

CASE NO. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19–519,
Hon. Gerald A. McHugh

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF
FRIENDS AND FAMILY OF VICTIMS OF OPIOID ADDICTION**

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Various friends and family members of victims of opioid addiction—including Dr. Bonnie Mills, Cara Moser, Louis Natali, Esq., Katy Otto, Marissa Perrone, Rosalind Pichardo, Carol Rostucher, Elise Schiller, and Daniel Urevick-Ackelsberg (collectively, the “Friends and Family of Victims of Opioid Addiction” or the “Families”) respectfully move the Court for leave to file the attached *amicus* brief in support of Safehouse. A copy of the proposed *amicus* brief is attached hereto as Exhibit 1.

I. Identity and Interest Of Amici

The Families comprise various individuals who have been severely impacted by the current opioid crisis—they are the friends and family members of users of opioids and those who died of opioid overdoses. Specifically:

- Dr. Bonnie Milas is a mother who lost her son Robert to an overdose of opioids on January 6, 2018. Prior to that overdose, Robert struggled with opioid addiction for approximately ten years and had overdosed on at least nine other occasions. Dr. Milas is a Professor of Clinical Anesthesiology and Critical Care at the Perelman School of Medicine at the University of Pennsylvania and a Staff Anesthesiologist at the Hospital of the University of Pennsylvania (“HUP”) and Penn Presbyterian Medical Center.

- Cara Moser is a mother who lost her daughter Eliza to an overdose of opioids on November 30, 2018. Eliza's body was discovered by her brother, Jackson, who attempted to administered CPR until paramedics arrived. It was estimated that Eliza died over an hour before Jackson found her. Prior to that fatal overdose, Eliza struggled with opioid addiction for over five years and had overdosed on several other occasions.
- Katy Otto is a Committee Person in the 1st Ward in the Pennsport neighborhood of South Philadelphia. She knows many people who have battled addiction, and lost one of her good friends at the age of thirty from a heroin overdose.
- Marissa Perrone is a member of the Society Hill Civic Association and the 5th Square, and a co-founder of Friends of Safehouse, a community group that supports the urgent opening of Safehouse in Philadelphia and other Overdose Prevention Sites across the United States. Her son Antonio has battled substance use disorder for years and nearly lost his life to opioids several years ago.
- Rosalind Pichardo lives in the Kensington neighborhood of Philadelphia and has lost two cousins to overdoses of opioids. Since late 2017, she has personally administered Narcan, an opioid reversal agent, to

individuals who have overdosed from heroin or fentanyl in Philadelphia approximately 130 times. Ms. Pichardo is the founder of Operation Save Our City, a nonprofit that works with families effected by gun violence.

- Carol Rostucher lives in Northeast Philadelphia, and is a mother whose son Drew has struggled with drug addiction for years. Drew has overdosed on at least five occasions. On one of those occasions, Drew was alone and actually died, but was revived by medical personnel after a passerby called for help. Ms. Rostucher is the founder of Angels in Motion, an organization based in Philadelphia that seeks to help those suffering from addiction.
- Louis Natali and Elise Schiller are parents that lost their daughter, Giana, to an overdose of opioids approximately five years ago. Giana died alone, and had likely been dead from the overdose for approximately 30 minutes before being discovered. Mr. Natali is a Professor of Law at Temple Law School, where he has taught since 1990. Ms. Schiller lives in the Germantown neighborhood of Philadelphia, serves on the advisory board of the Philadelphia Department of Behavioral Health and Intellectual disAbility Services, and previously served on the Philadelphia Mayor's Task Force to Combat the Opioid Epidemic.

- Daniel Urevick-Ackelsberg is a public interest attorney who resides in South Philadelphia. His cousin disappeared in 2012 after leaving a rehabilitation center. Her remains were found five years later in a park in Camden, New Jersey. She is believed to have died from a heroin overdose.

Safehouse offers overdose prevention services that could have saved the lives of those who died of opioid overdoses, and can provide services to users of opioids. The Families support efforts to save as many lives as possible through overdose prevention sites such as Safehouse, and as such, reduce the number of families having to deal with the tragic loss of loved ones due to opioid overdose. Appellants' erroneous interpretation of the Controlled Substances Act ("CSA") and threat to prosecute Safehouse acutely impacts the Families, who have firsthand knowledge of the tragic need for overdose prevention sites.

No Party's counsel authored the attached brief in whole or in part, and no party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person—aside from *amici curiae* or its counsel—made any monetary contribution intended to fund the preparation or submission of this brief.

II. Reasons Why Motion Should Be Granted

The role of *amicus curiae* as “friend of the court” is to assist courts “in cases of general public interest by making suggestions to the court, by providing supplementary assistance to existing counsel, and by insuring a complete and plenary presentation of difficult issues so that the court may reach a proper decision.” *Newark Branch, N.A.A.C.P. v. Harrison*, 940 F.2d 792, 808 (3d Cir. 1991) (citation omitted). “A district court has inherent authority to designate amici curiae to assist it in a proceeding.” *Liberty Res., Inc. v. Phila. Hous. Auth.*, 395 F. Supp. 2d 206, 209 (E.D. Pa. 2005). Courts regularly permit non-parties to file *amicus* briefs. *See, e.g., Burlington v. News Corp.*, No. CIV.A. 09-1908, 2015 WL 2070063, at *3 (E.D. Pa. May 4, 2015); *Shank v. E. Hempfield Twp.*, No. 09-CV-02240, 2010 WL 2854136, at *3 (E.D. Pa. July 20, 2010); *Perry v. Novartis Pharma. Corp.*, 456 F. Supp. 2d 678, 687 (E.D. Pa. 2006); *Liberty Res., Inc.*, 395 F. Supp. 2d at 209; *Avellino v. Herron*, 991 F. Supp. 730, 732 (E.D. Pa. 1998).

Ultimately, the inquiry is whether the proposed *amicus* has “a sufficient ‘interest’ in the case” and whether its proposed brief will be helpful and relevant. *Neonatology Assocs., P.A. v. C.I.R.*, 293 F.3d 128, 129 (3d Cir. 2002) (Alito, J.) (quoting Fed. R. App. P. 29(b)); *accord Martinez v. Capital Cities/ABC-WPVI*, 909 F. Supp. 283, 286 (E.D. Pa. 1995) (“[P]ermitting persons to appear in court as friends of the court may be advisable where third parties can contribute to the

court’s understanding.”) (ellipses omitted) (quoting *Harris v. Pernsley*, 820 F.2d 592, 603 (3d Cir. 1987)).

The Court should permit the filing of the attached *amicus* brief and accompanying declarations because the Families’ experiences are highly relevant to the disposition of this case. As already noted, the Families have tragic firsthand experiences in dealing with the consequences of the opioid epidemic and the need for overdose prevention sites. It is the Families that exemplify the costs of—and in the case of family members of users, continue to bear the brunt of—Appellants’ misreading and misapplication of the CSA.

The *amicus* brief both supplements arguments made by Safehouse and provides distinct arguments relevant to the Safehouse’s Opposition. Specifically, the *amicus* brief makes additional arguments to demonstrate that Appellants’ reading of the CSA will frustrate, rather than enhance, the CSA’s purposes by prohibiting Safehouse from preventing overdose deaths, reducing public drug consumption, and encouraging drug treatment. The brief provides additional information regarding the perverse effects that Appellants’ proffered interpretation of the CSA would have on those most impacted by the opioid crisis. “Even when a party is very well represented, an amicus may provide important assistance to the court” by “explain[ing] the impact a potential holding might have” on individuals not before the court. *Neonatology Assocs.*, 293 F.3d at 132. The arguments in the

attached brief and Declarations of the Families will be helpful to the Court in resolving Appellants' Appeal.

Respectfully submitted,

COZEN O'CONNOR

Dated: July 6, 2020

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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Dated: July 6, 2020

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 1,298 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as counted using the word-count function on Microsoft Word 2016 software.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word 2016, in Times New Roman style, 14 point font.

This brief complies with Local Rule 31.1(c) because the text of the hard copies of this brief filed with the Court and this E-Motion are identical, and because the Trend Micro Office Scan Agent was run on this E-Motion, and no virus was detected.

Dated: July 6, 2020

By: /s/ Thomas A. Leonard IV

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, I caused a true and correct copy of the foregoing Motion for Leave to File *Amicus Curiae* Brief of Friends and Family of Victims of Opioid Addiction to be served on all counsel of record via the Court's ECF system.

/s/ Thomas A. Leonard IV

EXHIBIT 1

CASE No. 20-1422

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UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
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Appeal from the United States District Court,
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Hon. Gerald A. McHugh

**BRIEF OF PROPOSED AMICUS CURIAE FRIENDS AND FAMILY OF
VICTIMS OF OPIOID ADDICTION, AS AN INTERESTED NON-PARTY
SUPPORTING SAFEHOUSE AND JOSE BENITEZ**

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***AMICUS CURIAE* BRIEF OF FRIENDS AND FAMILY OF VICTIMS OF
OPIOID ADDICTION IN SUPPORT OF DEFENDANTS SAFEHOUSE AND
JOSE BENITEZ**

Friends and Family of Victims of Opioid Addiction, by and through undersigned counsel, submit the following brief as *amici curiae* in this matter.¹

I. INTRODUCTION

Addiction is a devastating disease. Those suffering from its effects face a tremendous challenge every day, particularly when the subject of their addiction is a product as powerful and deadly as opioids. It can lead rational people to do things that would otherwise be unimaginable to them, such as injecting drugs knowing that there is a significant chance that they will overdose and die. Addiction to opioids and other drugs has resulted in thousands of lives being lost in Philadelphia in just the last few years alone.

But the effects of opioid addiction are not felt solely by the person directly suffering from it. It is felt every day by those who love them most: their friends and family. This Brief addresses the impact of opioid addiction on the loved ones of those suffering from this cruel disease, and how an overdose prevention site such as Safehouse can prevent others from experiencing the tragedy of losing a friend or family member to addiction.

¹ No party's counsel authored any part of this brief. No one, apart from counsel for *amici*, contributed money intended to fund the brief's preparation or submission. All parties have consented to the filing of this brief.

II. THE GRIP OF ADDICTION

Addiction to opioids has ruined the lives of countless people. Carol Rostucher has witnessed the effects of opioids throughout her life. She grew up in the Kensington neighborhood of Philadelphia, and experienced the heartbreak of losing her sister to opioids. (Declaration of Carol Rostucher, attached hereto as Exhibit A, ¶¶ 2, 6.) She also saw several friends from her youth die of opioid overdoses. (Ex. A, ¶ 6.) In her current job, she has administered Narcan, a brand name opioid overdose reversal medication, to countless overdose victims to save their lives. (Ex. A, ¶ 15.) Ms. Rostucher's son, Drew, who has battled heroin addiction for years, is among the many individuals Ms. Rostucher has saved in this way. (Ex. A, ¶¶ 4-10, 22.) Ms. Rostucher has seen first-hand that one of the best way to reduce overdose deaths is to make sure that individuals are not alone when they use. (Ex. A, ¶¶ 13-19, 23.)

Addiction is an indiscriminate disease. Its victims come from every class, race, ethnicity, gender and religion. Promising young men and women have seen their lives derailed because the weight of their addiction made them incapable of functioning in other aspects of their lives. For example, Dr. Bonnie Milas is a professor of Clinical Anesthesiology and Critical Care at the Perelman School of Medicine at the University of Pennsylvania, and a Staff Anesthesiologist at the Hospital of the University of Pennsylvania ("HUP") and Penn Presbyterian Medical

Center. (Declaration of Dr. Bonnie Milas, attached hereto as Exhibit B, ¶ 5.) Her son, Robert, was an A-student and pursuing a degree in mechanical engineering, but had to drop out of college twice because of his struggle with addiction. (Ex. B, ¶ 6.) He also had a serious girlfriend for whom he wanted to get sober, but he was not able overcome this disease, and he fatally overdosed just days after telling his family of his intention to propose to her. (Ex. B, ¶ 9.)

It is also a disease that never fully goes away. Those suffering from addiction must confront the issue every day of their lives, no matter how long it has been since they last used. (Declaration of Marissa Perrone, attached hereto as Exhibit C, ¶ 16.) Trips to rehabilitation centers are often stop-gaps that do not lead to long-lasting sobriety. For example, Eliza Harper attended treatment centers all across the country during her battle with addiction. (Declaration of Cara Moser, attached hereto as Exhibit D, ¶ 7.) After several relapses following prior attempts to become sober, she was believed to have been sober for at least 10 months before her last, fatal overdose on November 30, 2018. (Ex. D, ¶ 9.) Similarly, Antonio Piscitello spent six months at a treatment center in Colorado before relapsing and nearly dying in May 2017. (Ex. C, ¶ 14.)

Many individuals who are addicted to opioids are aware of the dangers of this disease, but are unable to stop. (Ex. A ¶ 12; Declaration of Professor Louis Natali, Esq., attached hereto as Exhibit E, ¶ 5.) For example, Giana Natali knew that the

drugs she purchased on the streets could contain deadly chemicals, including fentanyl. (Ex. E, ¶ 6.) Ms. Natali, like many of the individuals afflicted with this disease, was very concerned about what was contained within the drugs she was using because she did not want to die. (Ex. E, ¶ 6; *see also* Ex. A, ¶ 12.) However, the addiction tragically compels these individuals to continue using, even at the cost of their lives. (Ex. A, ¶ 12; Ex. E, ¶ 6; Declaration of Elise Schiller, attached hereto as Exhibit F, ¶ 9.)

The fear of embarrassment, and even death, is often not enough to prevent those suffering from addiction from using. Robert Milas was mortified every time he would wake up on the floor after an overdose, but that feeling was not enough to stop his use. (Ex. B, ¶ 7.) In fact, even after witnessing the destructive power of addiction in Robert, his brother became addicted to opioids. (Ex. B, ¶ 12.) This disease ultimately took his life too, cutting short the lives of both of Dr. Milas' sons. (Ex. B, ¶ 12.)

Eliza Harper knew that addiction could be deadly, but was unable to stop. (Ex. D, ¶ 6.) Drew Rostucher reached the point that he was injecting drugs in front of his own mother because the urge to use was so overwhelming. (Ex. A, ¶ 13.) Mr. Rostucher is alive today because another person was present when he overdosed, or found him in time for medical personnel to revive him. (Ex. A, ¶¶ 10, 23.) Others,

such as Ms. Natali, were tragically alone when they overdosed, and lost their lives as a result. (Ex. E, ¶ 4; Ex. A, ¶ 19.)

III. THE IMPACT THAT ADDICTION HAS ON FAMILIES

The friends and family members of those suffering from addiction, or who have lost their lives to the disease, face substantial hurdles as well. Even for a trained professional like Dr. Milas, who handles large amounts of opioids every day, her son Robert's opioid use was insidious and hard to detect. (Ex. B, ¶ 5.) Ms. Rostucher's son Drew spent much of his early- to mid-twenties living on the streets of Kensington using drugs, and she would often go there to find him and make sure he was safe. (Ex. A, ¶¶ 7-8.)

Many families members have even had to administer opioid reversal medication to their own family members. For instance, one time while driving to work, Rosalind Pichardo heard someone yell "I need Narcan!" (Declaration of Rosalind Pichardo, attached hereto as Exhibit G, ¶ 11.) She rushed over to administer Narcan and realized that the man who had overdosed and was lying on the ground in need of Narcan was her cousin. (Ex. G, ¶ 11.)

Witnessing neighbors, friends, and family members struggle with opioid addiction has led people with no medical backgrounds, including Ms. Pichardo, to take steps to combat the opioid epidemic. Ms. Pichardo, who has lost multiple family members to opioid addiction, works in Kensington and serves people who

are battling addiction. Since late 2017, when she first received training on how to administer Narcan, she has administered it to overdose victims in Philadelphia over four hundred times. (Ex. G, ¶ 8.)

Additionally, because she understands how critical Narcan is to saving lives, Ms. Pichardo has personally trained approximately 2,000 individuals on how to administer it, including middle and high school students and her two sons. (Ex. G, ¶¶ 16-17.) She wishes that her sons did not need to know how to use Narcan, but they regularly encounter individuals who have overdosed, and this knowledge and training save lives. (Ex. G, ¶¶ 6, 16-18.)

Carol Rostucher has likewise administered Narcan countless times to prevent overdose deaths. (Ex. A, ¶ 15.) She also founded and currently works full time for Angels in Motion, an organization that has the express purpose of helping those suffering from addiction. (Ex. A, ¶ 2.) Responding to the regular overdoses and constant suffering of people in active addiction can take a psychological toll on those people who feel compelled to help. (Ex. G, ¶ 16.)

Family and friends often experience harrowing moments when they know that a loved one has overdosed, but do not know if they survived. Marissa Perrone once received a call from a treatment facility informing her that her son, Antonio, had overdosed. (Ex. C, ¶ 15.) Ms. Perrone spent four excruciating hours on the phone

before someone at the hospital could finally confirm that her son had survived and had apparently not suffered brain damage. (Ex. C, ¶ 15.)

Additionally, family and friends who have lost loved ones are often haunted by the realization that their loved ones likely died alone from a preventable overdose. For instance, every night before she goes to sleep, the last thing Dr. Milas thinks about is the memory of her two sons. (Ex. B, ¶ 13.) Similarly, Elise Schiller, whose daughter died alone from a heroin overdose, reports that the death of her daughter has changed her family's life forever, and she would not wish that experience on any other family. (Ex. F, ¶ 30.)

These tragic events are all too common. Caitlin Kearney, the cousin of Daniel Urevick-Ackelsberg and his wife Jennifer Kates, went missing in 2012 and was never seen alive again. (Declaration of Daniel Urevick-Ackelsberg, attached hereto as Exhibit H, ¶ 11.) Caitlin's remains were discovered almost five years later in a deserted park in Camden. (Ex. H, ¶ 12.) She is believed to have died of a heroin overdose. (Ex. H, ¶ 12.)

Jackson Harper will have to live the rest of his life with the image of his sister Eliza unconscious in their parents' house. (Ex. D, ¶ 12.) He was only 14 years old when he found her after she overdosed. (Ex. D, ¶ 10.) Jackson and his sister Ava will also have to live with the guilt of being unable to save Eliza's life, even though

they were in the house the morning that she overdosed for the last time. (Ex. D, ¶ 12.)

IV. HOW OVERDOSE PREVENTION SITES CAN HELP

Overdose prevention sites save lives by allowing people to use drugs under medical supervision – and most importantly by making sure that individuals are not alone when they use. Accordingly, facilities like Safehouse prevent overdose deaths and provide individuals suffering from addiction with access to treatment. It is impossible to know when a person suffering from addiction will be able to turn the corner on the road to recovery, and each additional day a person has is another opportunity to work towards living a life free from the grip of addiction. (Ex. A, ¶ 15; Ex. B, ¶ 14; Ex. H, ¶ 17.)

Ms. Rostucher tells the people she meets who are suffering from addiction that her most important concern is that they do not use alone. (Ex. A, ¶ 13.) Her son Drew has survived at least five overdoses, and is alive today because someone was always there when he overdosed. (Ex. A, ¶¶ 10, 17.) On one such occasion, his life was saved purely by chance – a stranger found him on the side of the road and called for help. (Ex. A, ¶ 10.) Drew was actually dead, but was revived by medical personnel. (Ex. A, ¶ 10.)

However, thousands of victims of opioid addiction were not as lucky when they used alone. Many family members believe that an overdose prevention site

would have saved the lives of their loved ones because they would have not been alone when they used. Cara Moser believes that her daughter, Eliza Harper, would have used at an overdose prevention site, rather than risk the possibility that her younger siblings would walk in on her in the middle of an overdose or worse. (Ex. D, ¶ 13.) Additionally, Elise Schiller and Louis Natali believe than an overdose prevention site could have saved their daughter, who died alone from a heroin overdose at the age of 33. (Ex. E, ¶ 6; Ex. F, ¶¶ 7-8.) Rosalind Pichardo believes that an overdose prevention site would have saved her cousin’s life—he was found dead in the middle of the street, with all of his possessions stolen, after experiencing an overdose. (Ex. G, ¶ 13.)

In addition to preventing overdoses, there are other obvious benefits to an overdose prevention site. Rosalind Pichardo, who works with between 100-150 people in active addiction in Kensington on a daily basis, believes that the majority of those people would use an overdose prevention site. (Ex. G, ¶ 13.) And if people use drugs in an overdose prevention site, they will not be using in public where citizens and children are exposed to drug use and paraphernalia. (Ex. G, ¶¶ 13-15, 19; Ex. F, ¶ 6.) Carol Rostucher knows many people who are suffering from addiction who are conscious not to inject in front of children, and thus find secluded places to use, posing a much higher risk of fatally overdosing. (Ex. A, ¶ X.)

Katy Otto has seen people in her neighborhood in South Philadelphia nearly overdose several times while sitting on the stoop of a house. (Declaration of Katy Otto, attached hereto as Exhibit I, ¶ 10.) Safehouse would ensure that they had a place to go that was safe and welcoming. (Ex. I, ¶ 11.)

Additionally, an overdose prevention site would connect drug users with compassionate medical professionals, who often are not involved with more traditional opioid treatment facilities. (Ex. F, ¶¶ 6, 23, 29.) Even someone like Carol Rostucher, who has administered Narcan many times, admits that it would be better if a medical professional were present when someone is overdosing and needs Narcan. (Ex. A, ¶ 15.) Medical professionals would also be able to connect drug users with other types of basic healthcare, including wound care and mental health services. (Ex. E, ¶ 8.)

Furthermore, overdose prevention sites can connect those suffering from addiction to counselors who specialize in treating the disease. Many lack access to this, but it can be vital in getting those who are addicted on the path to recovery. Trained counselors are often the most effective voices in convincing those addicted to opioids to seek treatment.

Counselors are especially important because many people who are addicted to opioids are often forced out of treatment programs when they relapse, even though they are desperately ill and need support in their struggle to recover from addiction.

For instance, Giana Natali was kicked out of a residential treatment program after she used heroin that had been brought into the facility by another patient. (Ex. F, ¶ 24.) Her mother was astonished that the facility would kick her out, because she badly needed ongoing treatment and, as an addict, the decision to use heroin was not a choice she willingly made. (Ex. F, ¶ 24.) Indeed, the stigma of drug addiction is one of the largest impediments to getting help for those who are suffering from the disease. (Ex. B, ¶ 13.) Overdose prevention sites would go a long way in reducing that stigma and saving lives. (Ex. B, ¶ 13.)

Katy Otto, for instance, had a friend who died from a heroin overdose at the age of 30. (Ex. I, ¶ 12.) Ms. Otto's friend's addiction had isolated her from almost all of her friends and family, except for a boyfriend who fueled her addiction. (Ex. I, ¶ 12.) Safehouse could have provided support for her friend to break away from the addiction. (Ex. I, ¶ 13.)

If Safehouse could save one life and one set of parents from grieving the death of their child, its benefits would far outweigh any possible negative consequences. (Ex. D, ¶ 7.) We should do everything we can to prevent more families from the pain of losing a loved one to opioids. (Ex. E, ¶ 30.)

V. APPELLANT’S PROFFERED INTERPRETATION OF SECTION 856(A)(2) WOULD FRUSTRATE THE PURPOSE OF THE CONTROLLED SUBSTANCES ACT

Appellant offers an interpretation of the Controlled Substances Act (the “CSA”) that would frustrate the overall purposes of the Act, and prevent Safehouse from averting overdose deaths and facilitating treatment for users. In fact, Appellant perversely seeks to criminalize Safehouse for providing these critical, life-saving services.

Section 856(a)(2) of the CSA makes it unlawful to “manage or control any place ... and knowingly and intentionally ... make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.” 21 U.S.C. § 856(a)(2). Thus, by its plain language, Section 856(a)(2) applies only where the property is maintained, opened, or made available “for the purpose” of unlawful drug activity. Section 856(a)(2) does not criminalize a facility such as Safehouse, which is operated for the purpose of preventing overdose deaths, and providing addiction treatment and medical care. (Ex. A, ¶ 16; Ex. B, ¶¶ 13-15; Ex. C, ¶¶ 5, 18; Ex. D, ¶ 14; Ex. E, ¶¶ 7-10; Ex. F, ¶ 31; Ex. G, ¶¶ 18-20; Ex. H, ¶¶ 14-16; Ex. I, ¶¶ 3, 13-14.)

In the face of this unambiguous language, Appellant contends that Section 856(a)(2) “squarely applies” to Safehouse because the CSA “makes it unlawful to manage any place where people” use illegal drugs. Appellant’s broad reading of

Section 856(a)(2) is not only unsupported by the statute’s plain language, it is contrary to the very purpose of the CSA. As a result, applying Appellant’s strained reading of Section 856(a)(2) to Safehouse would frustrate, rather than enhance, the purpose of the CSA.

The CSA was enacted for several stated purposes, including “to provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse.” Pub. L. No. 91–513, 84 Stat. 1236 (preamble) (1970) (codified at 21 U.S.C. §§ 801–904); *see also* H.R. Rep. No. 91–1444, *reprinted in* 1970 U.S.C.C.A.N. 4566, 4567 (“This legislation is designed to deal in comprehensive fashion with the growing menace of drug abuse in the United States (1) Through providing authority for increased efforts in drug abuse prevention and rehabilitation of users, (2) Through providing more effective means for law enforcement aspects of drug abuse prevention and control, and (3) By providing for an overall balanced scheme of criminal penalties for offenses involving drugs.”) As such, the CSA plainly seeks to facilitate the treatment and rehabilitation of users—the very same goals that Safehouse promotes through medically supervised consumption services. (Ex. A, ¶ 16; Ex. C, ¶ 5, 18; Ex. E, ¶¶ 8-9; Ex. G, ¶¶ 18-20.) And as the attached declarations make clear, a facility like Safehouse *could* have saved many lives that were lost to

opioid addiction, and *will likely* save the lives of many similarly-situated users. (Ex. A, ¶¶16-17; Ex. B, ¶ 15; Ex. C, ¶ 18; Ex. D, ¶ 13; Ex. E, ¶ 6; Ex. F, ¶ 28; Ex. G, ¶ 18; Ex. H, ¶¶ 14-15; Ex. I, ¶¶ 3, 13-14.)

Accordingly, Appellant’s attempt to criminalize Safehouse’s lifesaving efforts would undermine the stated purpose of the CSA and defy common sense. Courts in analogous circumstances have rejected such broad interpretations of statutes. *See, e.g., King v. Burwell*, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015) (rejecting interpretation of Affordable Care Act where it was “implausible” that Congress meant the Act to operate in this manner”); *United States v. Hayes*, 555 U.S. 415, 426–27 (2009) (rejecting interpretation of Gun Control Act that “would frustrate Congress’ manifest purpose”); *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 618–19 (2010) (Kennedy, J., dissenting) (“When construing a federal statute, courts should be mindful of the effect of the interpretation on congressional purposes explicit in the statutory text.”); *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 128 (1985) (rejecting interpretation of Age Discrimination in Employment Act that would “frustrate th[e] intent” of the statute); *Shenango Inc. v. Apfel*, 307 F.3d 174, 196 (3d Cir. 2002) (rejecting interpretation of Coal Industry Retiree Health Benefit Act that would “frustrate the very congressional purpose the Act sought to further,” and interpreting the statute using an “all too often overlooked tool: practical common sense.”).

VI. CONCLUSION

Safehouse has the potential to prevent the anguish experienced by so many friends and family members of those suffering from opioid addiction. Overdose deaths are preventable. There is no single cure for this epidemic, but overdose prevention sites such as Safehouse are one tool that can save the lives of those afflicted with the disease and spare their friends and family from the heartbreak of losing a loved one too soon. This unimaginable real-life pain can be prevented by recognizing that Congress could not possibly have intended to have the CSA criminalize the efforts of those looking to prevent overdose deaths.

Respectfully submitted,

COZEN O'CONNOR

Dated: July 6, 2020

By: /s/ Thomas A. Leonard IV
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CERTIFICATE OF BAR MEMBERSHIP

I hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

Dated: July 6, 2020

By: /s/ Thomas A. Leonard IV

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 10,074 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), as counted using the word-count function on Microsoft Word 2016 software.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in proportionally spaced typeface using Microsoft Word 2016, in Times New Roman style, 14 point font.

This brief complies with Local Rule 31.1(c) because the text of the hard copies of this brief filed with the Court and this E-Brief are identical, and because the Trend Micro Office Scan Agent was run on this E-Brief, and no virus was detected.

Dated: July 6, 2020

By: /s/ Thomas A. Leonard IV

CERTIFICATE OF SERVICE

1. I hereby certify that on July 6, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system.
2. Pursuant to the “Notice Regarding Operations to Address the COVID-19 Pandemic” issued by this Court on March 17, 2020 and stating that “[t]he filing of paper copies of briefs and appendices is deferred pending further direction of the Court,” paper copies of this brief have not been filed with the Clerk of Court at this time. See 3d Cir. L.A.R.31.1(a) (2011).
3. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: July 6, 2020

By: /s/ Thomas A. Leonard IV

EXHIBIT A

CASE No. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19–519,
Hon. Gerald A. McHugh

DECLARATION OF CAROL ROSTUCHER

I, Carol Rostucher, declare and state as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.
2. I am the founder of Angels in Motion, an organization based in Philadelphia that seeks to help those suffering from addiction.
3. I was born and raised in the Kensington section of Philadelphia and currently live in Northeast Philadelphia.
4. My son Drew has struggled with drug addiction for years.
5. Drew started drinking and smoking pot in eighth grade. He then started using cocaine before starting heroin at age 20.
6. My sister died from opiate use, and several of my friends from growing up died from opiate overdoses. I had always warned Drew not to start using heroin because I saw first-hand how devastating it can be.
7. Heroin had an immediate negative impact on Drew's life. He lost his job and spent much of his time from age 20-25 living on the street.
8. I had minimal contact with him during this time and would often go to Kensington to look for him to make sure he was safe.
9. These trips to Kensington led to my involvement in addiction treatment efforts.

10. I am aware of five times that Drew overdosed. He was alone only once. Luckily, a passerby saw him on the street, took his phone, and called for help. Drew had actually died but was revived when medical personnel arrived.

11. My approach to and understanding of opioid addiction evolved over time as I saw the effects that addiction had over Drew and others in Kensington who struggle with opioid use.

12. Most of the people who are addicted to opioids know that using them is dangerous and do not want to die, but the addiction is so strong that they cannot stop.

13. My primary concern is that users do not use alone. I repeatedly implored Drew not to use alone, to the point where I urged him to use in front of me so that I would be able to administer Narcan if he overdosed.

14. I have allowed many other users to use in front of me in an effort to ensure that they can be treated with Narcan promptly if they overdose.

15. I would estimate that I have saved more than forty people by convincing them that they should not use alone, and by administering Narcan when necessary. In my experience, most of these individuals do not want to be alone, and they do not want to die. At the same time, I have found that many individuals are mindful not to use in front of kids, so they often look for secluded or hidden places to use alone.

These situations are far more dangerous for these individuals, as no one can help them if they overdose.

16. I recall one instance when I passed someone on the street in or around Kensington who was about to use heroin. He told me that he had been clean for about four years, but had relapsed. He also told me that had used heroin previously, but not fentanyl. I warned him that if he used alone, he could kill himself. I allowed him to use in front of me so that I could save him, if necessary. He overdosed, and I administered Narcan that saved his life.

17. That gentleman later saved the life of another person who overdosed on opioids by administering Narcan.

18. Even though I have administered Narcan countless times to prevent overdose deaths, I would still prefer that a medical professional be present when it is given. I understand that Overdose Prevention Sites such as Safehouse would feature medical professionals who are best equipped to treat overdoses.

19. I believe that Overdose Prevention Sites such as Safehouse would be especially helpful for people going through a relapse. I recall one instance in which a young man used heroin in front of me, because he knew he should not use alone. A few months later and after he was released from jail I learned that this young man's father has found him dead in his home. If he had been able to access a facility

like Safehouse, I believe that he would have, and that Safehouse would have saved him.

20. Safehouse would provide support for people who have no support, are in need of resources and nowhere to go. I believe this would be especially helpful for individuals when they are released from incarceration. These individuals often have nowhere to go, and often end up relapsing on the streets. Facilities like Safehouse can keep these individuals alive, support them, and give them direction so that they can find a positive path forward.

21. The primary goal of any policy directed at the opioid epidemic should be to save lives. Overdose Prevention Sites such as Safehouse would help to accomplish that goal.

22. Drew relapsed in December 2018. Although I have saved my son with Narcan, I know that many family members of individuals struggling with addiction are unable to (or do not want to) administer Narcan. I do not want Drew to use in front of me, and I certainly do not want him to die. I want facilities like Safehouse to be available to help Drew and others struggling with addiction.

23. Drew is alive today because others were present when he overdosed. Safehouse, and other facilities like it, will be able to keep many more people alive, by being present when individuals overdose, and by providing treatment and support to help people struggling with addiction.

24. Drew is in recovery today, and a productive member of society. He is currently working full time, has his vehicle back and is looking for an apartment thanks to Narcan and individuals who value life.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Carol Rostucher

July 4, 2020

Date

EXHIBIT B

CASE No. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19–519,
Hon. Gerald A. McHugh

DECLARATION OF DR. BONNIE MILAS

I, Bonnie Milas, MD, declare and state as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.
2. I am a Professor of Clinical Anesthesiology and Critical Care at the Perelman School of Medicine at the University of Pennsylvania and a Staff Anesthesiologist at the Hospital of the University of Pennsylvania (“HUP”) and Penn Presbyterian Medical Center.
3. I live in Yardley, Pennsylvania, where my husband and I raised our two sons. In the last three years, I lost both of my sons to accidental drug overdoses.
4. My son Robert started using heroin at the end of his junior year in high school when he was 17 years old. He learned how to inject from a girl in our neighborhood who was two or three years younger than he was.
5. In my practice as an anesthesiologist, I handle large amounts of opioids, including fentanyl, almost every day. Even for a trained professional such as me, Robert’s initial use of opioids was slow, insidious, and hard to detect.
6. Robert was very bright. He was an A-student and was pursuing a degree in mechanical engineering. Despite his intelligence and stellar academic history, he had to leave both Bloomsburg University and Penn State Abington because of his struggles with addiction to opioids. He ultimately enrolled at Penn State Harrisburg, but did not graduate.

7. Robert tried very hard to shake his habit. He was mortified every time he would awaken on the floor after an overdose, but the addiction was so strong that that feeling was not enough to stop his use.

8. Robert was in in-patient treatment eight times. He was also enrolled in multiple partial hospitalization programs, intensive outpatient programs, recovery homes, and structured sober living homes. He attended Narcotics Anonymous and Alcoholic Anonymous meetings as well.

9. Robert also had a serious girlfriend for whom he wanted to get sober. He told us shortly before he died that he wanted to propose to her.

10. Robert struggled with opioid addiction for approximately 10 years. I am aware of nine overdoses that he survived.

11. Robert ultimately died from an opioid overdose on January 6, 2018. His death was already the 16th overdose death in Philadelphia that year. The only narcotic found in his circulation was fentanyl.

12. Even after witnessing Robert struggle with addiction, my older son became addicted to opioids, which ultimately led to his death as well.

13. The deaths of my children have been devastating to our family. It is the last thing I think about every night.

14. I chased my son down the street in my bathrobe in an effort to prevent him from trying to purchase drugs.

15. I wrestled with my son while he was holding a full syringe to try to prevent him from injecting heroin.

16. I saw my son stop breathing, and there were multiple instances in which I performed mouth-to-nose resuscitation or CPR on my son to bring him back to life.

17. I keep a supply of Narcan in my house, and administered it multiple times.

18. I removed a bathroom door from its hinges to rescue my son, and I physically restrained my son—after reviving him with Narcan—to prevent him from jumping out of a second-story window.

19. Still, the good memories outweigh those painful ones. Robert was smart, playful, loving, and had an amazing sense of humor. My older son was bright, determined, and athletic, and I proudly watched as he graduated from medical school. I miss them dearly, and I think about them every day.

20. The stigma associated with drug addiction is a tremendous impediment to users to obtaining help. I believe that opening an overdose prevention site such as Safehouse would go a long way in reducing the stigma and saving lives.

21. I saw first-hand how powerful opioid addiction can be. Many users would like to stop using, but cannot. It is impossible to know how many times a person can use or overdose before that person will be able to overcome his or her addiction.

22. If Robert had unknowingly injected fentanyl at a Safehouse-type facility I fully believe he would not have died that day. His only option was to use alone in a bathroom.

23. There are approximately one hundred legal supervised injections sites around the world. I am not aware of a single recorded death at any of those sites.

24. If either of my sons had used at a supervised injection site, they would have had a 100% chance of survival.

25. I have no surviving children.

26. High-risk Philadelphia needs this as an option to help people survive.

27. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Dr. Bonnie Milas

7/6/2020
Date

EXHIBIT C

CASE NO. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19-519,
Hon. Gerald A. McHugh

DECLARATION OF MARISSA A. PERRONE

I, Marissa A. Perrone, declare and state as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. I am the Director of Business Development for Piscitello Law, a law firm that has served the Philadelphia community for decades.

3. I live in the Society Hill neighborhood of Philadelphia, Pennsylvania, where my husband, Joe Piscitello, and I raised our children, including our son, Antonio.

4. Joe and I are members of the Society Hill Civic Association and the 5th Square, and we co-founded Friends of Safehouse, a community group that supports the urgent opening of Safehouse in Philadelphia and other Overdose Prevention Sites (“OPS”) across the United States.

5. Joe and I support Safehouse and its mission to meet those suffering from addiction where they are, engage with them, and save their lives if necessary.

6. We have firsthand experience with the devastating impact of Substance Use Disorder (“SUD”), as Antonio has battled this disease since he became addicted to opioids in or about the Fall of 2013.

7. As a result of SUD, Antonio dropped out of college after one semester, and moved back in with us in December 2013. He shifted from opioids to heroin soon thereafter.

8. Over the next four years, Antonio lived with us in between stints in treatment centers in Pennsylvania, Florida, Colorado, and, finally, Connecticut.

9. A few memories stand out from this time. I remember that the evenings were especially difficult. At night, Antonio would pace around the house, loudly opening and closing doors as he battled his disease. Joe and I would lay awake, night after night, listening to the sounds of Antonio's personal struggle, debating whether to confront him yet again.

10. It became routine for Joe and I to hide our valuable possessions to try to prevent Antonio from taking them to feed his disease. Still, each time a laptop or a cherished heirloom went missing, it shocked and devastated us. SUD stole our sanity, and our sense of safety in our own home.

11. On a number of occasions, Antonio disappeared from the house, in search of heroin. Joe and I then spent long days and nights roaming the streets of Philadelphia looking for Antonio. Each time, we were gripped with the fear that we would not be able to find him and help him before he died as a result of this disease.

12. Even when Antonio was in treatment, we were regularly confronted with the devastating effects of SUD.

13. For example, on or about March 16, 2016, Antonio was asked to leave a treatment facility in Florida where he had been living for roughly five months. My husband and I received this news from Antonio's case manager at approximately 8

p.m. that evening, and he told us that when Antonio called to ask for help, we should not “rescue him.” We struggled with this instruction. The treatment center told us that helping Anthony would enable him, but we felt like we would be abandoning him to his disease if we did not help him. After a number of hours, Antonio found a dubious “sober living” facility that would take him in. We spent the rest of that night worrying that Antonio was using heroin again, and we were certain that he would be found dead the next day.

14. Then, on May 7, 2017, Antonio overdosed on heroin. He had made great progress during a six-month stay at a treatment center in Colorado, and was close to getting a job. However, he and another patient apparently decided to get heroin together and use it one last time. Antonio made the roughly three-hour drive to Denver to buy the drugs, and then returned to the facility. Antonio and his roommate used the heroin together in their living quarters, but then Antonio wandered outside by himself to use again, and he overdosed. A staff person at the facility discovered Antonio unconscious, and called for medical assistance. It took an intraosseous delivery of naloxone to revive him.

15. I was driving on the highway when I received the call from a staff person at the treatment center informing me of Antonio’s overdose. I recall that I screamed in terror, trying to determine whether my son was alive, and whether he had suffered brain damage, while at the same time trying to get off the road safely.

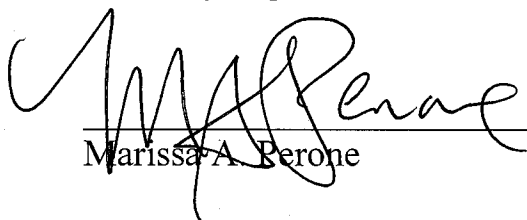
It took four excruciating hours to contact the hospital and confirm that Antonio did not appear to have suffered brain damage.

16. We are grateful and lucky that Antonio has improved since then. He has been sober for three years, and has been employed full-time by an addiction treatment center for two years. However, Antonio will be battling SUD for the rest of his life. He will never be fully cured, and there is always a chance that he could start using again, and overdose again.

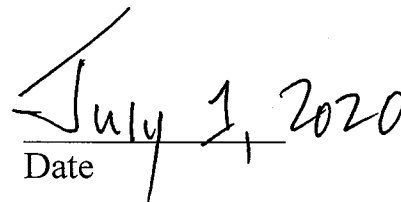
17. We can only hope that, if Antonio does relapse, there will be a place like Safehouse that will treat Antonio with care and compassion.

18. Philadelphia has lost thousands of citizens to SUD in just the last few years, and places like Safehouse are desperately needed to combat this public health crisis. Safehouse, and other OPS like it, will engage with and treat individuals battling this disease, in order to save lives and protect citizens from harm.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Marissa A. Perone



Date

EXHIBIT D

CASE No. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19-519,
Hon. Gerald A. McHugh

DECLARATION OF CARA MOSER

I, Cara Moser, declare and state as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. My daughter Eliza Harper died of an opioid overdose on her 26th birthday, November 30, 2018 in our home in South Deerfield, Massachusetts.

3. I learned about Safehouse and the efforts to establish overdose prevention sites in Philadelphia from my daughter Izzy, who currently lives in the city.

4. Eliza struggled with opioid addiction for over five years prior to her death.

5. Prior to that, she was diagnosed with depression and anxiety when she was 12 or 13 years old. She also suffered from post-traumatic stress disorder starting at age 15. She was prescribed medications, but was resistant or noncompliant at times due the negative side effects she experienced when taking them.

6. At times, Eliza talked openly to our family about her addiction. She was afraid that her addiction could kill her and she actively sought out rehabilitation and treatment centers. She did not want to continue using opioids and was dedicated to overcoming her addiction.

7. Eliza attended at least six treatment centers and four sober living centers during her struggle with addiction. The centers were located across the country,

including in Vermont, Florida, California, and Georgia. Despite numerous recommendations, not one treatment center led to an extended long-term inpatient treatment.

8. I am aware of several occasions in which Eliza overdosed. At least two occurred in our home, while others occurred in a hotel room, a car, or friends' apartments. In my opinion, she received substandard care from the medical centers to which she was sent.

9. To the best of my knowledge, Eliza had not used opioids for approximately 10 months prior to her final, fatal overdose. She came home sometime around 8 a.m. on November 30, 2018. Her 17-year-old sister Ava was asleep in her room and heard Eliza come in, but then immediately fell back asleep.

10. At about 11:30 that morning, Eliza's 14-year-old brother Jackson and two of his friends came into the house and discovered Eliza unconscious. Jackson called 911 and administered CPR until paramedics arrived.

11. Eliza was taken to the hospital and declared dead. It is estimated that she overdosed around 10 a.m.

12. Jackson and Ava have been completely devastated by the events of that morning. Jackson will have to live with the trauma of discovering his sister's lifeless body and trying desperately to breathe life into it for the rest of his life. Ava will

feel guilty for being home but not realizing that Eliza had overdosed for the rest of her life.

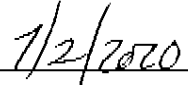
13. Eliza would have never wanted to cause her family, particularly her younger brother and sister, to experience the pain that we have all felt from her death. I believe that there is strong possibility that she would have used at an overdose prevention site such as Safehouse if one had been available, rather than risk overdosing at home where her siblings would find her.

14. My experience with Eliza and her addiction has changed the way that I view the opioid crisis. The health care system in this country is simply not equipped to properly handle the opioid crisis. Until that time, it is imperative that we save as many lives as possible through overdose prevention sites such as Safehouse.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Cara Moser



Date

EXHIBIT E

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAFEHOUSE and JOSE BENITEZ,

Defendants.

SAFEHOUSE,

Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant, and

U.S. DEPARTMENT OF JUSTICE, WILLIAM P.
BARR, and WILLIAM M. McSWAIN,

Third-Party Defendants.

CIVIL ACTION NO. 2-19-CV-00519

DECLARATION OF LOUIS NATALI, ESQUIRE

I, Louis Natali, Esquire, do hereby declare as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. I live in the Center City neighborhood of Philadelphia, Pennsylvania and have lived in Philadelphia all my life.

3. I have taught at Temple Law School since 1990. Last year, I was awarded the George P. Williams, III Memorial Award for the Outstanding Professor of the Year. Additionally,

I regularly write on subjects including Death Penalty Litigation, Evidence, and Trial Advocacy and train trial lawyers with the National Institute of Trial Advocacy.

4. I came to support Safehouse because of my daughter, Giana Natali, who died alone from a heroin overdose five years ago.

5. Giana became addicted to heroin and as an addict using heroin was not a choice she willingly made.

6. I think if a facility like Safehouse was available for Giana she may have used it to prevent an overdose. In July and August of 2013, she told me she very concerned about what was in the drugs she was using. She knew that the heroin available for purchase on the streets was frequently laced with other deadly substances, including fentanyl. This terrified her. She did not want to die.

7. If Safehouse could save one life and spare one set of parents from the pain I have experienced, then I think its benefits would far outweigh any of the possible, imagined negative consequences of the facility.

8. Safehouse has tremendous potential to save lives by preventing overdoses.

9. Safehouse also has tremendous potential to connect people who use drugs with other types of medical treatment and social services, including basic wound care, needle exchanges, and mental healthcare.

10. Individuals who are addicted to opioids are currently dying on the streets Philadelphia at alarming rates and I am not aware of any other viable solutions to this epidemic. I think Safehouse is a necessary and critical step toward combating this epidemic.

11. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Louis Natali
LOUIS NATALI, ESQUIRE

7-10-19
DATE

EXHIBIT F

CASE No. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19–519,
Hon. Gerald A. McHugh

DECLARATION OF ELISE SCHILLER

I, Elise Schiller, do hereby declare as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. I live in the Germantown neighborhood of Philadelphia, Pennsylvania and have lived in Philadelphia my entire life.

3. I serve on the advisory board of the Philadelphia Department of Behavioral Health and Intellectual disAbility Services. I have served on this board since 2016.

4. I previously served on the Philadelphia Mayor's Task Force to Combat the Opioid Epidemic in 2016 and 2017.

5. One of the many harm reduction strategies that the Mayor's Task Force to Combat the Opioid Epidemic recommended was to open a safe injection site in Philadelphia without using any public funds.

6. Safe injection sites allow people to use drugs under medical supervision, preventing overdoses. Safe injection sites also offer referral to recovery treatment and keep drug use and paraphernalia off the streets and away from children and other citizens.

7. I believe an overdose prevention facility could have helped save the life of my daughter, Giana Natali.

8. Giana died alone from a heroin overdose six and a half years ago at the age of 33.

9. Giana did not want to die. She wanted to get better. Between May 2012 and her death in January 2014, Giana tried eight different residential, in patient, and outpatient treatment facilities.

10. Giana graduated from William Penn Charter School in 1998 and went to Rutgers University on a swimming scholarship.

11. In college she suffered from severe anorexia, and took two years off to receive treatment. Eventually, she went back to college and graduated from the University of Vermont.

12. After college, because of her love for animals she obtained a graduate degree and became a veterinary nurse.

13. As a former college athlete, she took up an interest in bodybuilding. This led her to start taking nalbuphine, a synthetic opioid, to manage her pain.

14. Also around this time she suffered a back injury and received a prescription for opioids.

15. In late May 2012, Giana recognized she was abusing opioids and checked herself into a residential treatment center. She stayed there for the two weeks covered by her health insurance provider.

16. After being released, she went back to work. However, her addiction eventually caused her to lose her job.

17. After losing her job, she immediately checked herself into another residential treatment facility for one month.

18. When she got out of treatment she did not have any income and pills became less accessible. Heroin was less expensive and more available and I believe this led her to try heroin for the first time in November 2012.

19. After I found out that she was using heroin, Giana started working with a medical doctor to receive therapy and a prescription for suboxone. However, the residential treatment facilities would not allow her to take suboxone, so when she went back to a residential treatment facility in March of 2013 she stopped taking the suboxone.

20. She spent the next several months in and out of different treatment facilities.

21. In early January 2014, shortly after the death of my mother and her grandmother, Giana died from an overdose while in a “step-down” residential treatment program. She was alone when she overdosed. When her roommates found her she had likely been dead for 30 minutes.

22. The treatment she received for her heroin addiction was very different than the treatment she received when she suffered from anorexia in college.

23. The anorexia treatment was largely facilitated by medical professionals, while the addiction treatment was not. Additionally, when she was treated for anorexia, Giana was treated compassionately, like an individual with a serious disease. But when she was treated for addiction, she was often treated with contempt, like her addiction was her fault and due to her bad choices or lack of will power.

24. I recall one instance when Giana was kicked out of her residential treatment facility after using heroin that had been brought into the facility by another patient. I was astonished that the treatment facility would kick her out because she was desperately ill and the decision to use was not a choice she willingly made.

25. The opioid epidemic currently facing the City of Philadelphia is unprecedented.

26. The general public often misunderstands opioid addiction and the principles of harm reduction.

27. A safe injection site would allow individuals suffering with opioid addiction to avoid overdosing until they are able to find an effective treatment program.


28. If Giana would have used in a place like a safe injection site, she would not have died. Instead she died alone. I wish my daughter had not been alone when she died.

29. I also believe that if Giana had had the opportunity to meet compassionate medical professionals her addiction treatment would have been different.

30. Giana's death has changed my family's life forever and I would not wish this experience on any other family. I believe we should do everything we can to prevent what happened to Giana from happening to anyone else.

31. We cannot go backwards. We have to save lives going forward. A safe injection site is just one way to provide individuals suffering from opioid addiction with the treatment they need.

32. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Elise Schiller

7/2/20
Date

EXHIBIT G

CASE NO. 20-1422

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19-519,
Hon. Gerald A. McHugh

DECLARATION OF ROSALIND PICHARDO

I, Rosalind Pichardo, do hereby declare as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. I live in the Kensington neighborhood of Philadelphia, Pennsylvania and have lived in Kensington for most of my life.

3. I am the founder of Operation Save Our City, an organization based in Philadelphia that works with families that have been affected by gun violence.

4. I also work at the Kensington StoreFront, a public art making space, where I serve meals and facilitate a program for people suffering from addiction.

5. In 2015, I started organizing neighborhood "pop up" meals to feed anyone in Kensington who was hungry. When I started organizing the pop up meals in Kensington, I encountered so many people on the streets overdosing on opioids, including heroin and fentanyl.

6. I realized that in order to save lives, I needed to know how to administer Narcan, a brand name for naloxone, an opioid overdose reversal medication.

7. I received overdose prevention training, including on administering Narcan.

8. Since late 2017, I have administered Narcan to individuals who have overdosed from heroin or fentanyl in Philadelphia 410 times.

9. One time after I administered Narcan, the man I administered Narcan to stabbed me in the leg with a needle.

10. Another time while I was administering Narcan, I experienced a secondhand exposure to an opioid and had to be treated with Narcan myself.

11. I have several family members who have used opioids, including two cousins who have overdosed and died.

12. One time while driving into work, I heard someone yell "I need Narcan!" I rushed over to administer Narcan and realized the man who had overdosed and was lying on the ground in need of Narcan was my cousin.

13. Another cousin of mine died of an overdose and was found lifeless in the middle of the street. All of his belongings were stolen, including his shoes. I believe that he would be alive if Safehouse was open at the time. He didn't have to die that way.

14. On a daily basis, I interact with and attempt to help between 100-150 people in active addiction in Kensington. I believe that if a supervised consumption facility was available, a majority of these people would use in that space and would not be out on the streets using in public.

15. I hate that children and families are exposed to the drug use that is currently taking place publicly in the parks and streets of Kensington.

16. The neighborhood and its residents are not equipped to deal with the suffering they see on our streets. Many residents, including myself, are not medical professionals, yet we feel compelled to step in and respond to the overdoses we see happening around us. This takes a toll on us psychologically.

17. I have trained approximately 2,000 individuals on how to administer Narcan, including middle and high school students. I wish our children did not need to know how to use Narcan.

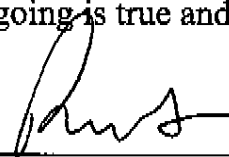
18. Both of my sons are trained on how to use Narcan. I wish that my sons did not need to know how to use Narcan, but they encounter opioid overdoses regularly.

19. I believe Safehouse will provide an opportunity for medical professionals to connect opioid users with resources, including treatment options and basic healthcare.

20. I also believe Safehouse will help reduce public consumption of drugs in my neighborhood.

21. We cannot turn a blind eye to the opioid epidemic in Philadelphia and the suffering that results from it. We need to try to find solutions to this epidemic and reduce the suffering. I believe Safehouse is one of the solutions we need to try.

22. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Rosalind Pichardo

7/3/20
Date

EXHIBIT H

CASE No. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19–519,
Hon. Gerald A. McHugh

DECLARATION OF DANIEL UREVICK-ACKELSBERG

I, Daniel Urevick-Ackelsberg, declare and state as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. I and my wife, Jennifer Kates, are public interest attorneys who reside in South Philadelphia.

3. We use the subway stop at the intersection of Broad Street and Snyder Avenue as part of our regular commute. Our son also attends pre-school just a few blocks away.

4. We regularly see needles and empty drug baggies scattered on the ground as we walk to our son's school, on our own street, and on our commute to and from work.

5. Individuals struggling with addiction regularly gather on the corners of the sidewalks in our neighborhood, and those without homes sometimes sleep in the playgrounds where the children in our neighborhood play. They also use opiates on the front steps of homes in our neighborhood.

6. Roughly once a week, someone in our neighborhood dies as a result of drug addiction.

7. My wife and I lost our cousin, Caitlin Kearney, to heroin.

8. The last time we saw Caitlin was in 2012. She was twenty years old, and a mother of a then one-year-old daughter.

9. Caitlin was struggling with addiction, and her relationship with much of our family was fracturing. We remained on good terms, and so we were given the task of trying to get Caitlin into rehab. We met up with her in Franklin Square Park at 7th and Race Streets in Philadelphia.

10. We spent thirty-six hours with her—walking, talking, arguing, crying, and eating—as we fought with insurance companies to get Caitlin into a rehabilitation center.

11. Over the course of her addiction, she was admitted to facilities in New Jersey and Pennsylvania to treat her illness, but she did not last more than a day or two at either facility.

12. Shortly after leaving the Pennsylvania facility in the summer of 2012, Caitlin disappeared.

13. Our family spent the next five years following leads for suspected sightings of Caitlin, in places like downtown Camden and Center City Philadelphia. We once were even told that she was in the group of people suffering from addiction who gathered by the Rite Aid on the 700 block of Market Street in Philadelphia, within eyesight of the James A. Byrne Federal Courthouse. I rushed to that corner, but unfortunately, Caitlin was not there.

14. In fact, we never saw Caitlin again. Instead, in 2017, Caitlin's remains were found in a deserted park in Camden. After an investigation, including an

autopsy that found no evidence of trauma, the police informed us that they believed she died from a heroin overdose.

15. I support Safehouse as a public good that mitigates harm by reducing the chances that drug addiction will serve as a death sentence for individuals struggling with addiction.

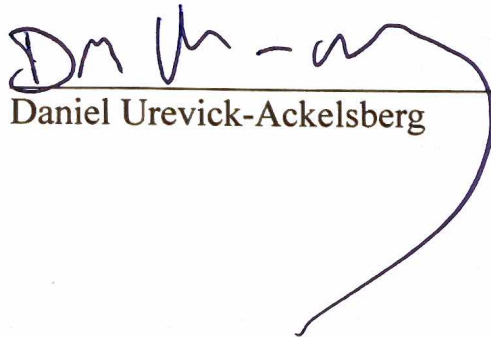
16. I support Safehouse opening in my neighborhood in South Philadelphia, because it will give a fresh chance to our neighbors struggling with addiction. It will connect these individuals to services that they desperately need, and it will reduce the frequency with which individuals use heroin and opioids on the streets. As a result, I believe there will be fewer used needles and baggies on the sidewalks in our neighborhood. And if individuals overdose and are in need of immediate medical attention, Safehouse will keep those individuals alive, at least for one more day.

17. Each additional day that a facility like Safehouse can give to individuals struggling with addiction—not to mention their loved ones—is invaluable. Each day is another chance to seek treatment, or to be a part of special moments with one's family. No disease can steal a person's humanity, and human beings, no matter how much they are struggling, deserve to live, even if it is just for one more day.

18. Safehouse is a commitment to the humanity we all have, regardless of whether we are healthy or struggling with addiction.

19. If we have been shown anything in the last four months of the COVID-19 pandemic, it is, first, that our fates are all tied together. And second, that thoughtful public health policies are of the highest importance for all of us.

20. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Daniel Urevick-Ackelsberg

7/1/20
Date

EXHIBIT I

CASE NO. 20-1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and JOSE BENITEZ,
President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the United
States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

Appeal from the United States District Court,
Eastern District of Pennsylvania, Case No. 19-519,
Hon. Gerald A. McHugh

DECLARATION OF KATY OTTO

I, Katy Otto, declare and state as follows:

1. I am of sound mind and over the age of eighteen, and I make this Declaration based upon my personal knowledge.

2. I am a Committee Person in the 1st Ward in the Pennsport neighborhood of South Philadelphia, where I live.

3. I support Safehouse because we need facilities like Safehouse that can help people who are struggling with addiction, and try to prevent them from dying alone.

4. I have had several close friends who battled opioid addiction, and I have lost a number of loved ones to this disease.

5. I have also witnessed a number of people in my neighborhood suffering from addiction, and nearly overdosing by themselves on the streets.

6. In 2010, I learned that my then-roommate was suffering from opioid addiction. On multiple occasions, he experienced terrible physical violence when he used drugs in public.

7. In 2012 or 2013, I found a dear friend in Malcom X Park in West Philadelphia. He had used heroin by himself, and had nearly overdosed. I helped him get to a treatment center.

8. I have had similar encounters with other close friends who were battling drug addiction. I would find them nodding off after using, and each time I

was terrified that they had overdosed, and I would help transport them to a hospital.

9. I have also had multiple friends who ended up sleeping out on the streets as they struggled with opioid addiction, putting themselves in even greater danger.

10. I have also observed people nearly overdose on drugs while sitting on the stoops of houses in my neighborhood. Every time, I feel love and concern for them, and wish there was a place for them to be safe, inside, and receiving treatment and care. I can only imagine how many other people are dying alone, where they cannot be seen, hiding to conceal the shame and stigma associated with addiction.

11. Safehouse, and other safe injection sites like it, would ensure that these individuals had a place to go to receive treatment and care, and reduce their risk of overdosing and dying. Each person that is given a safer environment, and another day to live, has a chance to find a path to recovery.

12. I have seen what happens when people who are battling addiction are not able to get the help they need. One of my good friends died at the age of thirty after overdosing on heroin. As a result of her addiction, she had lost most of her relationships, leaving her with only a boyfriend who fueled and encouraged her heroin use.

13. I wish that this friend had been able to go to a place like Safehouse, where she would have been able to connect with other human beings, access treatment and other resources, and potentially find a path forward.

14. I believe that Safehouse can prevent many needless deaths, and help people get on the road to recovering from drug addiction.

15. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.


Katy Otto

^{KO}
~~6/3~~ 7/1/2020
Date