



exhibits thereto by reference, and for all purposes, as the contents thereof are essential to OAG's answer, defenses, and denial of the claims raised by Plaintiff.

## **II. PLEA TO THE JURISDICTION**

3. The Court should deny temporary injunctive relief and dismiss Plaintiff's suit in its entirety because, as the Attorney General for the State of Texas, OAG is immune from suit based on governmental immunity. Plaintiff has failed to plead or prove an exception or waiver to such immunity, and accordingly, subject matter jurisdiction is lacking. *E.g. Pidgeon v. Turner*, 625 S.W.3d 583, 599 (Tex. App.—Houston [14th Dist.] 2021, no pet.) (denying injunctive relief based on governmental immunity in spite of *ultra vires* allegation); *City of Canton v. Lewis First Monday, Inc.*, No. 06-23-00027-CV, 2023 WL 4945085, at \*1 (Tex. App.—Texarkana Aug. 3, 2023, pet. denied), reh'g denied (Aug. 25, 2023) (a party seeking temporary injunctive relief bears the burden to “affirmatively demonstrate” that jurisdiction exists and governmental immunity is lacking) (*quoting Dann v. Athens Mun. Water Auth.*, No. 12-07-00087-CV, 2007 WL 2460058, at \*2 (Tex. App.—Tyler Aug. 31, 2007, no pet.)).

4. The Court should dismiss Plaintiff's claims because they are not ripe.

5. The Court should dismiss Plaintiff's claims because they are moot.

## **III. OTHER DEFENSES**

6. Pursuant to Texas Rule of Civil Procedure 94, Plaintiff's claims are barred by the defense of illegality.

7. Pursuant to Texas Rule of Civil Procedure 94, Plaintiff's claims are barred by the defense of fraud.

8. Pursuant to Texas Rule of Civil Procedure 94, Plaintiff's claims are barred by the defense of estoppel.

9. Pursuant to Texas Rule of Civil Procedure 94, Plaintiff's claims are barred by the defense of waiver.

10. Plaintiff is not entitled to temporary injunctive relief because Plaintiff has not pled a valid cause of action against OAG.

11. Plaintiff is not entitled to temporary injunctive relief because Plaintiff has not pled, and cannot demonstrate, a probable right to relief.

12. Plaintiff is not entitled to temporary injunctive relief because Plaintiff has not pled, and cannot demonstrate, a probable and imminent injury in the absence of temporary injunctive relief.

13. Plaintiff is not entitled to temporary injunctive relief because Plaintiff has not pled, and cannot demonstrate, a probable and irreparable injury in the absence of temporary injunctive relief.

#### **IV. MOTION FOR LEAVE**

14. Pursuant to Texas Civil Practices and Remedies Code section 66.002(d) and Texas Business Organizations Code sections 12.152 and 12.255, OAG moves this Court for leave to file the Counterclaim in the Nature of Quo Warranto, attached hereto as "Exhibit A" against Annunciation House, Inc.

15. As detailed in the attached Counterclaim, Annunciation House, Inc. is a domestic non-profit entity organized under the laws of the State of Texas and is registered in Texas for the purposes of transacting business in this state.

16. OAG seeks to revoke Annunciation House's registration on the grounds that it has violated the law and failed to permit OAG to inspect, examine, and make copies of Annunciation House's records in response to a valid Request to Examine. *See generally* Ex. 1. The attached

Counterclaim, contains sufficient basis to allow the Court to determine that probable grounds exist to file the pleading and grant leave to do so.

V. **PRAYER**

17. Accordingly, for the reasons stated herein and those set forth in the document attached and incorporated herein as “Exhibit A,” OAG asks that the Court dismiss Plaintiff’s claims, deny injunctive relief, render judgment against Plaintiff, grant OAG’s request for leave, award costs against Plaintiff, and grant all other relief to which OAG may be justly entitled.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

JAMES LLOYD  
Deputy Attorney General for Civil Litigation

RYAN S. BAASCH  
Division Chief, Consumer Protection Division

*/s/ Rob Farquharson*  
ROB FARQUHARSON  
Assistant Attorney General  
State Bar No. 24100550  
Office of the Attorney General of Texas  
Consumer Protection Division  
300 W. 15th St.  
Austin, Texas 78701  
Phone: (214) 290-8811  
Fax: (214) 969-7615  
Rob.Farquharson@oag.texas.gov

LEVI T. FULLER  
Assistant Attorney General  
State Bar No. 24087548  
Office of the Attorney General of Texas

Consumer Protection Division  
Levi.Fuller@oag.texas.gov

**ATTORNEYS FOR THE STATE OF TEXAS**

**CERTIFICATE OF CONFERENCE**

I certify that counsel for OAG has conferred with counsel for Plaintiff regarding the filing of OAG's Motion for Leave, and counsel for Plaintiff has indicated that they are opposed to the filing of OAG's quo warranto counterclaim.

*/s/ Rob Farquharson*  
ROB FARQUHARSON

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document has been served on all attorneys of record via e-service on the 16th day of February 2024.

*/s/ Rob Farquharson*  
ROB FARQUHARSON

# EXHIBIT A



## I. THE PARTIES

1. The Attorney General brings this action in the nature of quo warranto on behalf of the State of Texas on the grounds that Annunciation House acted or omitted an act in a manner requiring surrender or forfeiture of its rights and privileges as a registered corporation. *See* Tex. Civ. Prac. & R. Code §§ 66.001(4), 66.002(2); Tex. Bus. Orgs. Code § 11.301(a)(1).

2. The Office of the Attorney General has offices located at 300 W. 15th Street, Austin, Texas 78701.

3. Annunciation House is a corporation duly organized under the laws of the State of Texas for charitable purposes. Annunciation House's registered agent is Ruben Garcia, 815 Myrtle Avenue, El Paso, Texas 79901. Annunciation House has already appeared in this lawsuit and service may be accomplished pursuant to Tex. R. Civ. P. 21(a). *See* Tex. R. Civ. P. 124.

4. On December 30, 1985, Annunciation House registered as a domestic non-profit corporation for purposes of transacting business in the state of Texas. SOS Direct, *Annunciation House* (10: 45 A.M. February 12, 2024), [https://direct.sos.state.tx.us/corp\\_inquiry/corp\\_inquiry-entity.asp?spage=ra&:Spagefrom=&:Sfiling\\_number=77985601&:Ndocument\\_number=1331763780002&:Npgcurrent=1&:Norder\\_item\\_type\\_id=10](https://direct.sos.state.tx.us/corp_inquiry/corp_inquiry-entity.asp?spage=ra&:Spagefrom=&:Sfiling_number=77985601&:Ndocument_number=1331763780002&:Npgcurrent=1&:Norder_item_type_id=10)). As a corporation registered to transact business in Texas, Annunciation House is obligated to comply with the laws of this state.

## II. TEXAS RULE OF CIVIL PROCEDURE 97

5. The claims asserted herein constitute compulsory counterclaims within the jurisdiction of this Court and are not the subject of a separate pending action against Annunciation House. OAG's claims arise out of the transaction or occurrence that is the subject matter of the legal filing captioned Verified Original Petition for Declaratory Judgment, Application for



Temporary Restraining Order, and Application for Temporary Injunction, which obtained a Temporary Restraining Order and seeks judicial approval of its decision not to comply with OAG's Request to Examine in violation of Texas Business Organizations Code section 12.151 *et seq.* This Counterclaim does not require for adjudication the presence of third parties over whom the Court does not have jurisdiction.

6. For these reasons, OAG's claims represent compulsory counterclaims under Texas Rule of Civil Procedure 97(a).

### **III. DISCOVERY CONTROL PLAN**

7. No Discovery Control Plan is necessary at this time. The material facts in support of this Petition alleged herein are undisputed and render OAG's claims capable of judicial resolution as a matter of law. Should discovery become necessary, it should be limited and tailored to the circumstances of the case, consistent with a Level 3 Discovery Control Plan found in Texas Rule of Civil Procedure 190.4.

### **IV. STATEMENT OF RELIEF**

8. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, OAG states that it seeks monetary relief of \$250,000 or less and non-monetary relief.

### **V. RELEVANT BACKGROUND**

#### **A. The Office of the Attorney General's Investigative Authority**

9. OAG has broad authority to "investigate the organization, conduct, and management of a filing entity or foreign filing entity to determine if the entity has . . . engaged in acts or conduct in violation of . . . any law of [Texas]." Tex. Bus. Org. Code § 12.153. *Accord* Tex. Const. art. IV, Section 22. Texas courts have recognized the expansive nature of the Attorney

General’s general investigatory power over corporations registered in Texas. *See, e.g., Humble Oil & Refining Co. v. Daniel*, 259 S.W.2d 580, 589 (Tex. App—Beaumont 1953) (noting the Attorney General’s “undoubted right to require full information as to all of the business” of a corporation “permitted to come into the state”). “[T]he power to compel the production of the records of any organization, whether it be incorporated or not, arises out of the inherent and necessary power of the . . . state governments to enforce their laws.” *United States v. White*, 322 U.S. 694, 700–01 (1944).

10. For these reasons, the law makes clear that entities registered in Texas *must* allow “the attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general, of *any* record of the entity.” Tex. Bus. Org. Code § 12.151. Upon receiving a written request for documents and information, a registered entity “shall *immediately* permit the attorney general to inspect, examine, and make copies of [its] records.” *Id.* § 12.152 (emphasis added).

11. Texas law sets forth the consequences for failure to comply with an investigative request issued by OAG. Specifically, section 12.155 of the Texas Business & Organizations Code dictates that “a filing entity that fails or refuses to permit the attorney general to examine or make copies of a record . . . *forfeits the right . . . to do business*” in the state. *Id.* at § 12.155 (emphasis added). The section further instructs that upon such violation, an “entity’s registration or certification of formation . . . *shall be revoked or terminated.*” *Id.* (emphasis added); *Walker-Texas Inv. Corp. v. State*, 323 S.W.2d 603, 606 (Tex. App.—Austin 1959) (“following the language of the statute, a refus[al] to permit” OAG to “examine the books and records of the corporation” results in “forfeit[ure] [of] the charter”).

**B. Annunciation House**

12. Annunciation House publicly depicts itself as a humble organization dedicated to “simply liv[ing] the Good News of the Gospel” and providing “compassion and freedom” to “outcast[s] or alien[s].” <https://annunciationhouse.org/about/history/>.

13. The actual operations of Annunciation House appear to be quite different.

14. Based on public reporting and Court documents, Annunciation House appears to be openly and flagrantly violating many provisions of law in a systemic fashion. A non-exhaustive list includes:

15. *First*, it is a federal crime for an alien to enter the United States “at any time or place other than as designated by immigration officers” or to “elude[] examination or inspection by immigration officers.” 8 U.S.C. § 1325(a). Annunciation House, however, has boasted that it houses “migrants who avoided Border Patrol when crossing the Rio Grande, out of fear that agents would send them back to Mexico.” See Priscilla Totiyapungprasert, *Annunciation House helps undocumented immigrants apply for asylum* El Paso Matters (Jan. 20, 2023), <https://elpasomatters.org/2023/01/20/el-paso-migrants-apply-for-asylum-with-annunciation-house/>, Ex. 2. Indeed, Annunciation House has publicly claimed that it “hous[es] close to 300 migrants” at a given time, “many of whom are struck in limbo because they” avoided law enforcement. *Id.* Annunciation House’s provision of shelter to migrants who avoided law enforcement when crossing the Rio Grande facilitates and aids and abets violation of 8 U.S.C. § 1325(a).

16. *Second*, it is illegal to “encourage[] or induce[]” aliens to “enter . . . this country in violation of federal law by concealing, [or] harboring” the aliens from “detection.” Tex. Penal

Code § 20.05(a)(2); *see also Berry v. Golden Light Coffee Co.*, 160 Tex. 128, 131 (1959) (establishing civil liability for an “unlawful conspiracy to evade and circumvent the [] laws of this state”). When Annunciation House shelters aliens whom it *knows* entered illegally, it is necessarily “concealing” or “harboring” them from “detection.” And Annunciation House’s publication of the fact that it actively performs this service for illegal aliens logically “encourages or induces” others to come, all in violation of Texas Penal Code § 20.05(a)(2).

17. *Third*, it is illegal to engage in human smuggling, defined to include “us[ing] a motor vehicle” to “transport an individual with the intent to conceal the individual from” law enforcement. Tex. Penal Code § 20.05(a)(1)(A); *State v. Flores*, 679 S.W.3d 232 (Tex. App.—San Antonio 2023) (rejecting constitutional challenges to human smuggling statute). Annunciation House appears to be engaged in the business of human smuggling. According to its own in-Court admission, Annunciation House “contracts with a local company once or twice a week to transport migrants in passenger vans in groups of approximately 15.” *Annunciation House v. Abbott*, Compl. ¶ 15, 3:21-cv-00178 (Aug. 4, 2021) As noted *supra*, Annunciation House knows that at least some of the aliens it provides services to are present illegally and are trying to avoid Border Patrol. Annunciation House’s transportation of those aliens presents a very significant likelihood of human smuggling.

18. *Fourth*, it is illegal to operate a “stash house,” defined as “knowingly” allowing “another to use any real estate” owned by a person to commit a number of other offenses, including human smuggling offenses. Tex. Penal Code § 20.07(a). Annunciation house appears to be engaged in the operation of an illegal stash house by potentially allowing others to use its real estate to engage in human smuggling.

19. *Fifth*, it is illegal to counsel aliens to commit fraud, including fraud within the asylum application process. *See e.g.* Tex. Pen. Code Ann. § 37.10 (“a person commits an offense if he...makes...or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record”); *see also* Tex. Pen. Code Ann. § 38.05 (establishing a crime where a person “with intent to hinder the arrest...of another... (1) harbors or conceals the others...[or] (2) provides or aids in providing the other with any means of avoiding arrest”). Annunciation House, however, may be violating these laws because it publicly represents that it has “workshops” to assist aliens with asylum claims, and specifically instructs them on “what situations qualif[y] for asylum and what records they could gather to establish their case.” Priscilla Totiyapungprasert, *Annunciation House helps undocumented immigrants apply for asylum* El Paso Matters (Jan. 20, 2023), <https://elpasomatters.org/2023/01/20/el-paso-migrants-apply-for-asylum-with-annunciation-house/>. It is possible that the provision of such information crosses the line from mere counseling into specific instructions on how to commit fraud.

### **C. The Request to Examine**

20. On February 7, 2024, two Assistant Attorneys General with OAG personally served upon Annunciation House the Request to Examine at issue in this litigation. Taylor Decl., Ex. 3. Multiple features of that Request to Examine and that in-person service are highly relevant to this Counterclaim.

21. *First*, the Request to Examine demanded “immediate access” for purposes of reviewing specified categories of documents. Request to Examine, Ex. 1, p. 1-2. Those categories are highly relevant to an investigation into the potential legal violations listed *supra*. For example, the categories included “[d]ocuments sufficient to show all services that you provide to Aliens,

whether in the United States legally or illegally,” and “[a]ll documents provided to individual Aliens as part of your intake process.” Request to Examine, Ex. 1, p. 7. As described *supra* at ¶¶ 14-18, many of Annunciation House’s services appear to be illegal. These documents would help shed light on that determination.

22. *Second*, the Request to Examine’s demand for “immediate access” was not made in a vacuum. Rather, OAG agents were monitoring Annunciation House during the period leading up to the service of the Request to Examine. Sgt. Carter Decl., Ex. 4. Those observations showed that Annunciation House operates in an unusually covert way, raising concerns about how truthful it would be in a document production. Among other things, very limited people associated with Annunciation House had keys to the building, even though at least dozens of aliens (hundreds, according to public reporting) appear to be residing in the building. *Id.* ¶ 5-6. Based on OAG observations, even though many aliens are residing in the building, they have to ring the doorbell in order to gain entry. *Id.* ¶ 6.

23. Annunciation House staff also made multiple admissions that they had assisted migrants in the past in the United States who had not surrendered to border patrol, had assisted persons in Mexico in crossing over to the United States in the past, and they intended to continue these activities the future. *Id.* By definition, there are no documents to corroborate the presence of an undocumented migrant who is in the United States illegally while residing at one of Annunciation House’s locations except for those in Annunciation House’s possession.

24. *Third*, the Assistant Attorneys General who served the Request to Examine did not insist upon immediate access. Instead, as a matter of grace, they “gave [Annunciation House] time . . . to consult internally and with its attorneys.” Fuller E-mail, Ex. 5. And so, instead of

demanding immediate access on February 7, the Assistant Attorneys General requested “access to the specified records in [Annunciation House’s] possession by **tomorrow, February 8.**” *Id.* And they indicated that the penalty for non-compliance was that Annunciation House would be deemed “to be in non-compliance with [the] Request to Examine.” *Id.*

25. *Fourth*, the Assistant Attorneys General who served the Request to Examine explicitly clarified that they were not seeking to examine documents that Annunciation House did not “physically possess.” *Id.* Instead, they confirmed that the Request to Examine did not require Annunciation House to “perform impossible feats,” such as producing documents it did not have access to. *Id.* Rather, the Assistant Attorneys General specified that Annunciation House presumably possessed at least “*some* records” at issue in the Request to Examine. *Id.* And as to at least *those* records, Annunciation House had no basis to refuse access.

26. Annunciation House, however, indicated only that it “expect[ed]” to “provide [a] response” to OAG “within 30 days.” *Id.* When the OAG informed Annunciation House that this was non-compliant, Annunciation House sued the Attorney General and obtained an *ex parte* temporary restraining order. Annunciation House, Inc.’s Verified Original Petition for Declaratory Judgment, Application for Temporary Restraining Order, and Application for Temporary Injunction, Ex. 6.; Temporary Restraining Order and Order Setting Hearing on Temporary Injunction, Ex. 7.

**BRIEF SUPPORTING TERMINATION OF ANNUNCIATION HOUSE’S RIGHT TO  
DO BUSINESS IN TEXAS AND FOR INJUNCTION AND APPOINTMENT OF  
RECEIVER**

27. As a matter of law, Annunciation House’s right to do business in Texas has been forfeited and its registration or certification of formation “shall” be revoked or terminated. Tex.

Bus. Orgs. Code § 12.155. As a result, the Court should enter an injunction barring Annunciation House from continuing to operate in Texas, and must appoint a receiver. *See, e.g., Walker-Texas Inv. Corp. v. State*, 323 S.W.2d 603 (Tex.App.—Austin 1959) (materially similar relief granted for failure to comply with request to examine).

28. Under Texas law, any corporation, including non-profit corporations operating for charitable, religious, or civic purposes, “must” file with the State a “certificate of formation.” Tex. Bus. Orgs. Code § 3.001(a). When they do this, the corporation becomes a “filing entity” subject to a host of other regulations under law. *See id.* § 1.002 (defining a “Filing entity”); *id.* § 2.008 (covering nonprofit corporations). Corporations who *fail* to do this are subject to a judicial order terminating their existence. Tex. Bus. Orgs. Code § 11.301(a)(1).

29. As relevant here, “each filing entity” “**shall** permit the attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general, of any record of the entity.” Tex. Bus. Orgs. Code § 12.151. To make such an examination, “The attorney general shall make a written request to a managerial official, who shall **immediately** permit the attorney general to inspect, examine, and make copies of the records of the entity.” *Id.* § 12.152.

30. It is well-established that courts must give statutory words their “common, ordinary meaning unless a contrary meaning is apparent from the statute’s language.” *Tex. State Bd. of Exam’rs of Marriage & Fam. Therapists v. Tex. Med. Ass’n*, 511 S.W.3d 28, 34 (Tex. 2017). And here, the common ordinary meaning of “immediately” is that OAG must be given access to the records right away. “Immediately,” The Merriam-Webster Dictionary, 2024 .



31. OAG’s power to demand access to a corporation’s records “immediately” is also historically well-established. *See, e.g., Walker-Texas Inv. Corp. v. State*, 323 S.W.2d 603, 605-06 (Tex.App.—Austin 1959) (Assistant Attorneys General “presented” themselves with request to examine). That is consistent with how multiple other regulatory bodies operate to ensure that corporations are law-abiding. *See, e.g.,* Tex. Occ. Code § 556.051 (A member or representative of the Texas State Board of Pharmacy may “enter and inspect” financial records relating to the operation of a facility); Tex. Water Code § 26.014 (Members, employees, and agents of the Texas Commission on Environmental Quality are “entitled to enter any public or private property at any reasonable time for the purposes of inspecting and investigating”); Tex. Health & Safety Code § 382.015 (“A member, employee, or agent of the Texas Commission on Environmental Quality may “enter public or private property” at a reasonable time to “inspect and investigate conditions relating to emissions of air contaminants”); Tex. Health & Safety Code § 222.005 (The Commissioner of State Health Services shall “make inspections and investigations as the commissioner considers necessary”); Tex. Gov’t Code § 402.026 (The Attorney General “shall inspect” accounts of the offices of the comptroller and “each other person responsible for collection or custody of state funds”); Tex. Health & Safety Code § 12.018 (The Department of State Health Services may “make any inspection of a facility or program under the department’s jurisdiction without announcing the inspection.”)

32. Other provisions of the Texas Business Organizations Code confirm that the statutory grant of power to OAG to demand “immediate” access plainly means what it says. For example, the Secretary of State has authority to issue an “interrogatory” to corporations under the Code. Tex. Bus. Orgs. Code § 12.002. But the corporation has until at least “the 31st day after the

date the interrogatory is mailed” in which to answer. *Id.* That is obviously a sharp contrast from the instruction to permit “immediate” access to the Attorney General if he seeks to examine records. *Id.* § 12.151. The Legislature’s use of this disparate timing language within the Code confirms that when it used the word “immediate” it meant what it said. *State v. J. M. Huber Corp.*, 193 S.W.2d 882, 884 (Tex. App.—Austin 1946), *aff’d*, 145 Tex. 517, 199 S.W.2d 501 (1947) (holding that the legislature meant what it said when it replaced the word “annually” with “immediately” in a statute); *see also Cadena Comercial USA Corp. v. Tex. Alcoholic Beverage Comm’n*, 518 S.W.3d 318, 337 (Tex. 2017)

33. The consequences for failure to give OAG immediate access to records are also textually plain. A “filing entity that fails or refuses to permit the attorney general to examine or make copies of a record . . . forfeits the right of the entity to do business in this state, and the entity’s registration or certification of formation **shall** be revoked or terminated.” Tex. Bus. Orgs. Code § 12.155. That is the long-standing application of Texas corporate regulation going back many decades. *See, e.g., Walker-Texas Inv. Corp. v. State*, 323 S.W.2d 603 (Tex.App.—Austin 1959). The Court also “shall appoint a receiver” to wind up the business’s affairs, Tex. Bus. Orgs. Code § 12.251, and should issue an injunction against further operations, *id.* § 12.259.

34. The Court must enforce the statute “as written” and “refrain from rewriting text that lawmakers chose.” *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009). That is true even if the Court concludes that a “fair reading . . . yields unfair results.” *BankDirect Cap. Fin. v. Plasma Fab*, 519 S.W.3d 76, 86 (Tex. 2017) (confirming this is not a basis to reject statutory text). It is often true that “[a] looser, nontextual construction may temper statutory absoluteness and lead to more congenial policy outcomes.” *Id.* But judges must be “[s]ticklers about not

rewriting statutes under the guise of interpreting them” and “[s]ticklers about not supplanting [their] wisdom for that of the Legislature.” *Id.*

35. Annunciation House’s combined petition and brief in support of temporary restraining order proffered “two” bases why it was excused from immediate compliance. Pet. at 24. Both bases are fatally flawed for multiple reasons, including because they materially mis-state or omit undisputable facts, and their improper invocation in this Court skirts dangerously close to a violation of opposing counsel’s duty of candor. *Marquez v. Weadon*, No. 05-17-00276-CV, 2018 WL 3829267, at \*6-7 (Tex. App.—Dallas Aug. 13, 2018, no pet.) (knowing misrepresentation of facts to obtain a TRO is sanctionable conduct).

36. **First**, Annunciation House contends that OAG’s demand for immediate access imposed “nothing short of an impossible demand.” Pet. ¶ 24.a. It is hard to understand how—Annunciation House failed to specify *how* OAG’s demand imposed impossible tasks, and that materially undermines the TRO it obtained.<sup>1</sup> Annunciation House *appears* to be saying that it was impossible to gather all of the identified documents in the specified time period. But if so, then Annunciation House has made a misrepresentation to this Court about the scope of its obligations that OAG very explicitly conveyed to it. OAG “recognize[d]” that Annunciation House might not “possess” some documents in a way to make them immediately accessible. Fuller E-mail, Ex. 5. And OAG said **this was OK**—because the Request to Examine “does **not** request [Annunciation House] to perform impossible feats.” *Id.* Instead, OAG indicated that, as a matter of basic logic

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<sup>1</sup> *In re Cnty. of Hidalgo*, 655 S.W.3d 44, 54 (Tex. App.—Corpus Christi–Edinburg 2022, no pet.) (holding that conclusory statements that a party “will commit the disenfranchisement of voters before notice and a hearing,” and “will suffer irreparable harm... because Plaintiffs will have no adequate remedy at law to grant Plaintiffs complete, final, and equal relief” are insufficient to sustain a TRO.)

and suppositions about how ordinary corporations behave, “at least **some** records” are presumably available for examination. *Id.* If Annunciation House had fulfilled its obligation to permit the Office of the Attorney General to examine *those* records immediately, it would have discharged its “immediate” obligation and would not have been deemed in non-compliance. As for the remainder of the records, Annunciation House and OAG could have negotiated in good faith about timing for future production. Instead, Annunciation House just sued.

37. In light of this, Annunciation House has utterly failed to explain how the Request to Examine imposed an “impossible” demand. It submitted no affidavit explaining impossibility. And, although Annunciation House’s petition is “verified,” its Declarant swore only that paragraphs 9-18 were true. Pet. at 7. By contrast, Annunciation House’s contentions about “impossibility” appear in paragraph 24. So, Annunciation House’s Declarant did not say a word about impossibility.

38. In addition, everything that Annunciation House’s *lawyer* said about impossibility in paragraph 24 of the petition appears to have no actual relevance to impossibility. For example, the fact that Annunciation House “has openly operated in El Paso for forty-six years” and that it “work[s] with vulnerable populations” says nothing about whether it can provide access to documents. Pet. ¶ 24.a. So too, Annunciation House’s complaint that OAG “has stated nothing to indicate *why* immediate production of documents” is warranted misses the mark. Pet. ¶ 24.a. There is no explanation how OAG’s *reasons* for the demand have anything to do with whether the demand is impossible. Annunciation House also says it has “limited volunteer staff.” Pet. ¶ 24.a. But Annunciation House’s Declarant actually said that Annunciation House has “up to 30 full-time volunteers.” Pet. ¶ 12. Annunciation House appears to have paid staff too. *Cf. id.*

(Annunciation House “primarily”—but not exclusively—relies on its volunteers). Moreover, it is not apparent how or why more staff would be needed to comply with the Request to Examine. And Annunciation House’s final protestation—that it “needs to consult with its far-flung board members”—likewise does not justify Annunciation House’s refusal. Pet ¶ 24.a. Almost *all* corporations have “far-flung board members.” If that were sufficient to excuse non-compliance with a Request to Examine, then the statute’s language about “immediate” compliance would become a dead letter. Annunciation House also utterly failed to explain how the location of its board members has any relevance to immediate access.

39. Annunciation House’s case law about “impossibility,” Pet. ¶ 24.a., is also inapposite. The only Texas authority relied upon by Annunciation House is a half-page concurrence from the Court of Criminal Appeals, which stands for the unremarkable proposition that a police department cannot both refuse to accept a sex-offender’s registration, and simultaneously, prosecute that same sex-offender for lack of registration. *Id.* (citing *Robinson v. State*, 466 S.W.3d 166, 174-75 (Tex. Crim. App. 2015)). But this case is not criminal and Annunciation House neither attempted to comply with the RTE nor alleges that the State interfered with its ability to comply with the RTE, as delivered. And Plaintiff’s other cases fare no better. They arise from far-away courts, and like the Texas case, are primarily *criminal cases* involving *an individual’s* liability. This case, by contrast, involves a corporation exposed to no criminal liability.<sup>2</sup>

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<sup>2</sup> *Doe v. Snyder* and *United States v. Dalton* are criminal cases from Michigan and Colorado where defendants were charged with crimes that were impossible to avoid as a matter of basic logic. In *Doe v. Snyder* a homeless sex-offender was prosecuted for failure to maintain state identification, which could only be obtained with proof of a residential address. 101 F. Supp. 3d 722, 724-25 (E.D. Mich. 2015). And in *Dalton*, a defendant was prosecuted for possession of an unregistered firearm, which the law precluded him from registering. 960 F.2d 121, 122 (10th Cir. 1992). In

40. **Second**, Annunciation House contends that the Request to Examine violates its “constitutional rights of association” by seeking “[a]ll logs identifying aliens to whom you have provided services in the relevant time period.” Pet. ¶ 24.b. Even if that were a correct proposition of law, it would excuse Annunciation House’s compliance *only with documents as to that category*—not as to all documents identified in the Request to Examine. Most of the Request to Examine’s document demands have no conceivable connection to “associational” rights, such as the demands to examine Annunciation House’s “applications for humanitarian relief funding” and “underlying documentation.” Request to Examine, Ex. 1, p. 7.

41. Annunciation House’s contention about associational rights is also legally baseless. Annunciation House invokes a very limited First Amendment doctrine that sometimes protects the identities of *donors*. *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 381 & n.10 (Tex. 1998); Pet. ¶ 24.b. But the Request to Examine did not seek donor information. Instead, its request for logs of aliens to whom Annunciation House provided services is materially identical to a request for a customer list of persons whom it has assisted in violating the law. And those are not protected by associational rights. *United States v. Bell*, 414 F.3d 474, 484 (3d Cir. 2005) (holding that a tax professional who advocated for the abolition of income taxes, and advertised that he could help people avoid such taxes, could be compelled to produce his customer list and

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*dictum*, *Brunetti v. New Milford* discussed a similar logical impossibility, wherein landlords, as a part of a New Jersey rent-leveling ordinance, would be required to submit consumer price index (CPI) data up to 5-days before the U.S. Department of Labor released that data. 68 N.J. 576, 597-99 (1975). But that case did not even decide the impossibility issue, and, in fact, rejected other constitutional challenges to the ordinance because the landlords had not demonstrated irreparable harm and exhausted the existing remedies available to them. *Id.* at 588-89, 598-99. And finally, Plaintiff’s last case, *De Ren Zhang v. Barr*, is a highly-specialized appeal from a Board of Immigrations matter, wherein a Chinese citizen was completely denied a standard evidentiary hearing, and his request for a continuance was denied based on an erroneous belief that the matter was 12-years older than it actually was. 767 Fed. Appx. 101, 103-05 (2d Cir. 2019).

could not avoid scrutiny by merely “packaging a commercial message with token political commentary”).

42. Moreover, even if Annunciation House were right (it is not) about associational rights protecting its alien logs, that would only be the beginning of the inquiry—the OAG could overcome this invocation of associational rights by showing “a substantial relation between the information sought and a subject of overriding and compelling state interest.” *In re Bay Area*, 982 S.W.2d at 381 & n.10. OAG can easily make that showing here because the alien logs are highly relevant to investigations into whether Annunciation House is committing a host of legal violations. *See supra* ¶¶ [14-18]. The appearance of unlawfully present aliens in its logs, for example, could show *both* that Annunciation House is in fact facilitating, encouraging, and aiding illegal entry in violation of 8 U.S.C. § 1325, and that it has knowledge of such unlawful presence through its logs.

#### **PRAYER FOR RELIEF**

43. OAG incorporates by reference the preceding paragraphs and introduction as if fully set forth herein.

44. As explained above, Annunciation House has refused to comply with the Attorney General’s valid Request to Examine. Accordingly, Annunciation House has performed or omitted an act that requires a surrender or causes a forfeiture of its rights and privileges as a foreign corporation registered to transact business in Texas. Tex. Civ. Prac. & Rem. Code § 66.001; Tex. Bus. Orgs. Code 12.155; *Walker-Texas Inv.*, 323 S.W.2d at 606.

45. Therefore, OAG respectfully prays that the Court enter judgment in favor of the Attorney General and order the following:

- a. That quo warranto relief is warranted;
- b. That Annunciation House forfeit its rights and privileges as a registered corporation;
- c. That Annunciation House's registration is immediately dissolved and void;
- d. Permanent injunctive relief prohibiting Annunciation House from transacting any business in Texas;
- e. A receiver be appointed to wind up Annunciation House's affairs;
- f. OAG be awarded all costs and expenses in prosecuting this Counterclaim; and
- g. OAG be awarded any further relief to which it demonstrates entitlement under the law.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

JAMES LLOYD  
Deputy Attorney General for Civil Litigation

RYAN S. BAASCH  
Chief, Consumer Protection Division

/s/ Rob Farquharson

ROB FARQUHARSON  
Assistant Attorney General  
State Bar No. 24100550  
Office of the Attorney General of Texas  
Consumer Protection Division  
300 W. 15th St.  
Austin, Texas 78701  
Phone: (214) 290-8811



Fax: (214) 969-7615  
Rob.Farquharson@oag.texas.gov

LEVI T. FULLER  
Assistant Attorney General  
State Bar No. 24087548  
Office of the Attorney General of Texas  
Consumer Protection Division  
Levi.Fuller@oag.texas.gov

**ATTORNEYS FOR THE STATE OF TEXAS**

# EXHIBIT 1



OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION DIVISION

**REQUEST TO EXAMINE**

To: Annunciation House  
815 Myrtle Ave  
El Paso, TX 79901-1511

*Re: The Office of the Attorney General's Investigation of Annunciation House*

The Office of the Attorney General, as the representative of the public's interest, is charged under Texas law with the power and duty to protect and enforce the public interest in nonprofit organizations. In this capacity, this Office reviews nonprofit entities to determine compliance with Texas law.

Annunciation House, Inc. ("Annunciation House"), is a Domestic Nonprofit Corporation registered to do business in Texas as a domestic filing entity. Pursuant to this office's specific authority under Texas law, including Texas Business and Organizations Code Section 12.151, *et seq.*, the Office of the Attorney General is undertaking an investigation into the organization, conduct, and management of Annunciation House.

Under Texas Business and Organizations Code:

To examine the business of a filing entity or foreign filing entity, the attorney general shall make a written request to a managerial official, who shall immediately permit the attorney general to inspect, examine, and make copies of the records of the entity.

Tex. Bus. Orgs. Code § 12.152.

Pursuant to this authority, the Office of the Attorney General is issuing this Request to Examine (RTE), requesting that Annunciation House produce the documents set forth in Attachment "A." You are to make available the documentary material described in Exhibit "A" to the undersigned Assistant Attorney General or other authorized agent(s) identified by the Consumer Protection Division ("Division"). This documentary material shall be produced for inspection and copying during normal business hours at your principal office or place of business and is due immediately upon receipt of this Request to Examine. You will permit Levi Fuller and

Will Taylor, authorized agents of the Attorney General of Texas, immediate access for an examination and investigation of all requested materials and to make reproductions or copies of said materials. ***Please contact one of the persons listed below upon receipt in order to discuss and the logistics of producing the requested documents to the Consumer Protection Division***

## NOTICE

### Duty to Supplement

Annunciation House and its board and officers are given notice that this RTE remains effective until the Office of the Attorney General's investigation is complete, and that Annunciation House has a continuing duty to supplement its responses and to continue to produce documents and records that are within the scope of these requests. Additionally, as the investigation progresses, the Attorney General may request additional documents pursuant to one or more Supplemental Requests to Examine.

**TAKE NOTICE THAT pursuant to Sections 12.155-12.156 of the Tex. Bus. & Org. Code, a foreign filing entity or filing entity that fails or refuses to permit the Attorney General to examine or make copies of a record, without regard to whether the record is located in this state, forfeits the right of the entity to do business in this state, and the entity's registration or certificate of formation shall be revoked or terminated.**

**Further, a managerial official or other individual having the authority to manage the affairs of a filing entity or foreign filing entity commits an offense if the official or individual fails or refuses to permit the Attorney General to make an investigation of the entity or to examine or to make copies of a record of the entity. An offense under this section is a Class B misdemeanor.**

ISSUED THIS 7<sup>th</sup> day of February, 2024.

/s/ Levi Fuller

Levi Fuller

Assistant Attorney General

Consumer Protection Division

Office of the Attorney General

(512) 463-2185 (phone)

(512) 370-9125 (fax)

levi.fuller@oag.texas.gov (email)

Other Authorized Agents:

Christopher Krhovjak, Investigator

Consumer Protection Division

Office of the Attorney General

(512) 475-4175 (phone)

christopher.krhovjak@oag.texas.gov (email)

# ATTACHMENT “A”

## Instructions

1. **Read These Instructions/Definitions Carefully.** Your production must comply with these instructions and definitions.
2. **Duty to Preserve Documents.** All documents and/or other data which relate to the subject matter or requests of this RTE must be preserved. *Any ongoing, scheduled, or other process of document or data destruction involving such documents or data must cease even if it is your normal or routine course of business for you to delete or destroy such documents or data and even if you believe such documents or data are protected from discovery by privilege or otherwise.* Failure to preserve such documents or data may result in legal action and may be regarded as spoliation of evidence under applicable law.
3. **Relevant Dates.** Unless otherwise noted, the requests in this RTE require production of documents from January 1, 2022 to the date this RTE is received, herein called “the relevant time period.”
4. **Custody and Control.** In responding to this RTE, you are required to produce not only all requested documents in your physical possession, but also all requested documents within your custody and control. A document is in your custody and control if it is in the possession of another person and you have a right to possess that document that is equal or superior to that other person’s right of possession. On the rare occasion that you cannot obtain the document, you must provide an explanation as to why you cannot obtain the document which includes the following information:
  - a. the name of each author, sender, creator, and initiator of such document;
  - b. the name of each recipient, addressee, or party for whom such document was intended;
  - c. the date the document was created;
  - d. the date(s) the document was in use;
  - e. a detailed description of the content of the document;
  - f. the reason it is no longer in your possession, custody, or control; and
  - g. the document’s present whereabouts.

If the document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the document was destroyed or otherwise disposed of, and the date and manner of the destruction or disposal.

5. **Non-identical Copies to be Produced.** Any copy of a document that differs in any manner, including the presence of handwritten notations, different senders or recipients, etc. must be produced.
6. **No Redaction.** All materials or documents produced in response to this RTE shall be

produced in complete unabridged, unedited, and unredacted form, even if portions may contain information not explicitly requested, or might include interim or final editions of a document.

7. **Document Organization.** Each document and other tangible thing produced shall be clearly designated as to which request, and each sub-part of a request, that it satisfies. The documents produced shall be identified and segregated to correspond with the number and subsection of the request.

8. **Production of Documents.** You may submit photocopies (with color photocopies where necessary to interpret the document) in lieu of original hard-copy documents if the photocopies provided are true, correct, and complete copies of the original documents. If the requested information is electronically stored information, it shall be produced in electronic form. Electronically stored information shall be produced with the accompanying metadata, codes, and programs necessary for translating it into usable form, or the information shall be produced in a finished usable form. For any questions related to the production of documents you may consult with the Office of the Attorney General representatives above.

9. **Privilege Log.** For each Document and any other requested information that you assert is privileged or for any other reason excludable from production, please provide a privilege log, wherein you:

- a. Identify that Document and other requested information;
- b. State each specific ground for the claim of privilege or other ground for exclusion and the facts supporting each claim of privilege or other ground for exclusion;
- c. State the date of the Document or other requested information; the name, job title, and address (including city, state and ZIP Code) of the person who prepared it; the name, address (including city, state, and ZIP Code), and job title of the person to whom it was addressed or circulated or who saw it; and the name, job title, and address (including city, state, and ZIP Code) of the person now in possession of it; and
- d. Describe the type and subject matter of the Document or other requested information.

## Definitions

1. **“You,” “Your,” and, “Annunciation House”** means the entity named on page one of this RTE and includes its past and present directors, officers, employees, agents and representatives, parents and predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all persons and entities acting or purporting to act under the guidance of or on behalf of any of the above. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any firm in which there is total or partial ownership (25 percent or more) or control between Annunciation House, and any other person or entity.
2. **“Alien”** means any person not a citizen or national of the United States as set forth in United States Code, 8 U.S.C. § 1101.
3. **“Referral”** means any action taken to refer an Alien, whether here legally or illegally, to a lawyer or any legal services organization.
4. **“Facility”** or **“Facilities”** include, but are not limited to any temporary or permanent residential structures, commercial buildings, or leased or rented structures to which your organization, its clients, or partners have ownership or regular access.
5. **“Funding”** or **“Funds”** mean assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including coin, currency, bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, and letters of credit.
6. **“Emergency Food and Shelter Program”** refers to the program for humanitarian relief under the purview of the Federal Emergency Management Agency (FEMA).
7. **“Intake Process”** is defined to mean your procedure, including any paperwork, used to document each individual new migrant seeking services, shelter, or assistance of any kind from you.
8. The words **“and”** and **“or”** shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of the request, any document(s) that might be deemed outside its scope by another construction.
9. **“Communication”** means any conversation, discussion, letter, email, correspondence, memorandum, meeting, note, or other transmittal of information or message, whether transmitted in writing, orally, electronically, or by any other means.
10. **“Concerning”** or **“Relating to”** or **“Related to”** means related to, referring to, pertaining to, concerning, describing, regarding, evidencing, or constituting.
11. **“Document”** is used herein in the broadest sense of the term and means all records and other tangible media of expression of whatever nature however and wherever created, produced, or stored (manually, mechanically, electronically, or otherwise), including without limitation all versions whether draft or final, all annotated or nonconforming or other copies, electronic mail (e-mail), instant messages, text messages or other wireless device messages, voicemail, calendars,

date books, appointment books, diaries, books, papers, files, notes, confirmations, accounts statements, correspondence, memoranda, reports, records, journals, scientific or medical studies, registers, analyses, plans, manuals, policies, telegrams, faxes, telexes, wires, telephone logs, telephone messages, message slips, minutes, notes or records or transcriptions of conversations or Communications or meetings, tape recordings, videotapes, disks, and other electronic media, microfilm, microfiche, storage devices, press releases, contracts, agreements, notices, and summaries. Any non-identical version of a Document constitutes a separate Document within this definition, including without limitation drafts or copies bearing any notation, edit, comment, marginalia, underscoring, highlighting, marking, or any other alteration of any kind resulting in any difference between two or more otherwise identical Documents. In the case of Documents bearing any notation or other marking made by highlighting ink, the term Document means the original version bearing the highlighting ink, which original must be produced as opposed to any copy thereof.

12. “**Identify**” means the following:

- a. With respect to a natural Person, the complete name, any alias(es), social security number, date of birth, occupation, title(s), job responsibilities, street and mailing address for both home and business at the time in question and at the time of responding (if different), home, cellular, and business telephone numbers, and personal and business email addresses;
- b. With respect to an entity, its name(s), business address(es), legal address(es), state(s) of incorporation, registered or unregistered tradename(s), name(s) under which it does business, or any other affiliated name(s), electronic email domains and websites operated by the entity, tax identification number(s), and the identity of its agent(s) for the service of process; and
- c. With respect to a Document, its Bates or other sequential notation, title, date, location, author(s), signatory(ies), recipient(s), description (*e.g.*, memorandum, letter, contract, form), the number of pages, and a summary of the contents.

13. “**Person**” means any natural person or any legal entity, including, without limitation, any corporation, company, limited liability company or corporation, partnership, limited partnership, association, or firm.



### **Documents to be Examined**

In accordance with the requirements set forth in the “Definitions” and “Instructions” sections of this RTE, You are specifically required to produce the following documents for immediate examination and duplication:

1. Documents sufficient to show all Referrals within the relevant time period.
2. Documents sufficient to show all services that you provide to Aliens, whether present in the United States legally or illegally.
3. Documents sufficient to identify all Facilities in Texas under your control or operating at your behest.
4. All applications for humanitarian relief funding, submitted by your organization, through the Emergency Food and Shelter Program (ESFP).
5. All underlying documentation supporting your applications for humanitarian relief funding under the ESFP, including all documentation that you are required to maintain under that program.
6. All documents provided by individual Aliens as part of your Intake Process.
7. All logs identifying Aliens to whom you have provided services in the relevant time period.

# EXHIBIT 2

## IMMIGRATION

# Annunciation House helps undocumented immigrants apply for asylum



by **Priscilla Totiyapungprasert**

January 20, 2023



About 40 migrants attended an asylum workshop at the Casa Papa Francisco shelter on Thursday. (Priscilla Totiyapungprasert/El Paso Matters)

Kiara longs to see the Chicago that enchanted her on TV, the sanctuary city of emerald parks, elevated trains and, she hopes, plenty of jobs for people like her.

She arrived in El Paso on New Year's Eve with her husband and toddler after fleeing Venezuela more than four months ago. The family joined other migrants who avoided Border Patrol when crossing the Rio Grande, out of fear that agents would send them back to Mexico. Her family took refuge with Annunciation House, a faith-based organization that shelters and supports migrants and refugees.

The nonprofit is now helping Kiara and other migrants apply for asylum online, so they can begin the process of obtaining a work permit and have a chance of recreating a new life.

“They’ll kill you if you have money, they’ll kill you if you don’t,” Kiara said while describing the *colectivos* – paramilitary groups, allies of Venezuelan president Nicolás Maduro, that extort, murder and kidnap people.

Migrants have the right to request asylum and remain in the United States while their case is pending. But since March 2020, immigration officials have used the emergency health order [Title 42](#) to immediately expel people from certain countries, cutting off this legal avenue for many.

On Thursday morning, Kiara was in a group of about 40 people who attended an asylum workshop at the Casa Papa Francisco shelter. Ruben Garcia, director of Annunciation House, invited immigration attorney Nancy Oretskin to guide them through the process of requesting asylum. In the first half of the day, Oretskin explained what situations qualified for asylum and what records they could gather to establish their case. Molly Molloy, a research librarian and professor at New Mexico State University, gave interpretation in Spanish.



Immigration attorney Nancy Oretskin helped guide several migrants through the process of requesting asylum. (Priscilla Totiyapungprasert/El Paso Matters)

Garcia said his organization is housing close to [300 migrants right now](#), many of whom are stuck in limbo because they were never processed by immigration officials. Some fear they will be deported if they turn themselves into immigration authorities to request asylum.

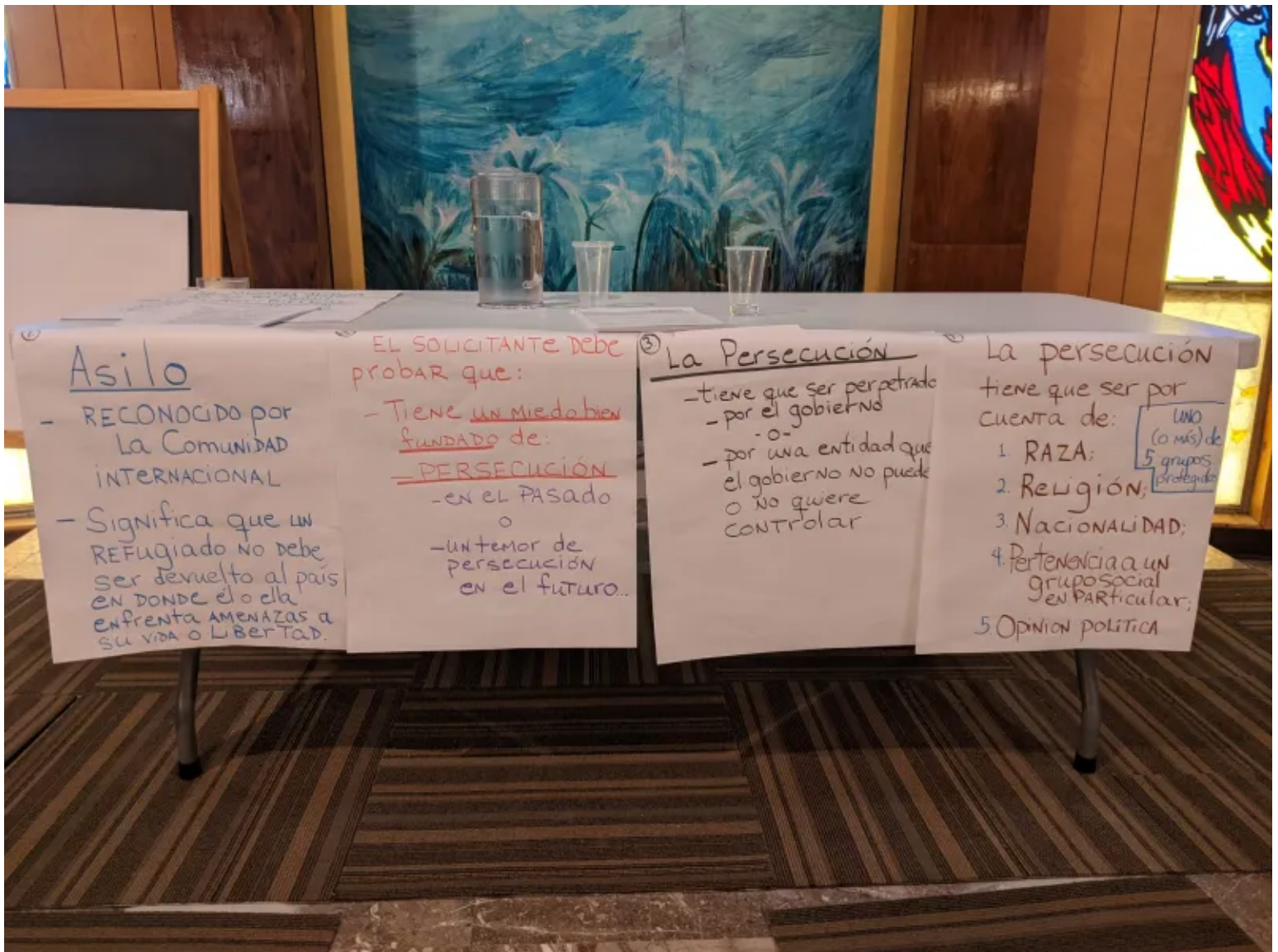
“They’re saying, ‘We want to present ourselves. We want to get processed. We want to proceed with our asylum.’ So from that was born the idea, let’s have a workshop on asylum,” Garcia said. “It’s about enabling asylum seekers to actually access the asylum process, which is their right to do, which has been denied.”

After a lunch break, people could begin to fill out their asylum applications on paper in Spanish. Next, their documents will get translated to English. The asylum seekers will then return so a translator can go over their application for accuracy. The applicant will then fill out and submit their form online.

“If people are given the tools and they have a valid claim and they know how to proceed, they should be able to win,” Oretskin said. “There are a lot of professionals that prey on uneducated people. For example, the application is free, but they need some assistance on how to complete it.”

Attorneys often charge by the hour, and the unscrupulous ones exploit migrants in vulnerable positions. In 2013, Oretskin co-founded the Southwest Asylum and Migration Institute to provide free and low-cost legal services to asylum seekers, undocumented immigrants who were brought to the U.S. as children, and immigrants in detention.

Many people who want to open an asylum case don't have the ability to obtain an attorney, Oretskin said. People qualify for asylum if they experience persecution in their home country because of their race, religion, nationality, social group or political opinion – or political opinion someone thinks they have. Applications must be submitted in English, so attorneys need to work with translators, including in languages outside of Spanish.



Several nonprofits are providing migrants information on how to seek asylum. (Priscilla Totiyapunprasert/El Paso Matters)

At Thursday's seminar, Oretskin taught people how to recognize if they have a case and what types of documentation they can use as proof, such as police reports and baptism records to show they're a member of a church. Phone call records and text messages are types of evidence that asylum seekers might not think about, Oretskin said.

One participant in the workshop said he left Venezuela because of the stigma of being a gay man diagnosed with HIV, especially in his hometown where a machista culture is pervasive. Even his family was indirectly affected through association, he described. He's also been unable to get HIV treatment, which is controlled by the state.

"I didn't want to fight for my life over there," he said.

Immigration courts are working through a massive backlog of asylum cases, Oretskin said. There were nearly 1.6 million people awaiting asylum hearings, according to a December 2022 [report](#) from Syracuse University. The highest number of applicants come from Guatemala, Honduras, El Salvador, Mexico and Venezuela.



Ruben Garcia, executive director of Annunciation House, speaks at a protest against the expansion of Title 42 at Chihuahueta Park on Saturday, Jan. 7. (Corrie Boudreaux/El Paso Matters)

Venezuelan nationals were initially excluded from Title 42, but the Biden administration expanded the policy in October after Mexico agreed to accept expelled Venezuelans. The federal government was then scheduled to lift Title 42 altogether in December, but the Supreme Court ruled it would keep the health order in place indefinitely. Many migrants from the restricted countries, who spent months living in Mexico without work or home, expressed dismay because they had been waiting to cross the border. Those who crossed without getting processed were rejected from the city's federally-funded shelters, which only allows documented migrants to enter.

“Do people in El Paso want to see hundreds and hundreds of people sleeping on the street? They don’t,” Garcia said. “We’ve had tens of thousands of people pass through El Paso in an orderly safe manner, and now that’s not happening because the rules of the game have been changed.”



Garcia said the [Annunciation House](#) is planning additional workshops to help more migrants fleeing persecution go through the asylum process.

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# EXHIBIT 3



certain specified documents in Annunciation House's possession. The representative informed us that she would have a supervisor come out to meet with us.

4. The representative proceeded to shut the front door of the establishment while we waited outside for her to notify a supervisor.
5. After a brief wait, a woman named Mary Bull arrived, and identified herself as the director of the facility. We provided her with a copy of the RTE, explained who we are, explained the purpose of the RTE, and again requested that we be given access to the specified documents in the RTE. She informed us that she would have to discuss this topic with the Annunciation House director, Ruben Garcia.
6. Ms. Bull proceeded to call Ruben Garcia and, after speaking with him briefly on the phone, placed the phone on speaker mode, ensuring the conversation was audible to all present and we could communicate as a group. We notified Mr. Garcia of our business and purpose, explained the RTE, and requested that we be granted access to the information requested in the RTE.
7. Mr. Garcia stated that he would need to consult an attorney before being able to comply with the RTE demands. We agreed to allow time for Mr. Garcia to confer with an attorney and requested that the OAG receive a response by the end of the day.
8. After the call with Mr. Garcia was concluded, Maj. Rasmussen, AAG Fuller, and I parted ways with Ms. Bull.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day, February 15, 2024.

/s/ William Taylor  
William Taylor  
Consumer Protection Division

# EXHIBIT 4



as a receiving site for individuals seeking assistance and was believed to be the main office of Annunciation House.

4. Secretary of State records show the Executive Director of Annunciation House as Ruben L. Garcia. A source of information observed Garcia dropping off groceries at location 1. Garcia was driving a white Toyota truck bearing TXLP- GSP-4841. This vehicle registration showed the owner as Annunciation House.
5. Location 1 showed evidence of housing of unidentified persons inside the building. A source of information identified several Hispanic individuals from adults to small children seen entering and leaving this Location 1. Source of information also observed what appeared to be bunk beds on the second-floor level of the building from the windows.
6. A source of information identified that only three individuals possessed a key allowing entry into Location 1, one individual later identified as an employee of Annunciation House, and another two unidentified women. Everyone else observed entering the building rang a doorbell before they were allowed into the building.
7. The second location identified was 815 Myrtle Avenue, El Paso Texas 79901 (Location 2). Location 2 shows to be owned by Annunciation House according to CAD records and was identified through open-source records as “Casa Teresa”. Source of information observed a clothesline in the rear of the building with laundry hanging to dry. Location 2 is believed to be a housing for individuals associated with Annunciation House.
8. The third location identified was located at 325 Leon Street, El Paso Texas 79901 (Location 3). Location 3 shows to be owned by Annunciation House according to CAD records and was identified through open-source records as “Casa Vides”. Source of information

observed clotheslines in the rear yard of the building with laundry hanging to dry. Location 3 is believed to be a housing for individuals associated with Annunciation House.

9. The fourth location identified was 5636 Frutas Avenue, El Paso Texas 79901 (Location 4). Location 4 was under renovation and is believed to not have any inhabitants currently living at this location.
10. A source of information identified members of the Annunciation House giving guidance to individuals seeking information. The staff member stated, if a person crossed the border into the United States undetected, that they Annunciation House would be able to assist them and provide shelter at their facility.
11. The staff member stated, if the person crossed the border and was placed in a shelter by immigration, then they wouldn't be able to provide any shelter. The staff member advised the best way is to enter via the Port of Entry, but that is not always ideal.
12. The staff member advised that they could offer hospitality to an undocumented/undetected person if they came to them at their facility. The staff member referred individuals to "Las Americas" for legal aid, and Diocesan Migrant Refugee Services (DMRS) for assistance as well.
13. The staff member stated again that if the person crossed over legally, that person would be placed in shelter by immigration, and they could not help because it is too complicated if the person is placed in a shelter by immigration. The staff member stated if the person comes over illegally, they work with that on a case-by-case basis.
14. The staff member also advised that they could help a person with paperwork and in the past, they had ways to help people on the other side of the border in Mexico to assist



persons in coming over, but currently do not have that available service in Mexico. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this day, February 15, 2024.

/s/ Anthony Carter  
Sgt. Anthony Carter  
Criminal Investigations Division

# EXHIBIT 5

**From:** [Jerome Wesevich \(ELP\)](#)  
**To:** [Levi Fuller](#)  
**Cc:** [Will Taylor](#)  
**Subject:** RE: [EXTERNAL EMAIL] Request to Examine - Annunciation House  
**Date:** Thursday, February 8, 2024 3:39:46 PM  
**Attachments:** [2024.02.08 - exh b - email fr ag - printed and stamped.pdf](#)  
[2024.02.08 - exh a - admin subpoena packet delivered to ahi - printed and stamped \(3\).pdf](#)  
[2024.02.08 - original petition ahi - FINAL.pdf](#)  
[2024.02.08 - TRO signed by judge dominquez.pdf](#)

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Dear Messrs. Fuller and Taylor:

Annunciation House wishes to provide you the documents to which you are entitled under law. This will require study and work on our part, and unfortunately litigation as well because it is impossible to comply with your deadline, and we remain concerned about the legality of certain aspects of your request.

Consequently we found it necessary to secure the attached Temporary Restraining Order, which temporarily prevents you from making findings concerning your Request to Examine or otherwise enforcing it. I have also attached our petition and application for the TRO, with all filed exhibits, and the receipt for our bond.

To be clear, Annunciation House has always intended to comply with Texas law. We remain open to constructive dialogue with you to discern what documents you need to reassure you that Annunciation House is complying with Texas law.

[JEROME WESEVICH](#)  
TEXAS RIOGRANDE LEGAL AID  
1331 TEXAS AVENUE  
EL PASO, TEXAS 79901  
(915) 585-5120  
[WWW.TRLA.ORG](#)

---

**From:** Levi Fuller <Levi.Fuller@oag.texas.gov>  
**Sent:** Wednesday, February 7, 2024 4:17 PM  
**To:** Jerome Wesevich (ELP) <JWESEVICH@trla.org>  
**Cc:** Will Taylor <Will.Taylor@oag.texas.gov>  
**Subject:** RE: [EXTERNAL EMAIL] Request to Examine - Annunciation House

Dear Mr. Wesevich,

Thank you for your email. This response serves to clarify your client's obligations under our Request to Examine.

*First*, our Request to Examine instructed your client to give our office **immediate** access to inspect certain specified records. Our statutory authority instructs that your client "shall immediately permit" our office to "inspect, examine, and make copies" of those records. Tex. Bus. Orgs. Code 12.152. To avoid any conceivable doubt about this matter, the courts have repeatedly held that our office's authority to inspect records under this statute is "full and unlimited and unrestricted" and may be exercised "at any time and as often as [we] may deem necessary." *Humble Oil & Refining CO. v. Daniel*, 259 S.W.2d 580, 587-88 (Tex.App. 1953); *Chesterfield Finance v. Wilson*, 328 S.W.2d

479, 481 (Tex. App. 1959) (same). Although the statute entitles us to **immediate** access, we nevertheless gave your client time today to consult internally and with its attorneys regarding our Request to Examine. But your email that you “expect” to provide a “response” “within 30 days” is not compliant with our Request to Examine. Unless your client provides us access to the specified records in its possession by **tomorrow, February 8**, we will deem it to be in non-compliance with our Request to Examine.

Granted, we recognize that your client may not physically possess every record that we are seeking to examine. Your client’s obligation to comply immediately does not request it to perform impossible feats. But it would defy credulity for at least some records to not be available. For example, our Request to Examine identified that your client must provide us access to “All logs identifying Aliens to whom [it] ha[s] provided services in the relevant time period.” Unless your client simply does not maintain such logs, then those logs are presumably available for our inspection “immediately” within the meaning of the statute and our Request to Examine. In addition, to the extent your client maintains digital files of any of the records that we are requesting to examine, we likewise assess those records to be available for our “immediate” inspection.

*Second*, your client should also treat this response as an instruction to **preserve all records that may relate to our Request to Examine** and to **cease any protocol for the automatic deletion of emails or backup files on its computer systems**. Please ensure that all employees and contractors of your client are aware of their obligation to preserve records.

*Third*, as noted above, the Office of the Attorney General will deem your client to be in non-compliance with our Request to Examine if it does not provide us access to the specified records in its possession by tomorrow, February 8. In order to facilitate our access, you may reach me at this email address.



Levi T. Fuller  
Assistant Attorney General  
Special Litigation and Non-Profit Enforcement  
Consumer Protection Division  
Office of the Attorney General of Texas  
P: (512) 936-1308  
Fax.: (512) 473-8301  
[Levi.fuller@oag.texas.gov](mailto:Levi.fuller@oag.texas.gov)

**PRIVILEGED AND CONFIDENTIAL:** This communication and any attachments are intended solely for the use of the individual or entity to which it is addressed, may be confidential and/or privileged pursuant to Government Code sections 552.101, 552.103, 552.107 and 552.111, and should not be disclosed, copied, or distributed without the express authorization of the Attorney General. If you have received this e-mail in error, immediately delete same and contact the sender.

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**From:** Jerome Wesevich (ELP) <[JWESEVICH@trla.org](mailto:JWESEVICH@trla.org)>

**Sent:** Wednesday, February 7, 2024 4:47 PM

**To:** Levi Fuller <[Levi.Fuller@oag.texas.gov](mailto:Levi.Fuller@oag.texas.gov)>

**Subject:** Request to Examine - Annunciation House

Good afternoon Mr. Fuller. My office represents Annunciation House regarding the request to examine documents that your office served on it this morning. I expect to provide its response to you within 30 days.

Respectfully,

JEROME WESEVICH  
TEXAS RIOGRANDE LEGAL AID  
1331 TEXAS AVENUE  
EL PASO, TEXAS 79901  
(915) 585-5120  
[WWW.TRLA.ORG](http://WWW.TRLA.ORG)

# EXHIBIT 6

No. \_\_\_\_\_

ANNUNCIATION HOUSE, INC.,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	EL PASO COUNTY, TEXAS
	§	
v.	§	_____ JUDICIAL DISTRICT
	§	
KEN PAXTON in his official capacity as	§	
Texas Attorney General, and	§	
JENNIFER COBOS, in her official capacity	§	
as Director of Regional Operations &	§	
Strategy for the Office of Attorney General	§	
	§	
<i>Defendants.</i>	§	

**VERIFIED ORIGINAL PETITION FOR DECLARATORY JUDGMENT,  
APPLICATION FOR TEMPORARY RESTRAINING ORDER, AND  
APPLICATION FOR TEMPORARY INJUNCTION**

**DISCOVERY**

1. Plaintiff intends to conduct any needed discovery pursuant to TEX. R. CIV. P. 190.3 Level Two, and affirmatively pleads that Plaintiff seeks declaratory and injunctive relief.

**PRELIMINARY STATEMENT**

2. The office of Defendant Ken Paxton, Texas Attorney General (AG), has demanded that Plaintiff Annunciation House, Inc., (AHI) produce extensive and sensitive documents within *one day* of being served with a “Request to Examine” letter. The AG threatened criminal sanctions and forfeiture of AHI’s right to do business in Texas if the AG, in his sole discretion, decides that AHI has not complied. This demand violates Due Process, Equal Protection, the First Amendment, and other law, and is thus *ultra vires*. To preserve the *status quo* and forestall irreparable harm to AHI’s capacity to continue its religious and charitable mission, which it has pursued in El Paso for 46 years, AHI needs immediate injunctive relief preventing further enforcement of the demand while its constitutional and other legal objections are resolved.

## **PARTIES, SERVICE, AND NOTICE**

3. Plaintiff Annunciation House, Inc., is a non-profit corporation that is exempt from taxation under Internal Revenue Code § 501(c)(3), and licensed to operate in Texas.

4. Defendant Ken Paxton is the Texas Attorney General, who is domiciled in Travis County and is sued in his official capacity only.

5. Defendant Jennifer Cobos is the Director of Regional Operations & Strategy for the Office of Attorney General, who is domiciled in El Paso County and is sued in her official capacity only.

## **JURISDICTION AND VENUE**

6. This Court's jurisdiction to enter declaratory relief in this lawsuit is established in TEX. CIV. PRAC. & REM. CODE § 37.003.

7. This Court's jurisdiction to enter injunctive relief in this lawsuit is established in TEX. CIV. PRAC. & REM. CODE § 65.001, *et seq.*

8. Venue in El Paso County is proper under TEX. CIV. PRAC. & REM. CODE §§ 15.002(a) and 65.023.

## **FACTS**

9. AHI was born in 1976 as an expression of Catholic faith and the Gospel calling to serve the poor. See [History – Annunciation House](#).

10. AHI is listed in the National Catholic Directory as a recognized organization of the Catholic Diocese of El Paso and it is via this listing that AHI has nonprofit tax exemption status under a “group ruling” by the Internal Revenue Service.

11. For forty-six years, AHI has operated several shelters in El Paso to serve the needs of homeless people, particularly immigrant and refugee populations.

12. AHI primarily relies on volunteer staff to perform its work, at times up to 30 full-time



volunteers.

13. All persons who work for AHI are kept exceedingly busy due to the demand for shelter services in El Paso, Texas.

14. AHI's board is comprised of former volunteers who live throughout the nation.

15. For over a decade AHI has repeatedly and routinely cooperated with federal and local government officials and agencies in responding to emergencies on the border.

16. On February 7, 2024, the Office of the Attorney General caused to be delivered to Annunciation House a "Request to Examine" (RTE) which demands immediate access to AHI documents, including attorney referrals provided to shelter guests, all documents provided to AHI by its guests, all personal documents that guests provided to AHI as part of seeking shelter, which could include medical and legal documents, and warns that civil and criminal penalties will result if the AG finds non-compliance. Attached Exhibit A. The RTE was apparently delivered by the Consumer Protection Division of the Office of Attorney General.

17. The RTE begins by stating that it is the AG's "duty to protect and enforce the public interest in nonprofit organizations. In this capacity, this Office reviews nonprofit entities to determine compliance with Texas law." *Id.* But the RTE never hints what Texas law it aims to gauge compliance with, so the government interest in the documents sought cannot be guessed.

18. AHI's counsel responded hours later that 30 days were needed for a fair opportunity to respond. Counsel for AG Paxton responded thirty minutes later by stating that "Unless your client provides us access to the specified records in its possession by tomorrow, February 8, we will deem it to be in non-compliance with our Request to Examine." Attached Exhibit B.

**CAUSE OF ACTION  
DECLARATORY JUDGMENT ACT**

19. AHI's rights, status, and legal relations are affected by the statutes referenced by the AG in

the RTE, only some of which the AG cites.

20. Real controversies exist between AHI and the Office of the Attorney General regarding the construction and validity of the statutes that the AG relies upon for issuing the RTE, namely:

a. what deadline Defendants may constitutionally use to determine AHI's compliance with the RTE; and

b. whether Defendants' unexplained demand for sensitive information infringes on AHI's constitutional rights, including religious liberty, association, and equal protection, and the privacy rights of third parties, including their sensitive medical, legal, and personal information.

21. These controversies will be resolved by this action seeking a ruling on when the AG may constitutionally access AHI documents, and what documents the AG may constitutionally access. Suits alleging ultra vires or unconstitutional conduct by a government official "do not seek to alter government policy but rather to enforce existing policy" by compelling a government official "to comply with statutory or constitutional provisions." *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

22. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.004(a), AHI needs to have its rights and obligations under the RTE determined in this action.

#### **BRIEF SUPPORTING APPLICATION FOR TRO**

23. This Court's capacity to determine AHI's rights and obligations will be mooted unless AHI is granted an immediate *ex parte* injunction against further enforcement of the RTE pending a temporary injunction hearing to be set by the Court within fourteen days.

24. AHI can demonstrate a likelihood that it will prevail on its claims in at least two respects:

a. "Due process may . . . be violated if a statute makes it nearly impossible to comply with

its provisions . . . .” *Robinson v. State*, 466 S.W.3d 166, 174 n.2 (Tex. Crim. App. 2015) (Keller, J. concurring). “Holding an individual criminally liable for failing to comply with a duty imposed by statute, with which it is legally impossible to comply, deprives that person of his due process rights.” *Doe v. Snyder*, 101 F. Supp. 3d 722, 724 (E.D. Mich. 2015) (collecting cases); *accord De Ren Zhang v. Barr*, 767 Fed. App’x 101, 103-04 (2d Cir. 2019); *United States v. Dalton*, 960 F.2d 121, 124 (10th Cir. 1992); *Brunetti v. New Milford*, 350 A.2d 19, 31 (N.J. 1975). In light of Annunciation House’s work with vulnerable populations, its limited volunteer staff, its need to consult with its far-flung board members, and the RTE’s breadth on its face, Defendants’ sudden appearance with a demand to be fulfilled in one day is nothing short of an impossible demand that violates Due Process. AHI is perfectly willing to provide the documents which it is required to produce by law, but it cannot be constitutionally required to perform tasks that are practically impossible on pain of severe civil and criminal consequences. AHI has openly operated in El Paso for forty-six years, and the AG has stated nothing to indicate why immediate production of documents, without an opportunity for review by its counsel, comports with Due Process.

b. The Texas Supreme Court has held that the Attorney General violates constitutional rights of association by seeking sensitive information from corporations without proving “convincingly a substantial relation between the information sought and a subject of overriding and compelling state interest.” *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 381 & n.10 (Tex. 1998). The Court refused to read a statute to permit the AG to require a non-profit organization to reveal its donor lists unless a compelling state interest could be stated, which the Court could not find. *Id.* Here, the AG seeks

information similar to donor lists, for example “[a]ll logs identifying aliens to whom you have provided services in the relevant time period.” Attached Exhibit A at 7. And in addition to identity, the RTE seeks personal documents of AHI guests. Yet AG Paxton never discloses in the RTE why he needs this information, or how it could conceivably assist in enforcing any specific Texas law. RTE at 1.

25. The AG threatened imminent injury to AHI unless AHI complies with the RTE within one day, including revoking AHI’s right to continue performing its religious mission and serve persons who it chooses. As the Fifth Circuit recently reiterated, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 348 (5th Cir. 2022) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This injury outweighs any damage that an injunction might cause Defendants, who have not articulated any basis for their need to have immediate access to a broad swath of AHI documents.

26. Due to sovereign immunity, AHI has no remedy at law for Defendants’ threatened constitutional violations. *City of El Paso v. Heinrich*, 284 S.W.3d 366, 368–69 (Tex. 2009).

27. AHI did not provide notice of this petition and TRO request to counsel for the AG because in light of Exhibit B, notice would pose an immediate threat to the *status quo*. Counsel for AG Paxton is Levi Fuller, Asst. Attorney General, P.O. Box 12548, Austin, TX 78711, cell (512) 936-1308, [levi.fuller@oag.texas.gov](mailto:levi.fuller@oag.texas.gov).

### **PRAYER**

WHEREFORE, Plaintiff AHI seeks the following relief:

- a. a temporary restraining order on appropriate bond to preserve the *status quo* and prevent any further findings or enforcement concerning the RTE while the Court decides

what constitutional limits apply to the deadline for responding to the RTE and its scope, which can be addressed at a hearing to be held within 14 days, as provided in the attached proposed Temporary Restraining Order;

b. upon hearing, a temporary injunction specifying constitutional limits on the deadline for response and the scope of the RTE;

c. declaratory judgment that the RTE attached as Exhibit A violates AHI's constitutional rights;

d. costs of suit and attorney fees as provided by TEX. CIV. PRAC. & REM. CODE § 37.009; and

e. all other relief, at law or in equity, to which Plaintiff is justly entitled.

Respectfully submitted,

TEXAS RIOGRANDE LEGAL AID, INC.

February 8, 2024

By: /s/ Jerome Wesevich  
Texas Bar No. 21193250  
jwesevich@trla.org  
1331 Texas Ave.  
El Paso, Texas 79901  
(915) 585-5120

*Attorney for Plaintiff*

#### VERIFICATION

Pursuant to TEX. CIV. PRAC. AND REM. CODE § 132.001(d), I, Ruben Garcia, born August 10, 1948, Director of Annunciation House, Inc. at 815 Myrtle Street, El Paso, TX 79901, declare under penalty of perjury that the statements under "Facts" above (¶¶ 9-18) are true and correct.



Ruben L. Garcia

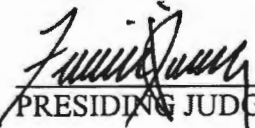
# EXHIBIT 7



public or in conjunction with any other government agency, concerning in any way the Request to Examine that Defendants served on Annunciation House, Inc., on February 7, 2024;

2. Bond is set at the nominal amount of \$100.
3. Issuance and service shall be completed without fee to Plaintiff.
4. A temporary injunction hearing is set for the 22<sup>nd</sup> day of February, 2024 at 1:00 o'clock P.m. Defendant is ORDERED to appear on that date and show cause why a temporary injunction shall not be entered enjoining Defendant, during the pendency of this action, from taking any further action to enforce the Request to Examine or to issue any findings regarding it.

SO ORDERED this 8th day of February, 2024, at 11:30 o'clock, A.m.

  
\_\_\_\_\_  
PRESIDING JUDGE



