and With Leave to Amend.

"[L]eave to amend must generally be granted unless equitable considerations render it otherwise unjust," and "outright refusal to grant the leave without any justifying reason . . . is . . . an abuse of [ ] discretion." *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Arthur v. Maersk, Inc.*, 434 F.3d 196, 204 (3d Cir. 2006). Dismissal with prejudice is appropriate only where amendment would be "inequitable or futile," *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir.

2002); *Shane v. Fauver*, 213 F.3d 113, 116 (3d Cir. 2000); *Phillips*, 515 F.3d at 245—and "[f]utility" means that the complaint, as amended, "would fail to state a claim upon which relief could be granted," *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997).

Amendment here would be neither inequitable nor futile. *Cf. Landau v. Corp. of Haverford College*, 789 F. Supp. 3d 401, 431 (E.D. Pa. 2025) (McHugh, J.) (explaining rationale for dismissal with prejudice after prior amendments). Neither this Court nor the Third Circuit has reached the merits of Safehouse's RFRA and Free Exercise claims; the prior dismissal rested on a threshold "non-religious entity" theory the Third Circuit rejected. *Safehouse II*, 146 F.4th at 319. This is thus not a case of "repeated failure to cure deficiencies" identified in prior merits rulings. *Foman*, 371 U.S. at 182. And Safehouse can readily plead additional facts addressing any perceived deficiency—including its continued and concrete intent to operate, the geographic areas available to it, its preparatory steps, the chilling effect of DOJ's threat on Safehouse's partners, landlords, funders, and providers, and additional detail regarding its religious mission and DOJ's selective enforcement.

CONCLUSION

This Court should deny the United States' motion to dismiss in its entirety. In the alternative, if the Court grants any portion of the motion, it should do so without prejudice and afford Safehouse leave to amend.

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Respectfully submitted,

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