No. 20-1422

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

Appellant,

v.

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

Appellees.

SAFEHOUSE, a Pennsylvania nonprofit corporation,

Appellee,

v.

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.

On Appeal from the United States District Court for the Eastern District of Pennsylvania in Case No. 2:19-cv-00519, Judge Gerald A. McHugh

BRIEF FOR AMICI CURIAE CURRENT AND FORMER PROSECUTORS, LAW ENFORCEMENT LEADERS, AND FORMER DEPARTMENT OF JUSTICE OFFICIALS AND LEADERS IN SUPPORT OF APPELLEES AND AFFIRMANCE

DANIEL SEGAL
MATTHEW A. HAMERMESH
HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER
One Logan Square, 27th Floor
Philadelphia, PA 19103
(215) 568-6200

MARK C. FLEMING
TASHA J. BAHAL
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

July 6, 2020

ADDITIONAL COUNSEL LISTED ON INSIDE COVER

NICHOLAS R. WERLE
SIMON B. KRESS
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST OF AMICI CURIAE[1]

Amici are 85 current or former prosecutors and law enforcement officials and former U.S. Department of Justice ("DOJ") leaders with expertise in prosecution, policing, and cooperative federal-state law enforcement activities.[2] Amici understand the challenges of preserving public safety and health and combating the epidemic of opioid-related deaths. Amici currently serve or have served in 32 states plus the District of Columbia, including in communities struggling to stem the tide of fatal overdoses caused by substance use disorder, limited access to effective treatment, and a toxic supply stream flooded with powerful synthetic opioids. These problems remain acute despite law enforcement's best efforts.

Many of amici's communities have experienced unprecedented levels of fatal opioid overdoses. The criminal justice and law enforcement agencies that amici lead or have led strive daily to respond to opioid-related overdoses, while also combating hazards posed by public injection. Discarded needles pose a safety risk in parks and on streets. The rapid spread of blood-borne illnesses has been

[1] All parties have consented to this filing. No counsel for a party authored this brief in whole or in part, and no one other than amici or their counsel made any monetary contribution toward the brief's preparation or submission.

[2] A full list of amici is included in the attached Appendix. Because State Attorneys General are submitting a separate amicus brief addressing preemption issues, no Attorneys General are included here.

exacerbated by the sharing of needles among intravenous drug users without access to clean syringes, thus endangering people whether or not they use drugs. Public injection has made residents feel unsafe in their own communities. And business owners and residents must contend with the daily prospect of finding people unconscious from an overdose in public places. Punitive responses to these concerns further stigmatize and marginalize people who use drugs, thereby deterring them from accessing treatment and support. Amici understand the urgency of finding practical solutions to this public health crisis and believe that communities can only manage the problems posed by opioid abuse by partnering with public health experts.

Amici have an interest in this litigation because overdose prevention sites (OPSs)[3] are among the harm reduction and public health interventions that have proven effective in preventing fatal overdoses and diverting people from unnecessary and counterproductive interactions with the justice system. Amici, many of whom are currently or were previously responsible for enforcing the nation's drug laws, also believe that the Controlled Substances Act cannot be

[3] OPSs are also sometimes referred to as safe consumption sites, supervised consumption facilities, drug consumption rooms, or medically supervised consumption sites. These facilities provide people who use drugs with a sanitary environment in which to inject drugs under supervision. Drugs are provided by the participant, not the facility, and OPS staff observe injections and are available to respond immediately in the event of an overdose.

construed to prohibit operation of a facility designed to address the most acute aspects of this public health emergency.

These issues are particularly acute at the current moment, with a global pandemic raging and fractured relations between law enforcement and communities. There is an urgent need to fortify trust in the justice system. Failing to address the loss of life resulting from drug overdoses—and criminalizing a community-based public health organization working to save lives—will further erode trust. If there were ever a time to demonstrate that the justice system values the dignity of human life, that time is now.

Amici respectfully submit that the Court should affirm the district court's determination that 21 U.S.C. § 856 does not prohibit public health organizations, such as Appellee Safehouse, from establishing an overdose prevention site that will prevent fatalities by providing immediate medical care to people experiencing drug-related overdoses.

SUMMARY OF ARGUMENT

Appellees seek to open a facility specifically designed to address the public health emergency posed by the epidemic of opioid-related overdoses. Like a syringe exchange, the contemplated OPS would provide people who inject drugs with sterile equipment to minimize the spread of illness. And like any emergency medical care provider, the contemplated OPS would also administer oxygen or the

overdose "antidote" naloxone to reverse overdoses. But rather than pushing participants onto the streets to inject in an unhygienic and unmonitored place, Safehouse would fill the life-threatening gap in services by providing space for supervised consumption and observation. Supervision ensures that individuals who could otherwise be at high risk of death if they inject unsupervised or alone are within immediate reach of lifesaving medical care—including the administration of oxygen, CPR, or naloxone—in the event of an overdose. Safehouse would also help injection drug users, who are often extremely medically vulnerable, stabilize their lives and improve their health. Safehouse would offer services, including on-site initiation of medication-assisted treatment for substance use disorder, basic medical services, wound care, physical and behavioral health assessments, and referrals to social services. *See* Appx63 (Memorandum Opinion, 49).

While new in the United States, more than 110 OPSs currently operate in at least 11 other countries, with many more expected—for example, Portugal recently opened the first of several planned mobile OPSs.[4] Not one of these OPSs has ever

[4] *See* Beau Kilmer et al., *Considering Heroin-Assisted Treatment and Supervised Drug Consumption Sites in the United States*, RAND Corporation 30-31 (2018), www.rand.org/t/RR2693 [hereinafter "RAND Report"]; Helen Redmond, *Inside Portugal's First Mobile Safe Consumption Site*, Filter (Jun. 10, 2019), https://filtermag.org/filter-video-inside-portugals-first-mobile-safe-consumption-site/.

reported a fatal overdose inside its facility.[5] The supervision available in an OPS is directly responsible for saving lives: for example, an OPS facility in Vancouver, Canada had 189,837 visits from 5,436 individuals in 2018, and the OPS staff administered 1,466 overdose interventions and 3,725 other clinical treatment interventions, such as wound care and pregnancy tests.[6]

As law enforcement and criminal justice leaders, amici's objective is to maintain public safety; saving lives and promoting health is as central to that mission as preventing and prosecuting crime. Local governments must have the leeway to address the opioid crisis through proven methods that minimize the need for confrontational encounters between police and citizens, especially in this time of pandemic and tension between communities and law enforcement. Amici therefore urge the Court to affirm the district court's judgment.

[5] *See, e.g.*, Vancouver Coastal Health, *Insite User Statistics*, http://www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics (last updated July 2019) ("[M]ore than 3.6 million [clients have] inject[ed] illicit drugs under supervision by nurses at Insite since 2003.").

[6] *Id.*

ARGUMENT

I. THE OPIOID OVERDOSE EPIDEMIC HAS CAUSED EXTENSIVE HARM

Nationwide, 67,367 people died from drug-related overdoses in 2018.[7] Since 1999, the drug overdose death rate in the United States has increased nearly four-fold.[8] Existing drug policy strategies are insufficient to respond to a crisis of this scale.

Philadelphia, like many other parts of the United States, contends daily with the epidemic of opioid-related deaths. "In Philadelphia alone, on an average day the city morgue accepts three or more overdose victims, making the city's overdose death rate about triple its homicide rate."[9] Philadelphia County's 2016 drug overdose death rate was second among the 44 U.S. counties with over one

---

[7] Centers for Disease Control and Prevention, *Drug Overdose Deaths* (Mar. 19, 2020), https://www.cdc.gov/drugoverdose/data/statedeaths.html. 2018 represents the latest CDC statistics available. These figures describe only *fatal* drug overdoses; the number of overall overdoses is certainly much higher. *See* Shane Darke et al., *The Ratio of Non-Fatal to Fatal Heroin Overdose*, 98 Addiction 1169, 1170 (2003) (estimating that there are between 20 to 30 non-fatal opioid-related overdoses events for every fatality). Countless others narrowly avoided death due to the assistance of first responders, a bystander's administration of naloxone, or sheer chance.

[8] Holly Hedegaard, M.D. et al., *Drug Overdose Deaths in the United States, 1999–2017*, Centers for Disease Control and Prevention, NCHS Data Brief No. 329 (Nov. 2018), https://www.cdc.gov/nchs/products/databriefs/db329.htm.

[9] Thomas Farley, M.D., *Overdose prevention sites can help cities like Philadelphia save lives*, STAT News (Apr. 5, 2019), https://www.statnews.com/2019/04/05/overdose-prevention-sites-save-lives.

million residents (Allegheny County was first), and Pennsylvania's drug overdose death rate increased 16.9 percent from 2016 to 2017.[10]

The devastating consequences of this crisis go beyond overdose fatalities. Although the overall number of new HIV cases in Philadelphia has fallen over the last few years, the number of cases among those who inject drugs has substantially increased. The number of new cases of Hepatitis C, most of which result from intravenous drug use, has also increased dramatically. The proportion of emergency room visits related to drug use has doubled since 2007.[11] And the opioid crisis costs Pennsylvania nearly $56 billion annually.[12] The severity of this crisis demands solutions of equal magnitude.

A. Criminalization Has Exacerbated, Not Prevented, The Overdose Epidemic

As current and former criminal justice leaders, amici have seen first-hand how the classic "war on drugs" approach to drug control—and almost exclusive

---

[10] Larry Eichel & Meagan Pharis, *Philadelphia's Drug Overdose Death Rate Among Highest in Nation*, The Pew Charitable Trusts (Feb. 15, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/15/philadelphias-drug-overdose-death-rate-among-highest-in-nation.

[11] City of Phila. Dep't of Pub. Health, *The Opioid Epidemic in Philadelphia: Implementation of the Mayor's Task Force Recommendations*, 9 (March 14, 2018), https://www.phila.gov/media/20180606132344/OTF_StatusReport_March2018.pdf.

[12] Drug Enforcement Admin., *The Opioid Threat in Pennsylvania*, Joint Intelligence Report 45 (Sept. 2018) (estimated economic cost to Pennsylvania of opioid use disorders in 2016).

focus on aggressive criminal law enforcement—has exacerbated the overdose epidemic. This experience confirms that no jurisdiction can arrest its way out of this public health problem. Fatal overdoses are a symptom of substance use disorder, a medical condition requiring a medical response.

Amici's experience comports with the available evidence. Between 1981 and 2006, the number of drug arrests in the United States quadrupled to nearly two million per year, disproportionately affecting people and communities of color.[13] An estimated 74 percent of the people processed at Philadelphia prisons test positive for drug use upon admission to jail, and "[d]rug crimes have been the predominant reason for new admissions into state and federal prisons in recent decades."[14]

---

[13] Katherine Beckett, *The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing*, 10 Harv. L. & Pol'y Rev. 77, 81 (2016); *see also* Brian Stauffer, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, Human Rights Watch (Oct. 12, 2016), https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states ("In every state for which we have sufficient data, Black adults were arrested for drug possession at higher rates than white adults[.]").

[14] City of Phila., *The Mayor's Task Force to Combat the Opioid Epidemic in Philadelphia, Final Report & Recommendations*, 11 (May 19, 2017) [hereinafter "Mayor's Task Force Report"]; Jonathan Rothwell, *Drug Offenders in American Prisons: The Critical Distinction Between Stock and Flow*, Brookings Institution (Nov. 25, 2015), http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/11/25-drug-offenders-stock-flow-prisons-rothwell.

These massive increases in drug arrests and drug-related incarcerations have not reduced drug consumption. The evidence shows that "higher rates of drug imprisonment do not translate into lower rates of drug use, arrests, or overdose deaths."[15] In fact, when a person with substance use disorder is incarcerated, the weeks following release pose a dramatically elevated risk of fatal overdose.[16] Mass incarceration for drug offenses also has devastating consequences for those incarcerated, their families, and their communities.[17] Excessive punishment of drug crimes perpetuates the cycles of generational trauma and socioeconomic marginalization that, in turn, intensify the social determinants of drug use.

A strict-enforcement approach also stigmatizes people who use drugs in ways that increase health risks, drive problems underground, and magnify social harms. Fear of arrest and incarceration does not reliably deter drug use, but it does

---

[15] The Pew Charitable Trusts, *More Imprisonment Does Not Reduce State Drug Problems*, 6 (March 2018), https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf. Mandatory minimum sentencing regimes, including those for drug offenses, "have few if any deterrent effects." National Research Council of the National Academies, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 83 (Jeremy Travis, Bruce Western, & Steve Redburn eds. 2014).

[16] *See* Ingrid A. Binswanger et al., *Release from Prison-A High Risk of Death for Former Inmates*, 356 New Eng. J. Med. 157, 165 (2007).

[17] The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 3-5 (2010), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf; Drug Pol'y Alliance, *The Drug War, Mass Incarceration and Race*, 2 (Jan. 2018), http://www.drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf.

deter intravenous drug users from accessing healthcare, harm reduction services, and treatment that could save their lives and significantly reduce the social costs of their drug use.[18] Fear and shame force people who use drugs to turn to isolated and dangerous spaces—such as alleys and abandoned houses—where hygienic injection is impossible. These environments increase transmission of blood-borne diseases like HIV, hepatitis C, and septicemia.[19] Isolation increases the risk of fatal overdose: people injecting alone are unlikely to be discovered and to receive the overdose "antidote" naloxone within the critical minutes before a drug overdose can kill by asphyxiation.

Given the stark evidence that criminalizing drug use only increases its harms, the federal government's attempt to extend the Controlled Substances Act to block a public health response to the overdose crisis is perplexing. Amici, who have served in federal agencies that enforce the Controlled Substances Act and state agencies with their own (often similar or even identical) criminal drug laws, have never seen these laws used to prohibit public health and harm reduction programs such as syringe exchange facilities, naloxone provision services, or

---

[18] Leo Beletsky et al., *The Law (and Politics) of Safe Injection Facilities in the United States*, 98 Am. J. Pub. Health 231, 231 (2008).

[19] *Id.*; *see also* Samuel R. Friedman et al., *Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas*, 20 AIDS 93, 97 (2006) (showing that strict criminalization is associated with higher incidence of HIV among injected drug users).

OPSs. Amici understand that substance use disorder is, first and foremost, a medical condition requiring medical treatment. Criminal sanctions by themselves do not address—and often exacerbate—the root causes of substance use disorder. Section 856 was enacted to target the manufacturing of crack cocaine in "crack houses" and amended to address ecstasy use at raves. *See* Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 608, 117 Stat. 650, 691 (2003). It was never intended to target public health facilities like OPSs.

B. Law Enforcement Agencies And Elected Prosecutors Around The Country Are Embracing A Harm Reduction Model Because It Is Effective

OPSs fit comfortably within an approach to the opioid epidemic known as "harm reduction," which has proven a more effective response than simply arresting and incarcerating people struggling with substance use disorder. Harm reduction describes an approach to addressing drug use generally, and the opioid crisis in particular, by "targeting directly drug-related harms rather than drug use itself."[20] Harm reduction encompasses numerous practices, including "drug consumption rooms, needle and syringe program[s], non-abstinence-based housing and employment initiatives, drug checking, overdose prevention and reversal,

[20] Jonathan P. Caulkins et al., *Towards a harm reduction approach to enforcement*, 8 Safer Communities 9, 9 (2009); *see also* Harm Reduction International, *What is harm reduction?*, https://www.hri.global/what-is-harm-reduction (last visited July 6, 2020).

psychosocial support, and the provision of information on safer drug use."[21] Extensive evidence demonstrates that these practices are cost-effective and have a positive impact on individual and community health.[22] Central to harm reduction is the principle that institutions must structure their services "to meet drug users 'where they're at.'"[23]

Harm reduction has been accepted as a proven response to substance use disorder globally, and numerous U.S. law enforcement organizations have similarly recognized that harm reduction strategies address substance use disorder and the overdose epidemic more effectively than arrests and prosecution. For example, 38 jurisdictions have already implemented a Law Enforcement Assisted Diversion ("LEAD") model, which enlists police and prosecutors to work with community groups and social service agencies to provide harm reduction interventions in lieu of a punitive, criminal justice response.[24]

---

[21] Harm Reduction International, *supra* note 20.

[22] *Id.*; British Columbia Ministry of Health, *Harm Reduction: A British Columbia Community Guide* 6-12 (2005).

[23] Harm Reduction Coalition, *Principles of Harm Reduction*, https://harmreduction.org/about-us/principles-of-harm-reduction (last visited July 6, 2020).

[24] LEAD Bureau, www.leadbureau.org (last visited July 6, 2020).

LEAD programs are rapidly spreading: 74 jurisdictions are currently considering, developing, or launching LEAD programs.[25] This is a testament both to the benefits accruing to law enforcement agencies and the communities they serve and to the increased trust and cooperation born of incorporating public health and harm reduction strategies into responses to the opioid crisis. Amici who have introduced harm reduction programs in their own jurisdictions have seen how such strategies lead to more positive interactions between law enforcement and vulnerable members of the community. This mutual understanding builds relationships that can lead to greater cooperation and better outcomes during police interactions with the people they serve, thereby promoting improved public safety.

Particularly when employed within a comprehensive public health framework, harm reduction techniques can successfully address some of the most significant limitations of the traditional approach to the opioid crisis. One report concluded:

> Harm reduction saves lives and improves quality of life by allowing drug users to remain integrated in society. The alienation and marginalization of people who use drugs often compound the reasons why they engage in unsafe drug use. Harm reduction also reduces health care costs by reducing drug-related overdose, disease transmission, injury and illness, as well as hospital utilization.
>
> Harm reduction benefits the community through substantial reductions in open drug use, discarded drug paraphernalia, drug-related crime, and associated health, enforcement and criminal justice

[25] LEAD Bureau, *supra* note 24.

> costs. It lessens the negative impact of an open drug scene on local business and improves the climate for tourism and economic development.[26]

Criminal justice leaders should not take a back seat in implementing harm reduction strategies.[27] Police, prosecutors, and others involved in the criminal justice system have adopted several harm reduction strategies, including referring users to treatment or social service agencies before arrest or charging, obtaining familiarity with and implementing overdose remediation techniques and medications such as naloxone, and warning users when a shipment of tainted drugs hits a city's streets.[28] These duties are integral to the oath officers take to protect and serve their communities and to the aim of prosecutors to serve the public and promote the community's wellbeing.

OPSs would fill a critical need in the harm reduction efforts of cities like Philadelphia: they prevent overdose fatalities among some of the most at-risk groups. While 2,333 people died from overdoses in Philadelphia in 2017 and 2018, not one person has died of an overdose within an OPS anywhere in the

---

[26] British Columbia Ministry of Health, *supra* note 22, at 4; *see also id.* at 7-12 (identifying various harm-reduction strategies for addressing opioid abuse).

[27] Caulkins, *supra* note 20, at 9.

[28] *See id.* at 14; The Pew Charitable Trusts, *supra* note 15, at 6-7.

world.[29] As described below, OPSs are evidence-based, public health focused facilities that can help address the opioid crisis in a manner consistent with smart and effective criminal justice policies.

II. PUBLIC SAFETY IS WELL-SERVED BY OVERDOSE PREVENTION SITES

Introducing an OPS into a community ravaged by opioid deaths permits law enforcement agencies to use resources more effectively and promotes trust and cooperation between law enforcement agencies and a population subject to a disproportionate number of police interactions. Empirical evidence also shows that OPSs can reduce crime and public nuisances related to injection drug use. Accordingly, OPSs are valuable tools for protecting public safety, and there is no basis for concluding that federal law prevents states and localities from employing them as part of a multifaceted solution to the overdose epidemic—particularly at this critical moment.

A. Overdose Prevention Sites Save Lives And Reduce The Adverse Impact Of Drug Use

The primary objective of OPSs is to save lives, and they have been proven to do so. Multiple studies in Vancouver, British Columbia and Sydney, Australia have demonstrated that overdose-related morbidity and mortality are reduced when

[29] *See* City of Phila. Dep't of Pub. Health, *Opioid Misuse and Overdose Report* (Feb. 13, 2020), https://www.phila.gov/media/20200226121229/Substance-Abuse-Data-Report-02.26.20.pdf.

people inject drugs at an OPS rather than on the street.[30] In Vancouver, a statistical analysis of the OPS known as Insite estimated that the facility prevented an average of 1.9 to 11.7 deaths annually over four years. This would have accounted for between 6 percent and 37 percent of the overdose fatalities in the neighborhood during that period.[31] Also, compared to the period before Insite's opening, Vancouver experienced 35 percent fewer overdoses in the area within 500 meters of the facility.[32] Similarly, during its first eighteen months of operation, Sydney's Medically Supervised Injecting Centre ("MSIC") managed 409 overdoses without a single death.[33]

By reducing fatal overdoses in the community and moving some of the highest-risk injection drug use from streets and alleys to a facility with medical supervision, OPSs can reduce the burden on law enforcement resources caused by

---

[30] *See, e.g.*, Vendula Belackova & Allison M. Salmon, *Overview of International Literature-Supervised Injection Facilities & Drug Consumption Rooms* Issue 1, 8-18 (Aug. 2017).

[31] M-J. S. Milloy, et al., *Estimated Drug Overdose Deaths Averted by North America's First Medically-Supervised Safer Injection Facility*, 3 PLoS One e3351, 4 (2008).

[32] Brandon D.L. Marshall et al., *Reduction in Overdose Mortality After the Opening of North America's First Medically Supervised Safer Injecting Facility: A Retrospective Population-Based Study*, 377 The Lancet 1429, 1433 (2011); Steven Petrar, et al., *Injection Drug Users' Perceptions Regarding Use of a Medically Supervised Safer Injecting Facility*, 32 Addictive Behaviors 1088, 1092 (2007).

[33] Ingrid Van Beek, *The Sydney Medically Supervised Injecting Centre: Reducing Harm Associated with Heroin Overdose* 14 Critical Public Health 391, 395 (2003).

the opioid epidemic. Overdoses, whether fatal or not, require responses from police, EMS, and other first responders; these increasingly common overdose calls prevent personnel from addressing other public safety concerns. Often, these emergency responses require administration of one or more doses of naloxone, which can cost as much as $60 per dose.[34] The Philadelphia Police Department, for instance, has regularly administered naloxone more than 100 times per quarter, and Philadelphia EMS have regularly administered naloxone to more than 1,000 people per quarter.[35]

OPSs have been shown to substantially reduce these burdens on law enforcement and first responders by providing medically trained staff within a designated facility who respond to overdoses. For instance, the presence of an OPS in Sydney, Australia significantly reduced the burden on ambulance services in the site's vicinity.[36] By diverting overdoses from the street to a controlled, medically supervised facility, and by allowing for more effective early responses to overdoses (often with oxygen rather than more costly and physically taxing

---

[34] *See* U.S. Department of Justice Bureau of Justice Assistance, *What are the Typical Costs of a Law Enforcement Overdose Response Program?*, https://bjatta.bja.ojp.gov/naloxone/what-are-typical-costs-law-enforcement-overdose-response-program (last visited July 6, 2020).

[35] City of Phila. Dep't of Pub. Health, Health Information Portal, *Non-Fatal Overdose – Naloxone*, https://hip.phila.gov/DataReports/Opioid/NFONaloxone Administration (last visited July 6, 2020).

[36] *See* A.M. Salmon, et al., *The Impact of a Supervised Injecting Facility on Ambulance Call-Outs in Sydney, Australia*, 105 Addiction 676, 678 (2010).

naloxone), OPSs advance public safety and allow law enforcement agencies to dedicate their resources to other objectives.

Policing people who publicly inject drugs poses burdens and challenges beyond the high cost of the immediate response to an overdose. People who inject publicly account for a disproportionate share of police interactions and criminal prosecutions.[37] The result of an arrest-only response is often that medical treatment occurs within an incarcerated setting (if at all). Currently, as in many American communities, Philadelphia's largest provider of medication-assisted treatment is its jail.[38] By encouraging and increasing substance use treatment services in the community, OPSs help stabilize patients' lives, thereby reducing future negative interactions with law enforcement and first responders, allowing law enforcement to allocate resources elsewhere, and creating a more positive pathway to self-help.

Multiple studies have also shown significant additional public health benefits associated with OPSs. These facilities have reduced harmful behaviors,

---

[37] *See, e.g.*, Federal Bureau of Investigation, *2017 Crime in the United States* Table 29, (2017), https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-29 (documenting that the highest number of arrests in the United States in 2017 were for drug abuse violations).

[38] Nina Feldman, *Philadelphia Department of Prisons will begin offering buprenorphine to male inmates again*, WHYY (Apr. 1, 2019), https://whyy.org/articles/philadelphia-department-of-prisons-will-begin-offering-buprenorphine-to-male-inmates-again/

reduced blood-borne virus transmission, reduced infections, increased access to substance use disorder treatment, and connected users to other critical healthcare and social services.[39] For example, a survey of 1,082 people found that, after visiting the Vancouver OPS, 71 percent indicated they had engaged in less outdoor injecting, 49 percent reported cleaning the injection site more frequently, and 37 percent reported reusing syringes less often.[40] These benefits are experienced by individuals with the greatest need for support: people who are "homeless, unsure of how to access clean drug equipment such as needles, ha[ve] overdosed in the past, and tend[] to inject in public spaces."[41]

OPSs also serve as critical lifelines to health and social services. One study associated the Vancouver OPS with a 30 percent increase in the use of detoxification services compared to the year before it opened.[42] Another study found that regular use of the Vancouver OPS and contact with its counselors was "associated with entry into addiction treatment, and enrolment in addiction

---

[39] *See, e.g.*, Belackova, *supra* note 30, at 8; Chloe Potier et al., *Supervised Injection Services: What Has Been Demonstrated? A Systematic Literature Review*, 145 Drug & Alcohol Dependence 48, 50-61 (2014).

[40] *See* Petrar, *supra* note 32, at 1091.

[41] Massachusetts Medical Society, *Report of the Task Force on Opioid Therapy and Physician Communication: Establishment of a Pilot Medically Supervised Injection Facility in Massachusetts*, 12 (Apr. 2017).

[42] *See, e.g.*, Evan Wood et al., *Rate of Detoxification Service Use and Its Impact Among a Cohort of Supervised Injecting Facility Users*, 102 Addiction 916, 918 (2007).

treatment programs [which were] positively associated with injection cessation."[43] OPSs are also a conduit to other critical services such as housing, social work, and mental health treatment.[44]

OPS opponents sometimes voice the fear that opening an OPS will create a so-called "honeypot effect," drawing drug dealers and attendant crime and public nuisance to a neighborhood. The evidence is to the contrary. Communities' experiences with the more than 110 OPSs in operation worldwide demonstrate that OPSs can, in fact, reduce the negative effects of injection drug use and enhance public safety.[45] In Vancouver, controlled quantitative studies documented an abrupt and durable decline in property crimes and violent crimes in the area around the OPS.[46] The Supreme Court of Canada reached the same conclusion in a landmark 2011 case, affirming findings that the Vancouver OPS "is effective in reducing the risk of death and disease and has had no negative impact on the

---

[43] Kora DeBeck et al., *Injection drug use cessation and use of North America's first medically supervised safer injecting facility*, 113 Drug & Alcohol Dependence, 172, 174-75 (2011).

[44] *See, e.g.*, Mark W. Tyndall, et al., *Attendance, Drug Use Patterns, and Referrals Made from North America's First Supervised Injection Facility*, 83 Drug & Alcohol Dependence, 193, 197 (2006).

[45] *See* RAND Report, *supra* note 4, at 30-31.

[46] Andrew J. Myer & Linsey Belisle, *Highs and Lows: An Interrupted Time-Series Evaluation of the Impact of North America's Only Supervised Injection Facility on Crime*, 48 J. Drug Issues 36, 43 (2017).

legitimate criminal law objectives."[47] A study in Sydney likewise concluded that no local increases in property crimes, drug-related crimes, or loitering could be attributed to the opening of an OPS.[48] And a 2018 RAND Corporation review of the empirical literature concluded that "[n]o study reported an increase in crime associated with [OPS] operation."[49] Notably, OPSs also protect their participants, who are more likely than the general population to be victims of violent and property crimes.[50]

Similarly, a study of the Vancouver OPS found that daily counts of suspected drug dealers in the vicinity did not increase after the OPS was opened.[51] The reasoning is simple: OPSs tend to serve people in the immediate neighborhood, rather than drawing in people from farther away. For instance, over 70 percent of frequent users of the Vancouver OPS reported living within four

---

[47] *Canada v. PHS Community Services Society*, [2011] 3 S.C.R. 134, 189 (Can.).

[48] Karen Freeman et al., *The impact of the Sydney Medically Supervised Injecting Centre (MSIC) on crime*, 24 Drug & Alcohol Rev. 173, 182-184 (2005).

[49] RAND Report, *supra* note 4, at 34.

[50] *See, e.g.*, Nadia Fairbairn et al., *Seeking refuge from violence in street-based drug scenes: Women's experiences in North America's first supervised injection facility*, 67 Soc. Sci. & Med. 817, 817 (2008).

[51] Evan Wood et al., *Changes in Public Order After the Opening of a Medically Supervised Safer Injecting Facility for Illicit Injection Drug Users*, 171 Canadian Med. Assoc. J., 731, 733 (2004).

blocks of the facility.[52] And while overdose mortality dropped approximately 35 percent in the area within 500 meters of the facility following its opening, there were no significant changes in overdose mortality further away.[53] This concentrated benefit suggests that the OPS was primarily serving people already in that area, rather than attracting people from elsewhere in the city. Because an OPS largely serves its immediate neighborhood, rather than drawing in new users, there is no additional demand drawing drug dealers into the area. To the extent drug dealers do operate in an OPS's vicinity, police and prosecutors are well equipped to disrupt this illicit commerce. The presence of an OPS need not prevent law enforcement from going after dealers and traffickers as they always have.

OPSs also decrease public nuisances associated with large-scale public injection in public streets, alleys, parks, and restrooms.[54] The prevalence of discarded needles and other injection-related litter tends to drop near an OPS, since an OPS moves consumption inside and provides safe disposal facilities.[55] Studies

[52] Marshall, *supra* note 32, at 1431.

[53] *Id.* at 1433.

[54] Wood, *supra* note 51, at 732.

[55] MSIC (Medically Supervised Injection Centre) Evaluation Committee, *Final Report of the Evaluation of the Sydney Medically Supervised Injection Centre* 116-125 (2003), https://www.drugsandalcohol.ie/5706/1/MSIC_final_evaluation_report.pdf.

have also found that opening an OPS does not increase drug-related loitering or create open-air drug scenes in the area surrounding an OPS.[56]

B. Overdose Prevention Sites Promote Trust In The Justice System, Thus Enhancing Public Safety

Amici understand that developing and retaining the trust of the communities they serve is vital to effectively enforcing the law and protecting public safety. Police and prosecutors can neither prevent nor solve crimes without cooperation and trust from the people they serve. But community trust requires that people view the criminal justice system and law enforcement as legitimate. As the nationwide protests against systemic racism and police brutality underscore, law enforcement's legitimacy depends on valuing the dignity of all human life. Adopting a harm reduction approach—and treating substance use disorder as the public health issue it is—fortifies confidence in the legitimacy of law enforcement. Harm reduction enhances legitimacy by embracing proactive and supportive public health approaches that save lives, stabilizing communities, and disrupting the cycles of trauma that perpetuate crime.

Conversely, a punitive approach to managing substance use disorder breeds distrust, amplifies the harms of drug use, and creates unnecessary risk from additional police interactions. Excessive policing of people who use drugs creates

[56] *See* Laura Huey, *What is Known About the Impacts of Supervised Injection Sites on Community Safety and Wellbeing? A Systematic Review,* 48 Soc. Publications 11-12 (2019) (collecting studies).

frequent, often hostile contacts with police. This disproportionately affects communities of color.[57] Repeated searches, arrests, prosecutions, and punishment in response to a public health concern exacerbate tensions between police and the community, thereby eroding trust. Such tense interactions also spur police use-of-force incidents, further risking the safety of all involved. Treating overdoses as crime scenes also alienates community members and dissuades people from seeking help.[58] Indeed, people witnessing an overdose often delay calling emergency services due to fear and distrust of the police.[59] This trust deficit costs lives—even a few minutes' delay can turn an overdose into a fatality.

Aggressive enforcement can also deter people who use drugs from reporting crimes committed against them. As noted above, people who use drugs are more frequently victims of crime,[60] but they are unlikely to report those crimes unless

---

[57] *See* Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 Stan. Law & Pol'y Rev. 257, 269-74 (2009), https://www-cdn.law.stanford.edu/wp-content/uploads/2018/03/fellner.pdf.

[58] *See* Leo Beletsky, *America's Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis*, 4 Utah L. Rev. 833, 862-863 (2019).

[59] *See* Melissa Tracy et al., *Circumstances of Witnessed Drug Overdose in New York City: Implications for Intervention*, 79 Drug & Alcohol Dependence 181, 183-185 (2005) ("The most commonly cited reason for delaying or failing to get help was fear of police response (52.2%). Among those who called for medical help at the last witnessed overdose, 21.2% delayed before calling for help; the most frequently reported reason for the delay was fear of police response (66.3%).").

[60] *See* Karen McElrath et al., *Crime Victimization Among Injection Drug Users*, 27 J. of Drug Issues 771, 779 (1997).

there is a relationship of trust with law enforcement. This dynamic can lead to increased lawlessness in areas where drug use is common, as crimes against vulnerable people go unreported. By contrast, harm reduction programs, including OPSs, reduce crime by stabilizing lives. For example, Seattle's LEAD program significantly reduced re-arrest rates for participants, as compared to people subject to standard criminal prosecution.[61]

Criminal justice leaders in cities with OPSs recognize the stabilizing effects an OPS can bring to a drug-ridden community. This understanding is critical, because a harm reduction facility cannot be effective unless the police allow people to come and go without fear of arrest. Indeed, local police tend to quickly become a major source of referrals for OPS participants after the facilities open.[62] These referrals indicate that local law enforcement can come to trust OPSs as a constructive part of the collective effort to protect the community.

Supportive, non-punitive interactions between law enforcement officers and people who use drugs can make the entire community safer by promoting mutual understanding and cooperation. Indeed, numerous law enforcement groups have

---

[61] *See* Susan E. Collins et al., *LEAD Program Evaluation: Recidivism Report* (March 27, 2015), http://static1.1.sqspcdn.com/static/f/1185392/26121870/1428513375150/LEAD_EVALUATION_4-7-15.pdf.

[62] *See* Evan Wood et al., *Impact of a Medically Supervised Safer Iinjecting Facility on Drug Dealing and Other Drug-Related Crime*, 13 Substance Abuse Treatment, Prevention, and Policy 1, 1, 3 (2006).

endorsed harm reduction policies, noting that "[p]olice are at the front-line of this 'war', and many individuals around the world are growing weary of fighting a 'war' that has so many negative outcomes, especially poor health outcomes, for so many of those involved. Police have growing concerns about a system that pits them against everyday citizens."[63]

The public likewise understands the need to embrace these strategies. Polling from late April of this year indicates that 60 percent of the American public (including 53 percent of Republicans) support OPSs as a tool to reduce fatal opioid overdoses.[64] This reflects Americans' quintessentially pragmatic understanding that extraordinary public health problems demand proven public health responses.

Distorting federal drug laws to prohibit an OPS or to prosecute its sponsors would further undermine trust in the justice system and faith in the fair and sensible application of our drug laws.[65] Interpreting federal criminal law to bar

---

[63] Centre for Law Enforcement & Public Health, *Police Statement of Support for Drug Policy Reform* (Feb. 2019), https://cleph.com.au/application/files/4815/4957/9983/Statement_of_Support_for_Drug_Policy_Reform_Feb_2019.pdf. *See also, e.g.*, *PHS Community Services Society*, 3 S.C.R. at 151 ("The Vancouver police support Insite.").

[64] Sterling Johnson & Leo Beletsky, *The Role of Overdose Prevention Sites in Coronavirus Response*, Justice Collaborative Inst. (May 7, 2020), https://tjcinstitute.com/wp-content/uploads/2020/05/20.05_Safe-Injection-Sites-1.pdf.

[65] As the district court recognized, applying 21 U.S.C. § 856 to Safehouse would inflict a far harsher sentence on Safehouse for seeking to save the lives of drug users than on the users themselves. *See* Appx637-639 (Transcript of Oral

empirically validated harm reduction measures would make no one safer; it would only impede cooperation between law enforcement and the communities they serve.

C. Overdose Prevention Sites Will Help Communities Cope With COVID-19

The coronavirus pandemic has exacerbated the overdose crisis and underscores why communities require public health approaches to public health problems. Fatal opioid overdoses have spiked since social distancing orders were put into effect. For instance, confirmed and suspected opioid deaths in Pennsylvania's York County were three times higher in March than in January, and coroners around the Commonwealth are predicting that opioid overdose fatality rates will far surpass those of prior years.[66] In Ohio's Montgomery County, which led the nation in per capita overdose deaths in 2017, drug overdoses have increased by more than 50 percent compared to last year.[67]

Argument, 49:11-51:19) (noting that a "person coming onto the site to use will face a year, … and a nonprofit medical entity with a harm reduction strategy seeking to safe their life would face a 20-year penalty"). Such an absurd application of the law would contravene Congress's intent. *See id*.

[66] *See* Talia Kirkland, *Overdose Deaths Skyrocket in Pennsylvania During COVID-19 Pandemic*, Local21News.com (Apr. 22, 2020), https://local21news.com/news/local/overdose-deaths-skyrocket-in-pennsylvania-during-covid-19-pandemic.

[67] *See* Leila Goldstein, *Montgomery County Overdoses Up 50 Percent Over Last Year*, WYSO.org (Apr. 16, 2020), https://www.wyso.org/post/montgomery-county-overdoses-50-percent-over-last-year.

Many people who were managing their substance use disorders have relapsed, as the threat of coronavirus infection, economic dislocation, and social distancing have increased stress, severed support networks, and precluded in-person therapy and treatment services.[68] And as quarantines have isolated people who inject, it is more difficult to identify people who have overdosed in time to intervene with naloxone or resuscitation.[69]

OPSs mitigate these risks by keeping a medically vulnerable population socially engaged and connected to public health resources and by providing a safe, hygienic alternative to public injection or isolated drug consumption. OPSs can also help slow the spread of the coronavirus among drug users by implementing infection control protocols and serving as a site for distribution of masks, gloves, sanitizer, and soap.[70]

Finally, OPSs would promote public safety by helping law enforcement and medical systems conserve resources already under unprecedented strain. Coronavirus response now monopolizes first responders' time and resources. OPSs reduce the number of overdose-related calls to ambulance and police

---

[68] *See* Kate Briquelet, *Don't Forget the Other Pandemic Killing Thousands of Americans*, Daily Beast (May 4, 2020), https://www.thedailybeast.com/opioid-deaths-surge-during-coronavirus-in-americas-overdose-capitals.

[69] *See id.*

[70] *See* Johnson & Beletsky, *supra* note 64.

services and reduce the burden on hospitals from overdoses.[71] Never before has this contribution to public safety been so critical.

* * *

OPSs protect their communities from harm and serve those who need support. As the district court ruled, the Controlled Substances Act does not criminalize public health facilities. Amici therefore submit that Philadelphia and other American communities should be able to gain the proven benefits of an OPS to save lives, improve public health, and enhance community trust and public safety. This was evident at the time of the district court's thoughtful decision; the addition of a global health crisis and an intensified distrust of law enforcement make it all the more apparent.

CONCLUSION

The district court's judgment should be affirmed.

[71] *See* Salmon, *supra* note 36.

Respectfully submitted,

/s/ Mark C. Fleming

MARK C. FLEMING
TASHA J. BAHAL
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

NICHOLAS R. WERLE
SIMON B. KRESS
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

Attorneys for Amici Curiae

DANIEL SEGAL
MATTHEW A. HAMERMESH
HANGLEY ARONCHICK SEGAL
PUDLIN & SCHILLER
One Logan Square, 27th Floor
Philadelphia, PA 19103
(215) 568-6200

July 6, 2020

ADDENDUM

ADDENDUM – LIST OF AMICI CURIAE

Roy L. Austin
Former Deputy Assistant to the President for Urban Affairs, Justice and Opportunity

White House Domestic Policy Council

Former Deputy Assistant Attorney General, Civil Rights Division

U.S. Department of Justice

Aramis Ayala
State Attorney

Ninth Judicial Circuit, FL

Chiraag Bains
Former Trial Attorney, Criminal Section, Civil Rights Division

U.S. Department of Justice

Former Senior Counsel to the Assistant Attorney General, Civil Rights Division

U.S. Department of Justice

Diana Becton
District Attorney

Contra Costa County, CA

Wesley Bell
Prosecuting Attorney

St. Louis County, MO

Buta Biberaj
Commonwealth's Attorney

Loudoun County, VA

Sherry Boston
District Attorney

DeKalb County, GA

Chesa Boudin
District Attorney

City and County of San Francisco, CA

Joseph Brann
Chief (Ret.)

Hayward Police Department, CA

Former Director, Office of Community Oriented Policing Services

U.S. Department of Justice

Aisha N. Braveboy
State's Attorney

Prince George's County, MD

Kenyen Brown
Former U.S. Attorney

Southern District of Alabama

Jim Bueermann
Chief (Ret.)

Redlands Police Department, CA

Chris Burbank
Chief (Ret.)

Salt Lake City Police Department, UT

Vice President

Law Enforcement Strategy Center for Policing Equity

A. Bates Butler
Former U.S. Attorney

District of Arizona

Mike Butler
Chief

Longmont Police Department, CO

Kimberly B. Cheney
Former Attorney General

State of Vermont

John Choi
County Attorney

Ramsey County, MN

Jerry L. Clayton
Sheriff

Washtenaw County, MI

Dave Clegg
District Attorney

Ulster County, NY

Scott Colom
District Attorney

16th Circuit Court, MS

Brendan Cox
Chief (Ret.)

Albany Police Department, NY

Director of Policing Strategies

LEAD National Support Bureau

John C. Creuzot
District Attorney

Dallas County, TX

Satana Deberry
District Attorney

Durham County, NC

Parisa Dehghani-Tafti
Commonwealth's Attorney

Arlington County and the City of Falls Church, VA

Brandon del Pozo
Chief (Ret.)

Burlington Police Department, VT

Michael Dougherty
District Attorney

20th Judicial District, CO

Mark Dupree
District Attorney

Wyandotte County, KS

Kim Foxx
State's Attorney

Cook County, IL

Neill Franklin
Major (Ret.)

Maryland State Police and Baltimore Police Department

Executive Director

Law Enforcement Action Partnership

Kimberly Gardner
Circuit Attorney

City of St. Louis, MO

George Gascón
Former District Attorney

City and County of San Francisco, CA

Chief (Ret.)

Mesa Police Department, AZ

San Francisco Police Department, CA

Sarah F. George
State's Attorney

Chittenden County, VT

Joe Gonzales
District Attorney

Bexar County, TX

Eric Gonzalez
District Attorney

Kings County, NY

Mark Gonzalez
District Attorney

Nueces County, TX

Andrea Harrington
District Attorney

Berkshire County, MA

Robert J. Hoffman
Chief (Ret.)

Plainfield Police Department, CT

John Hummel
District Attorney

Deschutes County, OR

Melinda Katz
District Attorney

Queens County, NY

Lawrence S. Krasner
District Attorney

Philadelphia, PA

Peter S. Holmes
City Attorney

Seattle, WA

Natasha Irving
District Attorney

Prosecutorial District 6, ME

Justin F. Kollar
Prosecuting Attorney

County of Kauai, HI

Miriam Aroni Krinsky
Former Assistant U.S. Attorney

Central District of California

Former Criminal Appellate Chief and Chief, General Crimes

Central District of California

Former Chair

Solicitor General's Criminal Appellate Advisory Group

Executive Director

Fair and Just Prosecution

Jackie Lacey
District Attorney

Los Angeles County, CA

William Lansdowne
Chief (Ret.)

San Diego Police Department, CA
San Jose Police Department, CA
Richmond Police Department, CA

Chris Magnus
Chief

Tucson Police Department, AZ

James L. Manfre
Sheriff (Ret.)

Flagler County, FL

Beth McCann
District Attorney

2nd Judicial Circuit, CO

Dan P. Meloy
Chief (Ret.)

Colerain Township Police Department, OH

Former Director of Public Safety

Colerain Township, OH

Brian Middleton
District Attorney

Fort Bend County, TX

Stephen Mills
Chief (Ret.)

Lindsay Police Department, OK

Bill Nettles
Former U.S. Attorney

District of South Carolina

Jody Owens
District Attorney

Hinds County, MS

Channing Phillips
Former U.S. Attorney

District of Columbia

Isaiah McKinnon
Chief (Ret.)

Detroit Police Department, MI

Spencer Merriweather
District Attorney

Mecklenburg County, NC

Kenneth Mighell
Former U.S. Attorney

Northern District of Texas

Marilyn Mosby
State's Attorney

Baltimore City, MD

Jerome O'Neill
Former Acting U.S. Attorney
Former Assistant U.S. Attorney

District of Vermont

Jim Petro
Former Attorney General

State of Ohio

Ira Reiner
Former District Attorney

Los Angeles County, CA

Former City Attorney

Los Angeles, CA

Rob Reyes
Chief (Ret.)

U.S. Department of Veterans' Affairs Police Department

Rachael Rollins
District Attorney

Suffolk County, MA

Jeff Rosen
District Attorney

Santa Clara County, CA

Stephen Rosenthal
Former Attorney General

State of Virginia

Dan Satterberg
Prosecuting Attorney

King County, WA

Ronal Serpas
Superintendent (Ret.)

New Orleans Police Department, LA

Chief (Ret.)

Metropolitan Nashville Police Department, TN

Chief (Ret.)

Washington State Patrol, WA

Harry L. Shorstein
Former State Attorney

4th Judicial Circuit, FL

Daniella Shorter
District Attorney

22nd Judicial District, MS

Carol Siemon
Prosecuting Attorney

Ingham County, MI

David Soares
District Attorney

Albany County, NY

Norm Stamper
Chief (Ret.)

Seattle Police Department, WA

Carter Stewart
Former U.S. Attorney

Southern District of Ohio

David E. Sullivan
District Attorney

Northwestern District, MA

Thomas P. Sullivan
Former U.S. Attorney

Northern District of Illinois

Thomas W. Synan Jr.
Chief

Newtown Police Department, OH

Jennifer Tejada
Chief

Emeryville Police Department, CA

Raúl Torrez
District Attorney

Bernalillo County, NM

Peter Volkmann
Police Commissioner

City of Hudson, NY

Andrew H. Warren
State Attorney

13th Judicial Circuit, FL

Betty Taylor
Chief (Ret.)

Winfield Police Department, MO

Steve Tompkins
Sheriff

Suffolk County, MA

Cyrus R. Vance
District Attorney

New York County, NY

Mike Ward
Chief (Ret.)

Alexandria Police Department, KY

CERTIFICATE OF BAR MEMBERSHIP (LAR 46.1)

Pursuant to Third Circuit Local Appellate Rule 46.1, I, Mark C. Fleming, hereby certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

/s/ Mark C. Fleming
MARK C. FLEMING

Dated: July 6, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 6,468 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

3. In addition, pursuant to Third Circuit Local Appellate Rule 31.1(c), I certify that the text of the brief filed with the Court via CM/ECF is identical to the text of the paper copies. I further certify that the electronic version of the brief has been scanned for viruses by Trend Micro OfficeScan 10.6.5372 (updated continuously) and is, according to that program, free of viruses.

/s/ Mark C. Fleming
MARK C. FLEMING

July 6, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of July, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Mark C. Fleming
MARK C. FLEMING