No. 24-0573

In the Supreme Court of Texas

WARREN KENNETH PAXTON, JR., IN HIS OFFICIAL CAPACITY AS TEXAS ATTORNEY GENERAL AND THE STATE OF TEXAS,

Appellants,

v.

ANNUNCIATION HOUSE, INC.,

Appellee.

On Direct Appeal from the
205th Judicial District Court, El Paso County

BRIEF FOR AMERICA FIRST LEGAL FOUNDATION *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

America First Legal Foundation (AFL) is a nonprofit organization dedicated to promoting the rule of law, ensuring due process and equal protection for every American citizen, and encouraging understanding of the individual rights guaranteed under the Constitution and laws of the United States.

A key aspect of AFL's mission to protect the rule of law in the United States is working to ensure appropriate enforcement of our immigration laws. Annunciation House and other non-governmental organizations supporting illegal immigration have caused irreparable harm by their lawless actions and ought not to be permitted to persist in exacerbating the border crisis.

AFL is also a staunch defender of American civil liberties, including religious freedom. As such, AFL has an interest in the balance between religious expression and the compelling government interests in maintaining an orderly immigration system and preventing violations of neutral, generally applicable laws.

America First Legal Foundation is a non-profit 501(c)(3) corporation with no parent corporation. No publicly held corporation

owns 10% or more of its stock. No counsel for any party authored any part of this brief. No one other than *amicus curiae*, its members, or its counsel financed the preparation or submission of this brief.

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INTRODUCTION

This case arises from an effort by the Attorney General of Texas to investigate nongovernmental organizations (NGOs) that publicly violate the laws of the State of Texas and of the United States and encourage others to do the same. We ought never to lose sight of that foundational fact in this case: The chief law enforcement officer of the State was investigating criminal behavior that NGOs not only failed to hide, but, indeed, proudly publicized. One such NGO, Annunciation House, Inc. (Annunciation House), has gone on the offensive, seeking to hide politically motivated, criminal behavior behind a claim of religious exercise. But NGOs like Annunciation House, whether motivated by politics, religion, or otherwise, should not be permitted to undermine American law and sovereignty, exacerbate the border crisis, endanger American national security, and violate Texas laws with impunity.

Texas faces a massive immigration crisis. As of 2023, there were an estimated 2,226,000 illegal aliens living in the State.[1] That number has

[1] *The Fiscal Burden of Illegal Immigration on United States Taxpayers 2023*, FEDERATION FOR AMERICAN IMMIGRATION REFORM (Mar. 8, 2023), https://perma.cc/P65Y-6MMA.

only increased since then, as well over eleven million more illegal aliens have flooded into this country due to the Biden-Harris Administration's lax immigration policies.[2] Texas spends billions of dollars on efforts to curtail the crisis, provide social services to illegal aliens (including education and emergency health care), and protect lawful residents from the increased crime associated with illegal immigration. Annunciation House is actively making this crisis worse.

Although America First Legal Foundation (AFL) endorses the many sound reasons for reversal outlined in the Attorney General's brief, *see* Brief For Appellants, *Paxton v. Annunciation House, Inc.*, No. 24-0573 (Oct. 17, 2024) (Appellants' Brief), including the Attorney General's explanation for why the statutes at issue are neither preempted by federal law nor unconstitutionally vague as applied to Annunciation

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[2] *See, e.g.*, *Nationwide Encounters*, U.S. CUSTOMS AND BORDER PROTECTION (Dec. 19, 2024) https://perma.cc/NNP9-Y2EM (last accessed Jan. 6, 2025) (over 9 million encounters since October of 2021, a number that excludes aliens who evaded detection); *Startling Stats Factsheet: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounters, 10.8 Million Total Encounters Since FY2021*, U.S. HOUSE OF REPRESENTATIVES HOMELAND SECURITY COMMITTEE (Oct. 24, 2024), https://perma.cc/FXW7-5BHF (stating that "CBP has recorded another roughly 2 million known "got aways" since the start of FY2021, roughly four times the number recorded from FY2017-2020"); Guy Benson, *Crisis: CBP Chief Reveals Shocking 'Got-Away' Numbers at Border Hearing Boycotted By Democrats*, TOWNHALL (Mar. 16, 2023), https://perma.cc/9VDY-52VK (quoting then-Border Patrol Chief Raul Ortiz estimating that the actual number of "got aways" are up to 20 percent higher than DHS estimates).

House, it submits this brief to emphasize, primarily, two points that are of particular interest to the organization.

First, America First Legal is a staunch defender of American civil liberties, especially the freedom of religious expression. Annunciation House, as an organization purportedly founded out of religious conviction, claims laws protecting religious expression allow it to violate immigration law. AFL believes that religious expression receives due consideration and protection. But the Texas Religious Freedom Restoration Act, TEX. CIV. PRAC. & REM. CODE §§ 110.001–110.012, (TRFRA) does not apply to Annunciation House's lawless conduct. Even if TRFRA did apply, Texas's compelling interest in curtailing illegal immigration would easily overcome Annunciation House's religious interests.

Second, border NGOs supporting and encouraging illegal immigration have caused a great deal of harm, both to the United States as a whole and to Texas in particular. We currently face an unprecedented illegal immigration crisis in this country. Border NGOs who encourage and even assist illegal immigration exacerbate that problem and impose massive costs on our country and the State of Texas.

Annunciation House's insistence on endorsing and aiding illegal and irregular immigration makes the crisis worse, encourages migrants to endanger themselves and their families, and, far from alleviating suffering, has contributed to an immigration crisis that, in all-too-many cases, has become a humanitarian crisis.

This Honorable Court should not allow border NGOs like Annunciation House to evade legal scrutiny and violate State and Federal law with impunity. AFL therefore strongly encourages this court to reverse the trial court and remand this case with instructions to reconsider the Attorney General's request to temporarily enjoin unlawful conduct and permit further action seeking all appropriate remedies, including an action in the nature of quo warranto.

SUMMARY OF ARGUMENT

I. The Texas Religious Freedom Restoration Act Does Not Impede the Attorney General's Investigation Into Annunciation House's Lawless Conduct

Annunciation House and the trial court relied on TRFRA to claim that the Attorney General had violated Annunciation House's statutory right of religious freedom. This argument is misguided in several respects.

First, TRFRA does not apply to Annunciation House's conduct because its religious exercise is not substantially burdened by either the Attorney General's investigation or Texas Penal Code §§ 20.05(a) & 20.07(a).

Second, even if TRFRA did apply, banning the harboring of illegal aliens and the establishment of stash houses to harbor illegal aliens is an appropriately, narrowly tailored means of accomplishing the compelling state interest of preventing illegal immigration. Indeed, the laws the Attorney General seeks to enforce are *necessary* to mitigate the illegal immigration crisis plaguing the State.

Finally, Annunciation House's argument against quo warranto focuses on the wrong aspect of the law, ignoring TRFRA's clear statutory instruction that the Attorney General "is not required to separately prove that the remedy and penalty provisions of the law . . . are the least restrictive means to ensure compliance or to punish failure to comply." TEX. CIV. PRAC. & REM. CODE § 110.003(c).

II. Maintaining the Border Is a Crucial Policy Priority, and It Is Being Undermined by Groups Like Annunciation House

As a matter of policy, permitting border NGOs like Annunciation House to flout state and federal law with impunity invites disaster. The country is suffering an illegal immigration crisis, and few, if any, states have suffered as much harm from it as Texas.

Yet Annunciation House insists that it is permitted to exacerbate this crisis by creating incentives for illegal immigration (indeed, in some cases, going into Mexico to actively assist aliens to illegally cross our borders). Although there is absolutely no evidence that Attorney General Paxton holds any animus towards any religion, the Appellees and trial court nonetheless insist on portraying his investigation of and pursuit of appropriate legal remedies against border NGOs who violate immigration laws as some sort of attack on religion. Far from it. The Attorney General's effort is a well-founded—indeed, necessary—effort to address a crisis that is costing the State of Texas, by one estimate, over $13 billion per year, to say nothing of lives lost to the increased criminality associated with illegal immigration.

ARGUMENT

I. The Texas Religious Freedom Restoration Act Does Not Impede the Attorney General's Investigation Into Annunciation House's Lawless Conduct

Annunciation House has relied on the argument that its free exercise of religion would be unlawfully burdened if the Attorney General were permitted to investigate its conduct or pursue judicial remedies for illegal conduct that he has uncovered (or that Annunciation House has admitted to). It is mistaken in several respects. At the threshold, Annunciation House is not threatened with a substantial burden on its religious liberty. Even if it were, the laws the Attorney General seeks to enforce serve a compelling state interest by narrowly tailored means. Finally, Annunciation House and the trial court appear to have been misled, at least in part, by a fundamental misunderstanding of how TRFRA applies to secular laws.

A. TRFRA Grew Out of Efforts to Lawfully Balance Religious Freedom and Secular Governance.

In 1990, the United States Supreme Court held that religious exercise must yield to "a valid and neutral law of general applicability." *Employment Division v. Smith*, 494 U.S. 872, 879 (1990) (internal quotation marks removed). The United States Congress responded with

the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb–2000bb-4, and, later, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc–2000cc-5.

The Texas Legislature, concluding that the judicial and legislative battles over the balance between religious freedom and secular regulation at the federal level did "not affect Texas' ability to enact similar legislation" to RFRA, passed TRFRA to prevent any "government agency from substantially burdening a person's free exercise of religion, unless the agency can demonstrate that the burden is the least restrictive means of furthering a compelling governmental interest."[3]

Courts in Texas apply a four-step analysis to TRFRA claims, with "each succeeding question contingent on an affirmative answer to the one proceeding:" 1) Does the challenged law burden a party's "'free exercise of religion' as defined by TRFRA"? 2) "Is the burden substantial?" 3) "Does the [challenged law] further a compelling governmental interest?" 4) "Is the [challenged law] the least restrictive means of furthering that interest?" *Barr v. City of Sinton*, 295 S.W.3d 287, 299 (Tex. 2009). AFL

[3] Sen. Comm. on State Affairs, Bill Analysis, Tex. S.B. 138, 76th Leg., R.S. (Feb. 26, 1999).

does not evaluate whether Annunciation House's commitment to serving the poor is "substantially motived by sincere religious belief." *See* TEX. CIV. PRAC. & REM. CODE § 110.001(a)(1); *see also, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (explicitly declining to evaluate the plausibility, centrality, or sincerity of a religious claim). But the remaining three questions all cut against Annunciation House.

B. Annunciation House's Free Exercise of Religion is Not Substantially Burdened.

Annunciation House's own explanation of the religious nature of its actions is disconnected from its ongoing violations of the harboring and stash house laws in Texas Penal Code §§ 20.05 and 20.07. Annunciation House emphasizes its commitment to "providing shelter" and "service to the poor," Appellee Brief at 57, but the record—and, indeed, Annunciation House's own briefing—demonstrates that this mission would not be substantially burdened by compliance with sections 20.05 and 20.07.

A law does not substantially burden the free exercise of religion merely because it vaguely touches on activity that may, for some people, be religiously motivated. "[A] government action or regulation creates a 'substantial burden' on a religious exercise if it truly pressures the

adherent to significantly modify his religious behavior and significantly violate his religious beliefs." *Adkins v. Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004).[4] There is no reason to believe that Annunciation House would be forced to significantly modify its religious behavior or significantly violate their religious beliefs because they are held to the standards of the harboring and stash house laws.

Indeed, Annunciation House's own briefing shows that providing shelter or services to illegal aliens is not a significant aspect of their religious behavior. *See* Appellee Brief at 20 ("**[N]early all** [refugees at Annunciation House] have been processed by Immigration and Customs Enforcement or Customs and Border Patrol.") (emphasis added). Although Annunciation House emphasizes its commitment to serving the poor and housing refugees, nothing in the record indicates that Annunciation House would be unable to serve the poor without encouraging and assisting would-be migrants to illegally enter the

[4] *Adkins* involved RLUIPA, but, because of common history, similar structure, and that "[b]oth RLUIPA and TRFRA protect religious exercise," "'[c]laims under TRFRA may be resolved by consideration of case law applying RLUIPA[.]'" *Lowery v. Gonzales*, No. 23-10366, 2023 WL 8449215 at *1 (5th Cir. Dec. 6, 2023) (quoting *McFaul v. Valenzuela*, 648 F.3d 564, 576 (5th Cir. 2012) (alterations in original)). Other courts, including this Court, have therefore referenced *Adkins* to help interpret TRFRA. *See, e.g.*, *Barr*, 295 S.W.3d at 301–02 & n.71, 73–74 (2009).

country, concealing them from authorities, or otherwise violating the harboring statute. Indeed, Annunciation House claims that "nearly all" of the refugees it houses "have been processed" by authorities. Appellee Brief at 20. Reducing services by the insignificant, "nearly zero" amount required to comply with Texas and U.S. law could hardly constitute a "significant modification of religious behavior," and Annunciation House has not argued that complying with sections 20.05 and 20.07 would interfere *to any extent* with its religious practice.

But even if Annunciation House had made such an argument, and further argued that turning *anyone* away (or appropriately directing them to immigration authorities for processing) represented a significant modification of religious behavior, there would still be no significant burden on religious expression sufficient to invoke TRFRA. Annunciation House has readily available alternatives. For example, it maintains a site in Ciudad Juarez, Mexico, to which it could direct illegally present refugees in need and provide services without violating the law. *See* Appellant Brief at 10; *About*, ANNUNCIATION HOUSE, https://perma.cc/HB3G-H2PJ(last accessed Jan. 6, 2025) (describing "Casa Emaus," a facility "in Anapra, a colonia of Ciudad Juarez," housing

"a number of Annunciation House volunteers," and a second, "more recent, larger building on the site" used for other purposes).

Courts routinely question whether reasonable alternatives exist such that any burden on religion could be insignificant. For example, in *McFaul v. Valenzuela*, the Fifth Circuit examined whether a prisoner could perform substantially similar religious rituals using alternative devotional items if his preferred items were banned by the prison. 684 F.3d 564 (5th Cir. 2012) (affirming dismissal of RLUIPA and TRFRA claims). Although the prisoner testified that he could not conduct the full ritual associated with his faith, and the court found that the challenged policies "somewhat interfere[d] with the exercise of his religion," he had nonetheless failed "to show that the interference is substantial." *Id.* at 576; *see also Inst. for Creation Rsch. Graduate Sch. v. Texas Higher Educ. Coordinating Bd.*, No. A-09-CA-382-SS, 2010 WL 2522529 at *17 (W.D. Tex., June 18, 2010) (finding no significant burden where Board declined to certify a master's degree grounded in religious belief, but school could offer alternative degrees based on the same material).

Similarly, in *Barr v. City of Sinton*, this Court examined whether Barr, a pastor, could have located his ministry elsewhere within the city.

295 S.W.3d at 302. The key difference between that case and this one (or *McFaul*) is that there was no alternative for Barr. In that case, this Court caveated its holding in two crucial ways, both of which are illustrative here. First, "while evidence of alternatives is certainly relevant to the issue whether zoning restrictions substantially burden free religious exercise, evidence of *some* possible alternative, irrespective of the difficulties presented, does not, standing alone, disprove substantial burden." *Id*. In other words, forcing reliance on a substantially inconvenient alternative might constitute a substantial burden.

But here, the Court need not rely on "evidence of *some* possible alternative . . . standing alone." Rather, in this case, the evidence of a possible alternative is bolstered by compelling evidence that the alternative presents little to no difficulty. Indeed, the alternative *has already been implemented*—the Ciudad Juarez facility is currently operating. Thus, Annunciation House already has an alternative facility available to provide services to illegal aliens without violating the harboring or stash house laws. It's not even an inconvenient alternative—Ciudad Juarez is just over the border from El Paso, Texas.

Second, this Court cited the United States Supreme Court's observation in *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939) that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Barr*, 295 S.W.3d at 302. But it is precisely the point that El Paso, Texas, is *not* an appropriate place to shelter and conceal illegal aliens. Indeed, it is their presence in the United States that is unlawful in the first place. An "appropriate place" for an illegal alien to receive services and hospitality might be at specific locations inside the United States, such as at a government immigration processing facility, or outside the United States, such as at Annunciation House's Ciudad Juarez facility, but it is *not* Annunciation House's El Paso facility.

TRFRA ensures that the government may not "substantially burden a person's free exercise of religion," but nothing alleged by Annunciation House indicates that it faces a substantial burden. Thus, at the outset, TRFRA does not apply to this case.

C. Immigration Enforcement is a Compelling State Interest.

Even if TRFRA did apply to this case, the State of Texas has more than overcome its obligation to show that the burden it imposes serves a

compelling state interest and is the least restrictive means of furthering that interest.

As discussed below in Section II, illegal immigration has reached crisis levels in this country. The United States Supreme Court has recognized that border states like Texas "bear[ ] many of the consequences of unlawful immigration." *See Arizona v. United States*, 567 U.S. 387, 397 (2012). Indeed, illegal immigration costs Texas billions of dollars each year for deterrence alone. *See, e.g.*, *Texas v. Mayorkas*, No. 2:22-CV-094-Z, 2024 WL 455337 at *2 (N.D. Tex. Feb. 6, 2024) ("The July 2022 Legislative Budget Board reported that Plaintiff 'appropriated $800 million for border security' in the 2018–19 legislative session, '$800.6 million' in 2020–21, and '$2.926 billion' in the most recent session.").

The Texas budget is further strained by providing social services to illegal aliens. Educating unaccompanied alien children costs Texas over $200 million per year. *See Texas v. DHS*, No. 6:24-cv-00306, ECF No. 3 at 57 (Aug. 23, 2024) (citing declaration of Amy Copeland, Associate Commissioner of School Finance at the Texas Education Agency). Texas spends approximately $100 million per year on Emergency Medicaid for illegal aliens. *Id*. Texas suffers increased crime from illegal aliens that

would not occur had they not been present, and such crime often leaves lives irreparably shattered. It also impacts Texas financially—in one recent year, the State spent over $170 million to incarcerate criminal illegal aliens. *Id*. at 58.

As discussed in further detail below, all these costs are greatly exacerbated by border NGOs like Annunciation House encouraging—often, as Annunciation House admits it has done, even actively assisting—aliens to illegally enter the United States. The harboring and stash house laws are narrowly tailored means of addressing the harm caused by those who would make the United States less safe by bringing aliens into this country and concealing them from authorities.

The government absolutely must be able to at least *detect* illegal aliens if it is to properly process them and, when necessary, remove them from this country. Government agents cannot sort criminal aliens who may pose a serious risk to the safety of those around them from legitimate refugees when people like Annunciation House hide them from detection. In other words, Sections 20.05 and 20.07 are more than tools to protect

Texas's budget by mitigating the illegal immigration crisis; they are necessary to protect Texan's physical safety.

By contrast, Annunciation House has offered no viable alternative method of preventing people (like themselves) from harboring illegal aliens and operating stash houses than by banning such conduct. There is no alternative that is more narrowly tailored. In short, even if TRFRA applied here (it does not), the Attorney General has carried his burden of demonstrating that a compelling state interest justifies his enforcement of Texas Penal Code sections 20.05 and 20.07.

D. Annunciation House Incorrectly Focuses on the Attorney General's Proposed Remedy Rather than the Relevant Criminal Statutes

Annunciation House has adopted an odd tactic in its battle with the Attorney General: focusing entirely on a specific remedy sought while barely addressing the underlying criminal law. This misguided effort ought to be rejected. The appropriate focus for a TRFRA claim is not the remedy sought, but the underlying criminal statute that is being enforced.

Put differently, Annunciation House mistakenly claims that TRFRA prevents quo warranto while failing to cite a single authority

supporting the broad proposition that religiously affiliated organizations cannot forfeit their corporate charters. The opposite is true: TRFRA precludes consideration of the remedy and requires the court to consider the underlying statute to be enforced.

As explained above, the Attorney General has demonstrated that enforcing Texas Penal Code sections 20.05 and 20.07 serves a compelling government interest by the least restrictive means, as would be required if TRFRA applied to this case. *See* TEX. CIV. PRAC. & REM. CODE § 110.003(b). From there, TRFRA forbids a further examination of remedies and penalties: "A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply." TEX. CIV. PRAC. & REM. CODE § 110.003(c).

This limitation is eminently reasonable. It would make little sense to apply TRFRA at every stage of an enforcement process, forcing government officials to prove that not only are the laws they are charged

to enforce reasonable under the TRFRA standard, but that the methods of investigation and enforcement are also, at every step, minimally impactful of any possible religious claim.

The limitation is also reasonable because "[t]he focus of [TRFRA] is on the degree to which a person's religious conduct is curtailed and the resulting impact on the person's religious expression." *Emack v. State*, 354 S.W.3d 828, 839 (Tex. Ct. App. 2011). The laws allegedly curtailing religious expression in this case are Texas Penal Code §§ 20.05 and 20.07, not the quo warranto provisions or injunction provisions elsewhere in Texas law. One who obeys Texas law is not subject to legal remedies for violating Texas law, so laws providing for such remedies are not the cause of any impact on a person's religious expression. Incarcerating a priest would undoubtedly impact his ability to preach, but, if the law he violated was not subject to TRFRA, he cannot invoke TRFRA to avoid liability for his actions.

This case helps illustrate why TRFRA precludes consideration of remedies. Annunciation House has consistently argued that quo warranto completely prevents it from exercising its religion and that the Attorney General should have sought an injunction instead (he did that,

too). But there is no reason to believe that Annunciation House members would be precluded from practicing their religious beliefs, including all the rites of Catholicism, following charter forfeiture. Indeed, they could even practice service to the poor and housing of refugees, so long as they complied with Texas law (even if they had to form a new organization dedicated to *lawful* service to do so).

Further, injunction is always available as an equitable remedy. Therefore, if Annunciation House's interpretation is correct, then any corporate entity claiming a religious affiliation or motivation would be *immune* to forfeiture. They could *always* argue that an injunction is a less restrictive remedial measure, granting such organizations free reign to flout Texas law until expressly enjoined to obey the law. No reasonable interpretation of Texas law requires such an extreme outcome— rather, the plain language of section 110.003(c) expressly prohibits it.

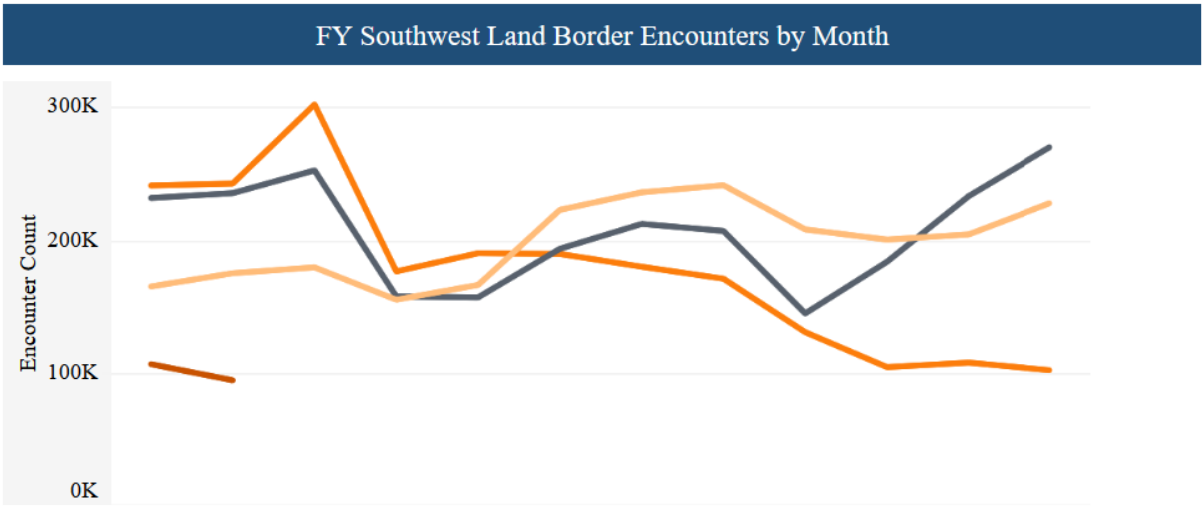
Had Annunciation House obeyed the harboring and stash house laws in the first place, it would not be subject to penalties. Sections 20.05 and 20.07 are the laws that curtail its activities, not the penalties that result, and so those are the proper focus of a TRFRA inquiry—to the extent any such inquiry is proper at all.

II. Maintaining the Border Is a Crucial Policy Priority, and It Is Being Undermined by Groups Like Annunciation House

"The Legislature determines public policy through the statutes it passes." *Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 665 (Tex. 2008). "In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy." Tex. Gov't Code § 312.005. "In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the . . . object sought to be attained" and the "circumstances under which the statute was enacted." Tex. Gov't Code § 311.023. The legislative intent, the evil to be addressed, and the object sought to be attained by Texas Penal Code sections 20.05 and 20.07 are all clearly focused on one thing: addressing the circumstance of the collapse of our southern border and the flood of illegal immigrants into the State of Texas.

Record numbers of aliens have entered the United States unlawfully since January 20, 2021. The Department of Homeland Security's (DHS) own statistics show the dramatic increases in the number of crossings into the United States. As the following table from

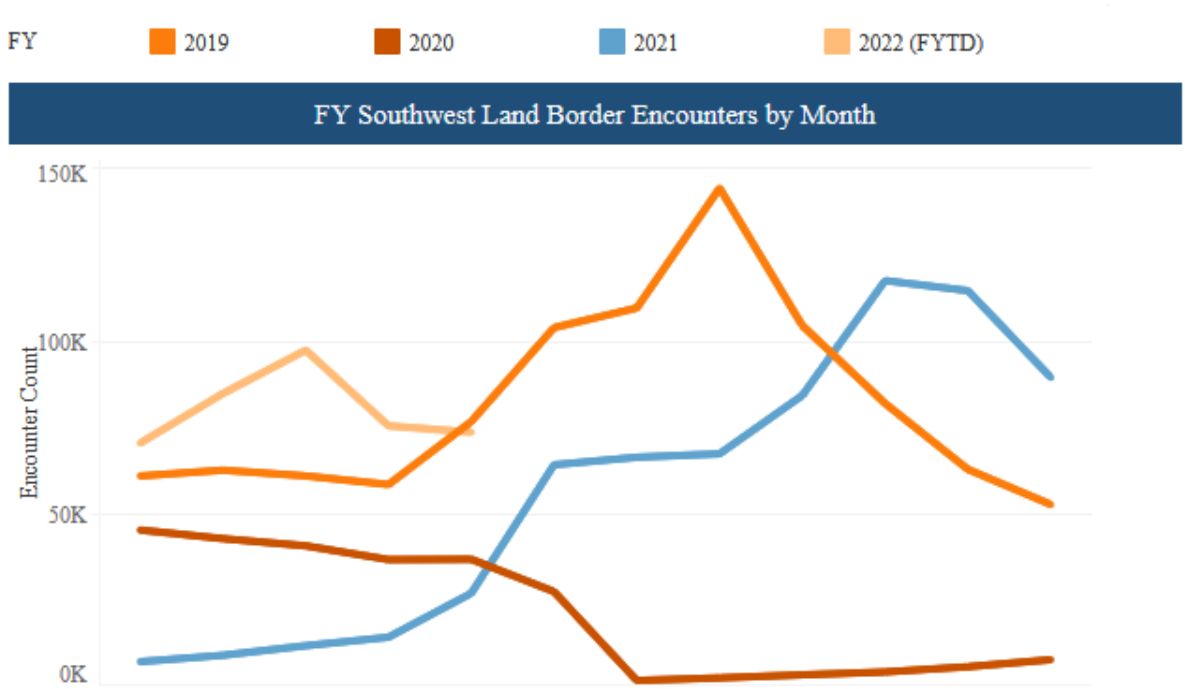
DHS demonstrates, during Fiscal Years 2022 through 2024, DHS encountered 6,989,618 aliens illegally crossing the southwestern border:[5]



	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	Total
2025 (FYTD)	106,335	94,190											200,525
2024	240,927	242,399	301,981	176,195	189,913	189,359	179,737	170,716	130,415	104,100	107,473	101,790	2,135,005
2023	231,529	235,173	252,315	157,358	156,630	193,249	211,992	206,690	144,556	183,479	232,963	269,735	2,475,669
2022	164,837	174,845	179,253	154,874	166,010	222,574	235,785	241,136	207,834	200,162	204,087	227,547	2,378,944

[5] *Nationwide Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, (Dec. 19, 2024), https://tinyurl.com/5ewmydm6.

For comparison, as the following table shows, encounters in FY2019 were 977,509, and were only 253,301 in FY 2020[6]:



	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	Total
2022 (FYTD)	70,305	84,659	97,203	75,295	73,460								400,922
2021	7,035	8,883	11,652	14,110	26,834	64,028	66,205	67,205	84,106	117,341	114,433	89,328	671,160
2020	45,139	42,643	40,565	36,585	36,687	27,310	1,584	2,342	3,220	4,058	5,561	7,607	253,301
2019	60,781	62,469	60,794	58,317	76,545	103,731	109,415	144,116	104,311	81,777	62,707	52,546	977,509

[6] *Nationwide Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, (accessed in April 2022), https://tinyurl.com/5ewmydm6.

Indeed, illegal crossings are currently at their highest levels in at least two decades, and perhaps ever. Furthermore, the above statistics do not include "got aways," *i.e.*, persons who are not turned back or apprehended after making an illegal entry. *See* 6 U.S.C. § 223(a)(3) (defining "got away"). In October 2024, the House Homeland Security Committee reported that "CBP has recorded another roughly 2 million known 'got aways' since the start of FY2021, roughly four times the number recorded from FY2017–2020."[7] Even worse, these DHS numbers are likely significant underestimates. In 2023, then-Border Patrol Chief Raul Ortiz estimated that the actual number of "got aways" are up to 20 percent higher than DHS estimates.[8]

These ever-increasing numbers of illegal aliens have significant negative impacts on the State of Texas. The Federation for American Immigration Reform (FAIR) estimates that there are 2,226,000 illegal

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[7] *Startling Stats Factsheet: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounters, 10.8 Million Total Encounters Since FY2021*, U.S. HOUSE OF REPRESENTATIVES HOMELAND SECURITY COMMITTEE, (Oct. 24, 2024), https://perma.cc/FXW7-5BHF.

[8] Guy Benson, *Crisis: CBP Chief Reveals Shocking 'Got-Away' Numbers at Border Hearing Boycotted By Democrats*, TOWNHALL (Mar. 16, 2023), https://perma.cc/9VDY-52VK.

aliens present in the State of Texas.[9] Texas spends substantial sums of money providing services to illegal aliens, including education and emergency healthcare. FAIR estimates that illegal aliens and their children impose a net burden on Texas of $13.4 billion a year.[10]

Analyses of the causes of migration flow patterns often focus on "push and pull factors . . . that may . . . drive[] the change in migration." *Massachusetts Coal. for Immigr. Reform v. DHS*, 698 F. Supp. 3d 10, 34 (D.D.C. 2023). Push factors are influences in aliens' home countries that induce them to leave. Pull factors are features in the United States that induce aliens to come here. Border NGOs that encourage illegal immigration, like Annunciation House, create major pull factors.

Ronald Reagan reportedly once said "if you want more of something, subsidize it." This unremarkable truism obviously applies in the realm of immigration, just as it does in all other aspects of life. Subject matter experts have confirmed this. For example, the Border Patrol's Chief Patrol Agent for the Big Bend Sector, Sean McGoffin, testified to the House of Representatives that when aliens are not

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[9] *The Fiscal Burden of Illegal Immigration on United States Taxpayers 2023* at 40, FEDERATION FOR AMERICAN IMMIGRATION REFORM, (Mar. 8, 2023), https://perma.cc/P65Y-6MMA.
[10] *Id.*

detained, this "can be a pull factor" incentivizing increased illegal immigration.[11] Similarly, in testimony to the same committee, Border Patrol Chief Patrol Agent of the El Paso Sector, Anthony "Scott" Good, agreed with the statement that "public perception of favorable immigration policies would be a pull factor."[12] Border Patrol Chief Patrol Agent Gloria Chavez of the Rio Grande Valley Sector similarly agreed in her testimony with the statement that "perception of . . . favorable immigration policies in the United States could be a pull factor."[13]

These Border Patrol Chiefs were stating the obvious: favorable treatment of illegal aliens incentivizes more illegal immigration.

NGOs that shelter and harbor illegal aliens and shield them from law enforcement are thus a significant pull factor attracting illegal immigrants to the United States. As the Border Patrol Chiefs testified, the prospect of detention disincentivizes illegal immigration. The facts here demonstrate that Annunciation House has been engaging in conduct

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[11] *NEW: Southwest Border Sector Chiefs Confirm That Lack of Consequences Encourages More Illegal Immigration*, U.S. HOUSE OF REPRESENTATIVES HOMELAND SECURITY COMMITTEE (Dec. 8, 2023).
[12] *Id.*
[13] *Id.*

that incentivizes illegal immigration by sheltering illegal aliens from the authorities, and thus from detection, detention, or removal.

Annunciation House provides services, shelter, supplies, and other benefits that encourage potential illegal immigrants to risk their lives, and their families' lives, break U.S. law, and attempt to enter the United States illegally. Going further, Annunciation House has repeatedly admitted to sending personnel *into Mexico* to actively assist would-be migrants in their unlawful efforts to enter this country, even if they have no lawful right to enter the United States—or, indeed, have already been turned away by U.S. immigration authorities. Appellants' Brief at 10.

Annunciation House's conduct violates not only the letter of the law (Texas Penal Code §§ 20.05 and 20.07), but also its spirit. Specifically, Annunciation House's conduct seeks to negate the "object sought to be attained" by the Legislature. Tex. Gov't Code § 311.023. The lower court's decision was incorrect.

CONCLUSION AND PRAYER

For the reasons explained above, the Court should reverse the trial court's judgment and remand the case with instructions.

Date: January 10, 2025

Respectfully submitted,

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