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Church*

11
12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF ARIZONA**

14 GETHSEMANI BAPTIST CHURCH, an
15 Arizona nonprofit corporation,

16
17 Plaintiff,

18 v.

19 CITY OF SAN LUIS, a political subdivision
20 of the State of Arizona; NIEVES G.
21 RIEDEL, in her individual capacity; JENNY
22 TORRES, in her individual capacity;
23 ALEXIS GOMEZ CORDOVA, in his
24 individual capacity,

25 Defendants.

No.

VERIFIED COMPLAINT

(Jury Trial Demanded)

1 For its Verified Complaint, Plaintiff alleges as follows:

2 **PRELIMINARY STATEMENT**

3 1. For decades, Plaintiff Gethsemani Baptist Church (the “Church”) has
4 operated a food ministry as part of its religious mission to support some of the most
5 vulnerable families in the southernmost part of Yuma County and across the border in
6 Mexico. Through this ministry, the Church fills a critical need in the City of San Luis (the
7 “City”) by sharing the Gospel and donating food and other supplies, which it ferries to its
8 property using a semi-truck. Because no other food ministries exist within the City, the
9 Church’s charitable activities have been a blessing for the community, with the City often
10 celebrating or even participating in the Church’s ministry efforts.

11 2. However, the election of a new mayor in December 2022 heralded a major
12 shift in the City’s approach. Although the Church had operated the food ministry in the
13 same manner for approximately twenty-three years without complaint, the City suddenly
14 turned hostile, bombarding the Church with a series of accusations that the Church’s use of
15 its property and semi-trucks violate the City’s Zoning Code, and threatening to take
16 enforcement action if the Church does not cease its operations. Although the Church
17 disclaimed that any of its operations were currently illegal, and committed to rectifying any
18 potential issues moving forward, Defendants refused to even discuss a solution that would
19 allow the ministry to continue—even resorting to citing the Church’s pastor for passing out
20 food to just a few hungry people. Accordingly, the Church has been forced to bring this
21 action to protect its ability to exercise its religious beliefs.

22 3. Defendants’ actions heavily burden the Church’s religious exercise, violating
23 its constitutional and statutory rights. The Church accordingly seeks declaratory and
24 equitable relief and nominal damages to prevent the City of San Luis and named Defendants
25 from violating its fundamental rights to share the Gospel by feeding the hungry.

26 **PARTIES, JURISDICTION, AND VENUE**

27 4. Plaintiff Gethsemani Baptist Church is an Arizona 501(c)(3) nonprofit
28 religious organization located in an R1-6 Single Residence Zoning District at 1010 B Street,

1 San Luis, AZ 85349, only a couple of blocks from the Mexico border. The Church is led by
2 Pastor Jose Manuel Castro (“Pastor Castro”).

3 5. Defendant City of San Luis is a city located in Yuma County, Arizona, and is
4 organized pursuant to Title 9 of the Arizona Revised Statutes.

5 6. Defendant Nieves G. Riedel is the Mayor of San Luis and is named in her
6 individual capacity.

7 7. Defendant Jenny Torres is the Acting City Manager of San Luis and is named
8 in her individual capacity.

9 8. Defendant Alexis Gomez Cordova is a City Code Enforcement Officer of San
10 Luis and is named in his individual capacity.

11 9. This civil rights action raises federal questions under the United States
12 Constitution, the Civil Rights Act of 1871, 42 U.S.C. § 1983, and the Religious Land Use
13 and Institutionalized Persons Act (“RLUIPA”), 42 U.S.C. § 2000cc *et seq.*, and state-law
14 questions under the Arizona Free Exercise of Religion Act (“FERA”), A.R.S. §§ 41-1493
15 *et seq.*

16 10. This Court has original jurisdiction over the federal claims under 28 U.S.C.
17 §§ 1331 and 1343, and it has supplemental jurisdiction over the state-law claims under 28
18 U.S.C. § 1367 because those claims form part of the same case or controversy as the claims
19 brough under federal law.

20 11. For the federal claims, this Court can grant the requested declaratory and
21 injunctive relief under 28 U.S.C. §§ 2201–02 and Federal Rules of Civil Procedure 57 and
22 65, and for the state-law claims, it can grant the requested relief under A.R.S. §§ 41-
23 1493.01(D), 12-1801, 12-1831, and Arizona Rule of Civil Procedure 65.

24 12. The Court can award the requested nominal damages for the federal claims
25 under 28 U.S.C. § 1343, and it can grant costs and attorneys’ fees for all claims under 42
26 U.S.C. § 1988 and A.R.S. 41-1493.01(D).

27 13. Venue in the District of Arizona is proper under 28 U.S.C. § 1391(e) because
28 (a) a substantial part of the events and omissions giving rise to the claim occurred in this

1 district—namely, the City’s attempted enforcement of its zoning laws against the Church,
2 and (b) a substantial part of property that is the subject of the action is situated in the district.

3 **GENERAL ALLEGATIONS**

4 **I. Since 1999, the Church Has Operated a Food Ministry to Serve the Local San**
5 **Luis Community.**

6 14. Gethsemani Baptist Church is a member of the Arizona Southern Baptist
7 Convention and has been an integral part of the City since its founding in 1986.

8 15. In December 1999, the Church began the Gethsemani Food Ministry (the
9 “Food Ministry”) as an expression of its religious beliefs encompassed by its motto,
10 “Passion for God, Compassion for Others.”

11 16. As an extension of its dedication to sharing the Gospel with the community,
12 the Food Ministry’s religious mission is to “help and provide for every necessity expressing
13 the love and purpose of God for everyone.”¹

14 17. The Church’s religious beliefs stem directly from Jesus’ teachings in Matthew
15 25:35–40, which states: “For I was hungry, and you fed me. I was thirsty, and you gave me
16 a drink. I was a stranger, and you invited me into your home. I was naked, and you gave me
17 clothing. I was sick, and you cared for me. I was in prison, and you visited me.”

18 18. Similar teachings appear throughout Scripture: “It is a sin to despise one’s
19 neighbor, but blessed is the one who is kind to the needy . . . whoever is kind to the needy
20 honors God.” *Proverbs* 14:21, 31 (New Int’l Version) (“NIV”). “He upholds the cause of
21 the oppressed and gives food to the hungry.” *Psalms* 146:7 (NIV). “Suppose there is a
22 righteous man who does what is just and right . . . He does not commit robbery but gives
23 his food to the hungry and provides clothing for the naked.” *Ezekiel* 18:5, 7 (NIV).

24 19. For nearly 25 years, the Church has distributed food, clothing, water, and
25 other household supplies to the poor and needy in its community through the Food Ministry.

26 20. In addition to hosting food drives throughout the week, the Church served
27

28 ¹ <https://www.gethsemanifoodministry.org/en/food-ministry>.

1 approximately three hundred families every Saturday between 7:00 a.m. and 11:00 a.m.,
2 where it often shares the Gospel and provides Bibles and other religious literature to any
3 willing individuals who come to receive free food.

4 21. Additionally, the Church sometimes donates excess food and supplies to other
5 churches or community programs with similar missional convictions.

6 22. During the life of the Food Ministry, the Church has distributed hundreds of
7 thousands of pounds of free food to the poor, other churches and ministries both inside and
8 outside the City, and even across the border into Mexico.

9 23. While the Church primarily serves the City's community and its neighbors
10 across the Mexico border, it has provided food to families in Somerton, Yuma, and nearby
11 cities in California.

12 24. The Church regularly provides free food and supplies to hungry migrants and
13 has seen this part of its ministry increase in recent years.

14 25. The Church does not require proof of need or any other qualifications before
15 offering its help. If someone has a need, the Church seeks to meet that need as an extension
16 of its Gospel-based mission.

17 26. The Church has donated over 1,500 free Thanksgiving turkey plates, given
18 away over 100 bicycles, and distributed thousands of personal hygiene products. And
19 during the pandemic, the Church organized approximately 15 drive-thru events, which
20 served over 400 impoverished families, thereby ensuring that their access to essential needs
21 remained uninterrupted.

22 27. The Food Ministry is largely supported by other churches and organizations
23 throughout the southwestern United States, who either donate pallets of food to the Church
24 directly or provide funding to purchase supplies and cover overhead costs.

25 28. The Church occasionally accepts small, voluntary donations from
26 congregants or other community members who wish to support both the Church and the
27 Food Ministry, as well as support the Church's other ministerial outreach to prisons,
28 orphanages, and senior centers.

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1 29. However, the Church does not charge any fee to those receiving free meals.

2 30. For about 14 years, the Church stored most of its food and other supplies at a
 3 warehouse owned by the City.

4 31. The Church has also used a semi-truck to transfer food to its property to
 5 facilitate its distribution efforts since around 2002.

6 32. After picking up food from the warehouse, the semi-truck would drive in from
 7 B Street and then turn into the large, paved parking lot in front of the Church, where it
 8 unloads the food. It would then depart on Babbitt Lane, which is located parallel to B Street
 9 on the other side of the church.



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 21 33. Typically, any food that was dropped off by the semi-truck would be
 22 temporarily kept in the sanctuary for distribution to the needy, and would either be donated
 23 by the end of the day or taken back to the warehouse. While some non-perishable food was
 24 also historically stored longer on Church property, the Church dramatically reduced that
 25 amount to the bare minimum over the last several months and committed to ensuring that
 26 nothing is stored long-term.

27 34. Further, all loading and unloading took place in the Church's parking lot, and
 28 at no point did the Church unload or park the semi-trucks on residential streets around it.

1 35. The Church has also never received any kind of citation for health code
2 violations, and it has passed every annual inspection from the County—including one only
3 a couple of months ago.

4 36. When not in use, the two semi-trucks owned by the Church, as well as a
5 couple of smaller box trucks with trailers, are stored approximately half a mile from the
6 Church in a business complex.

7 37. Since 2012, when the City adopted its current Zoning Code, the Church and
8 its Food Ministry were treated as a “legal nonconforming use,” meaning that it could
9 continue to operate in the residential zone. As relevant here, § 18.80.030 of the Zoning Code
10 provides that a “legal nonconforming use may continue only in the manner and to the extent
11 that it existed at the time of such enactment, amendment, or annexation.”

12 38. While the Food Ministry has certainly grown in scale in the years since its
13 founding, requiring larger trucks as early as 2002 to effectively transport food and supplies,
14 it has not dramatically changed in scope or character since the Zoning Code was adopted.

15 **II. Despite Decades of Cooperation, Defendants Suddenly Demand that the**
16 **Church Cease Operating its Food Ministry.**

17 39. For most of the Church’s history, the Church and its Food Ministry had a
18 positive working relationship with the City, which had never complained about the Food
19 Ministry’s operations nor informed the Church that its use of semi-trucks on its property
20 violated the City Code.

21 40. In fact, not only was the City well aware of the Church’s Food Ministry and
22 use of semi-trucks, but it actively supported it.

23 41. For instance, the City occasionally provided the Church with grant money to
24 support its ministry.

25 42. Multiple previous city councilmembers helped with the Food Ministry in the
26 past, often participating in food drives that took place on City property.

27 43. And on several occasions, the Church’s semi-trucks were invited by the City
28 to participate in parades and other community events, such as Safety Day and Founder’s

1 Day. During these events, over 100 people would receive free meals as part of the Church’s
2 outreach efforts.

3 44. However, when Mayor Nieves was elected in late 2022, everything changed.

4 45. The Mayor made clear that the Church’s Food Ministry would receive no
5 more support from the City.

6 46. Shortly after taking office, the Mayor informed the Church that it could no
7 longer use the City warehouse to store food or supplies—forcing the Church to move nearly
8 100 pallets of food to a different warehouse located outside the City.

9 47. Although there is a public park across from the Church, the Mayor would not
10 allow the Church to utilize any of that area for activities related to its Food Ministry.

11 48. The Mayor also unsuccessfully attempted to veto the City Council’s approval
12 of approximately \$7,000 in grant money, which the City had frequently given to the Church
13 in the past. The City Council overrode her attempted veto.

14 49. Then, on September 11, 2023, Pastor Castro received a letter from Acting
15 City Manager Jenny Torres, with the Mayor’s knowledge and at her direction, informing
16 the Church that “per city code semi-trucks are not permitted in residential areas,” and that
17 the City would “commence enforcement at the church of the no semi-trucks in the
18 residential neighborhood.” [Ex. A, 09/11/2023 Enforcement Letter from Torres to Castro.]

19 50. Attached to the letter were several Code provisions, including:

- 20 • § 10.15.245, which provides that “[u]pon any street outside
21 of a business or residence district, no person shall stop, park
22 or leave standing any vehicle, whether attended or
23 unattended, upon the paved or main traveled part of the
24 roadway when it is practicable to stop, park or so leave the
25 vehicle off that part of the roadway.”
- 26 • § 10.15.250, which provides that “[n]o person shall stand or
27 park a vehicle with a rated chassis capacity in excess of
28 three-fourths of a ton or a tractor, semitrailer, trailer or bus
on a local street in a residential area except during the
process of loading or unloading the vehicle.
- § 10.15.255, which provides in relevant part that (A) “[t]he
parking of any commercial vehicle of more than one-and-
one-half-tons’ capacity on any lot in any residential area
shall be considered a commercial use and is prohibited,” and
that (D) “[n]o person shall stop, stand, park or store a

1 disabled vehicle or vehicles, or a trailer or a trailer loaded
2 with a vehicle, on any street, alley or right-of-way in any
3 residential or commercial area of the City for a period of
more than two hours.”

4 51. This enforcement threat came as a surprise to the Church, as it did not use the
5 street to park the semi-truck.

6 52. And to the extent it used its own parking lot to load and unload the truck, the
7 Church agreed that it would keep those efforts to under two hours, as permitted by City
8 Code §§ 10.15.250 and -255(D). [Ex. B, 09/27/2023 Letter from J. Dalfanso to City.]

9 53. The Church does not concede that it cannot engage in appropriate food
10 storage on its property, nor that a semi-truck may not park on or near its property for brief
11 periods of time, in accordance with the City Code. Nevertheless, to avoid police
12 enforcement in the short term, the Church immediately began unloading the semi-truck at
13 a location approximately one mile away from its property and utilizing a small trailer to
14 ferry food and supplies to the Church.

15 54. This change immediately and significantly hampered the Church’s ministry
16 efforts and drastically reduced the food distribution to no more than 50 people.

17 55. But the City and Mayor’s efforts did not stop there. On September 29, 2023,
18 the City Planning and Zoning Commission (“P&Z”), through City Code Enforcer Alexis
19 Gomez Cordova, sent a Notice of Zoning Violation to the Church stating that the Food
20 Ministry itself violated the City’s zoning code. [Ex. C, 09/29/2023 Letter from P&Z to
21 Castro.]

22 56. Specifically, the letter stated that although it considered the Church and its
23 Food Ministry to be a legal non-conforming use under § 18.80.030, the “distribution,
24 storage, and traffic generated by the food distribution activity clearly alter the nature and
25 character of the non-conforming use, constituting an illegal change to the non-conforming
26 use.” [*Id.*]

27 57. Accordingly, Defendants, under letterhead from P&Z, demanded that the
28 Church “rectify these violations” within thirty days and stated that such rectification

1 “includes ceasing all commercial level food storage or distribution.” [*Id.*] The City also
 2 reserved the right to pursue all legal remedies against the Church. [*Id.*]

3 58. On September 27, 2023, during a City Council meeting, Pastor Castro and
 4 over 100 community members pled with the Council and the Mayor to allow the Church to
 5 have its semi-truck enter the Church parking lot to load and unload the food for up to two
 6 hours in compliance with City Code.

7 59. Pastor Castro also emphasized that the Food Ministry was a charitable
 8 religious ministry, not a commercial business.

9 60. However, the City and Mayor Nieves simply ignored the Church’s pleas. On
 10 October 4, 2023, Mayor Nieves sent a letter in which she reiterated that food distribution
 11 on the Church’s property violated the City’s zoning code and advised the Church that the
 12 only place the food distribution would be permitted in the City is in a commercial or
 13 industrial zoning district. [Ex. D, 10/04/2023 Letter from Nieves to Castro.]

14 61. On November 2, 2023, the Church sent a letter to Mayor Nieves and the City
 15 Council informing them that the City’s actions were unconstitutional, and that the City had
 16 misapplied its Code against the Church regarding the use of semi-trucks. [Ex. E, 11/02/2023
 17 Letter from Provident Law to City Council.]

18 62. However, in its response on November 7, 2023, the City continued to insist
 19 that the Food Ministry constituted “commercial food storage, preparation, or distribution,”
 20 because, according to the letter, (1) Pastor Castro did not operate the ministry at 1010 B
 21 Street until 2018, (2) the distribution activities had increased in both nature and intensity
 22 over time, and (3) the Church was being used to warehouse and distribute “thousands of
 23 pounds” of food. [Ex. F, 11/07/2023 Letter from City to Provident Law.]²

24 63. Accordingly, the City stated that that under Code § 18.100.030, the Church
 25

26 ² The November 7 Letter suggests that the food distribution previously took place in another
 27 location near 530 Archibald Street, which is located in a general commercial zone. This
 28 location served as the licensing address for a mobile kitchen, which was not directly part of
 the Food Ministry that has always taken place on church property. [Ex. G, 11/13/2023 Letter
 from Provident Law to City, at 2–3.]

1 could not operate the Food Ministry without a Conditional Use Permit (“CUP”)—which,
2 based on the Church’s previous interactions with the Mayor and City Council, would be a
3 fruitless and cost prohibitive effort. [*Id.*]

4 64. However, the City’s justifications for requiring the Church to apply for a CUP
5 are simply incorrect.

6 65. First, Pastor Castro has been loading and unloading semi-trucks of food on
7 the Church’s property at 1010 B Street almost every day for nearly 20 years—a fact which
8 the City was not only aware of, but actively supported. [Ex. G, 11/13/2023 Letter from
9 Provident Law to City, at 2–3.]

10 66. Moreover, the Church does not store “thousands of pounds” of food on its
11 property. Again, most of the Church’s food is stored off-site, and any food on Church
12 property is either donated that day or taken back to the warehouse. And although some long-
13 term food storage took place on its property in the past, the Church has actively taken steps
14 to ensure that is no longer an issue. [*Id.* at 1–3.]

15 67. Finally, the Church proposed that it would no longer request small donations
16 to remove any misconceptions that the Food Ministry was a commercial effort.

17 68. Nevertheless, Defendants refused to budge. On December 7, 2023, the City
18 sent the Church another letter accusing the Church of “routinely operating vehicles in a way
19 that violates numerous provisions of the San Luis City Code and the laws of the State of
20 Arizona,” parking the truck on its property, and violating an unspecified list of “traffic and
21 motor vehicle laws.” [Ex. H, 12/07/2023 Letter from City to Provident Law, at 1–2.]

22 69. It also continued to insist that the Church was engaged in “commercial level
23 food distribution” that required a CUP, and suggested that the Church was posing a “public
24 nuisance” and a health risk by “storing” food on the property. [*Id.*]

25 70. Because of Defendants’ threats, the Church ceased almost all Food Ministry
26 efforts and cancelled multiple events, including its annual Thanksgiving turkey drive-thru
27 and its Christmas toy drive.

28 71. However, Defendants’ crusade against the Church still did not abate.

1 **III. Defendants Have Escalated Their Intimidation Crusade Against the Church**
2 **by Threatening and Extracting Civil and Criminal Penalties on its Pastor.**

3 72. On February 22, 2024, Pastor Castro was handing out small quantities of
4 emergency food supplies to a small group of about 10 people, which he was actively
5 unloading from the small box truck in the Church parking lot. At the time, approximately
6 two pallets of food were present on Church property.

7 73. Without warning, under direction from the City and the Mayor, City Code
8 Enforcer Gomez Cordova entered the Church property and issued four citations against
9 Pastor Castro for (1) unspecified “[u]se of property . . . not permitted in” a residential zone
10 under City Code § 18.05.110(A), and (2) “construction” of an enclosing wall, shade
11 structure, and walk-in cooler “without a building permit” under City Code § 15.10.990(A),
12 even though all of those structures were built by the Church nearly 30 years ago. [Ex. I,
13 02/22/2024 Citation Form.]

14 74. Less than a week later, on February 28, 2024, there was a mistake with a
15 donation delivery. The semi-truck driver was supposed to deliver supplies to another
16 location, away from the Church, but he showed up at the Church instead. Pastor Castro
17 immediately ran outside and asked the driver to take the truck away. Although the truck
18 was parked for only 5 minutes at most, that was enough for Defendants.

19 75. The next day, on February 29, 2024, City Code Enforcer Gomez Cordova
20 arrived at the Church with three City vehicles—two police motorcycles, a City Code
21 Enforcement Specialist truck, a City Transit Enforcement truck—and was accompanied by
22 a police officer. With this entourage in tow, City Code Enforcer Gomez Cordova cited
23 Pastor Castro with identical code violations. [Ex. J, 02/29/2024 Citation Form.]

24 76. The City Code Enforcer indicated that the City had heard that a semi-truck
25 was parked in front of the Church the previous day and demanded information about the
26 third-party that owned the truck. However, Pastor Castro refused to say anything or show
27 the bill of lading, out of fear of getting anyone else in trouble with the City.

28 77. On March 1, 2024, Pastor Castro heard City workers say that he needs to

1 understand that the Food Ministry will be shut down completely.

2 78. As these two incidents show, Defendants are now attempting to extract civil
3 and potentially criminal penalties against the Church’s pastor for feeding the hungry and
4 having structures on its property that have been in plain sight for decades. That Pastor Castro
5 was cited the second time, for a third-party’s mistake, shows an ongoing and increasing
6 pattern of harassment and intimidation against the Church to stop its ministry efforts.

7 79. The Church and its pastor face a severe financial hardship to pay up to \$4,000
8 in fines stemming from these citations over its Food Ministry infrastructure and deliveries.

9 80. If the Church’s pastor is cited one more time, the penalties will increase
10 significantly, as he could be criminally cited with a Class 1 Misdemeanor, and will face
11 another \$2,500 fine, imprisonment for no more than 6 months, or both. SLCC § 18.05.110.

12 81. These incidents caused great embarrassment and frustration to Pastor Castro.

13 82. The Church is worried that if another third party parks in front of the Church
14 by mistake, without invitation from the Church, its pastor may go to jail.

15 83. But despite these aggressive tactics against the Church, Defendants do not
16 appear to be treating similarly situated entities in the residential neighborhood equally.

17 84. Within blocks of the Church, 18-wheeler semi-trucks and other commercial
18 vehicles from FedEx, furniture stores, buses, food trucks, a tow truck company, and a local
19 Head Start program are frequently seen parking, loading, and unloading on residential
20 streets and residences—sometimes, for hours or days at a time.

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1 85. On information and belief, the City has not threatened or formally taken any
2 enforcement action against any of these similarly situated entities.

3 **IV. Defendants' Selective Enforcement and Intimidation Have Harmed the**
4 **Church's Ability to Continue its Ministry.**

5 86. Ultimately, the Church's only interest is its ability to exercise its religious
6 beliefs. This includes (1) operating the Food Ministry on its property, as it has done since
7 1999, and (2) using the semi-truck to load and unload food for the two hours permitted by
8 City Code. The Church is open to working with the City on how to accomplish this.

9 87. If Defendants prevent the Church from operating its Food Ministry on its
10 property, there is nowhere else it could functionally continue, as the Church does not have
11 the funding or resources to buy another building. Moreover, the City, at the direction of
12 Mayor Nieves, refuses to allow the Church to use any public property, city warehouse, or
13 public park—including the park bordering the Church's property—to engage in its relief
14 efforts and religious exercise.

15 88. As a direct result of Defendants' actions, between September 2023 and March
16 3, 2024, the Church had to significantly curtail its Food Ministry. During that time, the
17 Church stopped using necessary infrastructure to easily transport food and supplies, and it
18 has not been able to serve the number of needy that it could before.

19 89. On March 4, 2024, the Church paused its Food Ministry completely in
20 response to the second round of zoning citations issued to Pastor Castro the week before.
21 The Church and its pastor cannot afford the mounting fines and possibility of criminal
22 penalties that might incur if it continues its efforts to feed the hungry in the community. As
23 a result, the Church has, at least temporarily, lost one of its primary methods of sharing the
24 Gospel in the City.

25 90. Defendants' actions have forced the Church to reject donations and tell
26 would-be donors that it cannot accept food and supplies. The Church built these charitable
27 relationships over the course of decades. Its inability to receive donations threatens those
28 relationships, especially with farmers who currently provide the Food Ministry with fresh

1 produce, and may result in permanent loss of donors.

2 91. These harms not only prevent the Church from feeding the hungry in the City
3 but also interfere with the Church’s ability to share the Gospel and follow Jesus’ commands.

4 **FIRST CLAIM FOR RELIEF**

5 **Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc)**
6 **Substantial Burden**

7 92. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

8 93. Under RULIPA, the government is prohibited from “impos[ing] or
9 implement[ing] a land use regulation in a manner that imposes a substantial burden on the
10 religious exercise of a person, including a religious assembly or institution, unless the
11 government can demonstrate that imposition of the burden on that person, assembly, or
12 institution[] (A) is in furtherance of a compelling governmental interest; and (B) is the least
13 restrictive means of furthering that compelling governmental interest.” 42 U.S.C. §
14 2000cc(a)(1).

15 94. Defendants’ zoning codes and ordinances constitute land use regulations
16 under RLUIPA.

17 95. Several courts have expressly recognized that food distribution to the poor
18 and needy is religious exercise. *See, e.g., Harbor Missionary Church Corp. v. City of San*
19 *Buenaventura*, 642 F. App’x 726, 727–29 (9th Cir. 2016) (finding that the church’s
20 homeless ministry, which included offering food, was “an integral part of its religious
21 exercise.”); *W. Presbyterian Church v. Bd. of Zoning Adjustment of D.C.*, 862 F. Supp. 538,
22 544 (D.D.C. 1994) (recognizing that “acts of charity as an essential part of religious worship
23 is a central tenet of all major religions,” and finding that a church’s feeding program was
24 “religious conduct falling within the protections of the First Amendment and the RFRA.”).

25 96. Moreover, for a burden to be considered “substantial,” it “must place more
26 than an inconvenience on religious exercise.” *Guru Nanak Sikh Soc’y of Yuba City v.*
27 *County of Sutter*, 456 F.3d 978, 985 (9th Cir. 2006) (denial of CUP application constituted
28 a substantial burden under RLUIPA).

1 97. Defendants’ efforts to stop the Church from conducting its Food Ministry at
2 its current location, when the Church cannot afford to relocate, substantially burden the
3 Church’s religious exercise. *See Harbor Missionary Church*, 642 F. App’x at 729 (the
4 “City’s denial of a [CUP] prevents the Church from conducting its homeless ministry at its
5 current location,” and the “substantial cost associated with relocating the site of the Church
6 demonstrates that the denial of the [CUP] substantially burdens the Church’s religious
7 exercise.”).

8 98. By effectively prohibiting the Church from operating its Food Ministry on its
9 property, as well as barring the Church from loading and unloading semi-trucks in its
10 parking lot, Defendants are imposing a residential land use restriction against the Church.
11 *See Yellowbear v. Lambert*, 741 F.3d 48, 55–56 (10th Cir. 2014) (Gorsuch, J.) (whenever
12 the government “prevents the plaintiff from participating in [a religious] activity,” giving
13 the plaintiff no “degree of choice in the matter,” that action “easily” imposes a substantial
14 burden on religious exercise); *see also United States v. Hoffman*, 436 F. Supp. 3d 1272,
15 1285 (D. Ariz. 2020) (finding a substantial burden where “enforcement of [] regulations”
16 threatened defendants to “coerce them, via criminal sanctions, into abandoning conduct that
17 is an exercise of religion” (simplified)).

18 99. The Church’s Food Ministry is fundamental to the Church’s free exercise and
19 cannot be severed from its other religious practices. *Harbor Missionary Church*, 642 F.
20 App’x at 729 (finding that “[t]he district court erred by questioning the validity of the
21 Church’s religious beliefs and by determining that its homeless ministry could be divided
22 piecemeal when the Church insisted on the importance of keeping its homeless ministry as
23 a whole at the same location.”)

24 100. Defendants have imposed a substantial burden on the Church’s religious
25 exercise by improperly classifying the Food Ministry as a “commercial” operation and
26 demanding that it cease and desist unless the Church applies for a CUP.

27 101. Similarly, Defendants have substantially burdened the Food Ministry’s
28 operation by prohibiting the Church from even temporarily loading and unloading its semi-

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1 truck on its parking lot for the two hours permitted by City Code.

2 102. Due to Defendants' demands, the Church has been forced to halt nearly all
3 operations related to its Food Ministry, including transporting food using the smaller box
4 trailer, which has dramatically reduced the number of people the Church can assist.

5 103. The Church cannot afford to comply with the City's demand that it obtain a
6 CUP. And even if it could, Defendants' hostility towards the ministry over the last several
7 months illustrates that its application would almost certainly be denied.

8 104. As demonstrated by previous support of the Food Ministry over the last 25
9 years, its treatment as a non-conforming use, and the Church's commitment to abide by all
10 health and safety requirements, the City has no compelling interest in either prohibiting the
11 ministry outright or substantially curtailing its operations.

12 105. Nor does the City have any interest in prohibiting the Church from loading
13 and unloading its semi-trucks in compliance with City Code §§ 10.15.250 and -255(D).

14 106. And even if the City does have some interest in enforcing its Zoning Code,
15 its efforts are not narrowly tailored, as it has refused to allow the ministry to continue even
16 though the Church has moved almost all food storage off its property and agreed to abide
17 by all laws regarding the use of its semi-truck.

18 107. This lack of tailoring is especially evident from the Defendants' decision to
19 cite Pastor Castro for distributing emergency food supplies to only ten hungry people.

20 108. As a direct and proximate result of Defendants' RLUIPA violation, the
21 Church has suffered and will continue to suffer irreparable harm, including the loss of its
22 statutorily protected rights, entitling it to declaratory and injunctive relief, nominal
23 damages, and attorneys' fees.

24 109. Accordingly, Plaintiff seeks (1) a declaration that Defendants' restrictions on
25 the Church's Food Ministry violate RLUIPA; (2) an order enjoining Defendants from taking
26 any enforcement actions on this basis; and (3) an award of nominal damages.

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SECOND CLAIM FOR RELIEF

**Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc)
Equal Terms**

110. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

111. Under RLUIPA, the government may not “impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.” 42 U.S.C. § 2000cc(b)(2).

112. The City’s interests in enforcing its zoning ordinances do not grant it a license to treat the Church worse than comparable institutions. Indeed, under RLUIPA’s straightforward Equal Terms proscription, the City’s motives for treating a religious institution unequally are irrelevant and this Court may not consider them. *See Centro Familiar Cristiano Buenas Nuevas v. City of Yuma*, 651 F.3d 1163, 1170 (9th Cir. 2011). The text of the Equal Terms provision does not provide an interest-balancing test “to see if the government can excuse the equal terms violation.” *Id.* at 1171 (simplified); *see also id.* (explaining “we cannot accept the notion that a ‘compelling governmental interest’ is an exception to the equal terms provision, or that the church has the burden of proving a ‘substantial burden’ under the equal terms provision”); *River of Life Kingdom Ministries v. Village of Hazel Crest*, 611 F.3d 367, 389 (7th Cir. 2010) (Sykes, J., dissenting) (explaining this provision “reflects a congressional judgment about state and local regulation of religious land uses: Regulations that treat religious assemblies or institutions less well than nonreligious assemblies or institutions are inherently not neutral”); *Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 510 F.3d 253 (3d Cir. 2007) (Jordan, J., concurring in part and dissenting in part) (centering the RLUIPA Equal Terms inquiry on a city’s zoning objectives would give it “a ready tool for rendering [the Equal Terms provision] practically meaningless”).

113. Importantly, the “burden is not on the church to show a similarly situated secular assembly, but on the [Defendants] to show that the treatment received by the church should not be deemed unequal, where it appears to be unequal on the face of the ordinance.”

1 *Id.* at 1173 (emphasis added). It is sufficient that Defendants have treated religious
2 institutions and nonreligious institutions on less than equal terms.

3 114. While Defendants have employed aggressive tactics, including cease-and-
4 desist letters and even civil and possible criminal citations against the Church’s pastor, to
5 stop the use of semi-trucks at the Church for its Food Ministry, upon information and belief,
6 Defendants turn a blind eye to the use of 18-wheeler semi-trucks or other commercial
7 vehicles for hours (and even days) at a time at nearby nonreligious entities, including
8 FedEx, furniture stores, buses, food trucks, a tow truck company, and a local Head Start
9 program.

10 115. Defendants’ application of the City’s ordinances violates RLUIPA because it
11 treats the Church on less than equal terms compared to comparable nonreligious charitable
12 programs and similarly situated for-profit commercial enterprises located just blocks away
13 within the same zone.

14 116. As a direct and proximate result of Defendants’ RLUIPA violation, the
15 Church has suffered and will continue to suffer irreparable harm, including the loss of its
16 statutorily protected rights, entitling it to declaratory and injunctive relief, nominal
17 damages, and attorneys’ fees.

18 117. Accordingly, Plaintiff seeks (1) a declaration that Defendants’ restrictions on
19 the Church’s Food Ministry violate RLUIPA; (2) an order enjoining Defendants from taking
20 any enforcement actions on this basis; and (3) an award of nominal damages.

21 **THIRD CLAIM FOR RELIEF**

22 **Free Exercise of Religion, U.S. Const. amend. I and XIV** 23 **42 U.S.C. § 1983**

24 118. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

25 119. The Free Exercise Clause, which applies to the States under the Fourteenth
26 Amendment, “withdraws from [governmental] power . . . the exertion of any restraint on
27 the free exercise of religion.” *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222–
28 23 (1963). The purpose of this clause “is to secure religious liberty in the individual by

1 prohibiting any invasions thereof by civil authority.” *Id.*

2 120. The Free Exercise Clause “forbids subtle departures from neutrality” and
3 “covert suppression of religious beliefs.” *Church of Lukumi Babalu Aye, Inc. v. City of*
4 *Hialeah*, 508 U.S. 520, 534 (1993).

5 121. “General applicability requires, among other things, that the laws be enforced
6 evenhandedly.” *Waln v. Dysart Sch. Dist.*, 54 F.4th 1152, 1159 (9th Cir. 2022). But a “law
7 is not ‘generally applicable’ if the law ‘impose[s] burdens only on conduct motivated by
8 religious belief’ in a ‘selective manner.’” *Apache Stronghold v. United States*, 38 F.4th 742,
9 770 (9th Cir. 2022) (vacated on other grounds) (quoting *Lukumi*, 508 U.S. at 533, 543).

10 122. The “government may not ‘treat *any* comparable secular activity more
11 favorably than religious exercise” without violating these well-established principles.
12 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. Educ.*, 82 F.4th 664, 686
13 (9th Cir. 2023) (en banc) (“*FCA*”) (quoting *Tandon v. Newsom*, 593 U.S. 61, 62 (2021)).

14 123. The Free Exercise Clause also protects against government actions that are
15 coupled with “official expressions of hostility to religion,” whether subtle or overt. *FCA*,
16 82 F.4th at 690. This is especially the case where “government actions [are] coupled with
17 ‘official expressions of hostility to religion.’” *Id.* (quoting *Masterpiece Cakeshop, Ltd. v.*
18 *Colo. Civ. Rts. Comm’n*, 584 U.S. 617, 639 (2018)).

19 124. As such, any governmental practice “burdening religious practice that is not
20 neutral or not of general application must undergo the most rigorous of scrutiny” in which
21 the government must advance “interests of the highest order” that are “narrowly tailored”
22 to those interests. *Lukumi*, 508 U.S. at 546.

23 125. Defendants, although acting under color of law, are abusing the City Code in
24 an attempt to prohibit the Church from exercising its sincerely held religious beliefs—to
25 feed the hungry through its Food Ministry.

26 126. At first blush, Defendants’ reference to its Zoning Code suggest that they are
27 merely attempting to enforce laws of general applicability.

28 127. However, Defendants’ misapplication of these laws against the Church—

1 including its improper classification of the Church’s operations as “commercial” and its
2 refusal to permit the Church to operate its semi-truck even within the bounds of City Code—
3 demonstrate that their actions are anything but.

4 128. This is especially true when the government has not applied similar
5 enforcement against the use of semi-trucks and other commercial vehicles, including those
6 delivering food, by similarly situated secular entities in the area. *Supra* ¶ 84.

7 129. Defendants have also exhibited unsolicited hostility against Pastor Castro and
8 the Church. For instance, rather than working cooperatively to find a solution to their
9 alleged concerns, Defendants have resorted to targeted intimidation efforts in an effort to
10 shut down the Church’s religious practice—including by baselessly citing Pastor Castro for
11 simply passing out food to the poor.

12 130. At the Mayor’s direction, the City has denied the Church access to a City-
13 owned warehouse, to which the Church had previously enjoyed government-granted access
14 to store donations and food for the Food Ministry.

15 131. The Mayor unsuccessfully attempted to veto a grant that the City wished to
16 give to the Church, like it had done for years before, and she has overseen and directed
17 efforts to stop the Food Ministry’s operations.

18 132. The Acting City Manager and City Code Enforcer have both taken direct steps
19 to stop the Food Ministry from operating on the Church’s property by sending notices and
20 cease-and-desist letters, and most recently, by repeatedly issuing citations to the Church’s
21 pastor for activities and on-site structures related to the Food Ministry.

22 133. Defendants are not constitutionally permitted to suppress the Church’s
23 religious exercise in this manner. Again, the City has no interest in prohibiting the Food
24 Ministry, and its enforcement actions are not narrowly tailored.

25 134. As a direct and proximate result of Defendants’ constitutional violation, the
26 Church has suffered and will continue to suffer irreparable harm, entitling it to declaratory
27 and injunctive relief, nominal damages, and attorneys’ fees.

28 135. Accordingly, Plaintiff seeks (1) a declaration that Defendants’ restrictions on

1 the Church’s Food Ministry violate the Church’s free exercise of religion under the First
2 and Fourteenth Amendments; (2) an order enjoining Defendants from taking any
3 enforcement actions on this basis; and (3) an award of nominal damages.

4 **FOURTH CLAIM FOR RELIEF**

5 **Substantial Burden under Arizona Free Exercise of Religion Act**
6 **(A.R.S. 41-1493 *et seq.*)**

7 136. Plaintiff incorporates the allegations set forth above as if fully set forth herein.

8 137. FERA declares that the “[f]ree exercise of religion is a fundamental right that
9 applies in this state even if laws, rules or other government actions are facially neutral.”
10 A.R.S. § 41-1493.01(A).

11 138. To bring a FERA claim, the plaintiff “must prove that: (1) [its] action or
12 refusal to act is motivated by a religious belief, (2) the religious belief is sincerely held, and
13 (3) the government’s regulation substantially burdens the free exercise of [its] religious
14 beliefs.” *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 297 ¶ 127 (2019); *see*
15 *also* A.R.S. §§ 41-1493(2), -1493.01(B). The burden then “shifts to the government to show
16 that the law (1) furthers a compelling governmental interest and (2) is the “least restrictive
17 means of furthering that compelling governmental interest.” *Brush & Nib*, 247 Ariz. at 297–
18 98 ¶ 127; A.R.S. § 41-1493.01(B).

19 139. “Under the least restrictive means test, the government must “show[] that it
20 lacks other means of achieving its desired goal without imposing a substantial burden on
21 the exercise of religion by the objecting part[y].” *Brush & Nib*, 247 Ariz. at 302 ¶ 149 (citing
22 *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014)).

23 140. And even if the government can demonstrate a compelling interest, it “shall
24 not impose or implement a land use regulation in a manner that imposes an unreasonable
25 burden on a person's exercise of religion,” unless it demonstrates either:

- 26 a. “That the person's exercise of religion at a particular
27 location violates religion-neutral zoning standards enacted
28 into the government's laws at the time of the person's
application for a permit,”

1 interest.” A.R.S. § 41-1493.03(B).

2 148. Despite imposing substantial burdens on the Church’s activities, and
3 specifically its use of semi-trucks to facilitate the Food Ministry’s operations, Defendants
4 have shown little interest in applying the rules to anyone else.

5 149. Indeed, over the last several months, Defendants have permitted 18-wheeler
6 semi-trucks and other commercial vehicles to park, load, and unload in the residential
7 zone—including at the local Head Start program only a couple of blocks away from the
8 Church. *Supra* ¶ 84.

9 150. Applying the Zoning Code to the Church without imposing the same
10 requirements on nonreligious properties in the same zone is certainly not treating the two
11 on equal terms.

12 151. Accordingly, Plaintiff seeks (1) a declaration that Defendants’ restrictions on
13 the Church’s Food Ministry constitute unequal treatment in violation of FERA, and (2) an
14 order enjoining Defendants from taking any enforcement actions on this basis.

15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiff pray for:

17 A. A declaration pursuant to 28 U.S.C. §§ 2201–02, Federal Rule of Civil
18 Procedure 57, A.R.S. § 12-1831, and other applicable law that Defendants’ restrictions on
19 the Church’s Food Ministry violate Plaintiff’s rights under RLUIPA and the First and
20 Fourteenth Amendments of the U.S. Constitution and constitute a substantial burden and
21 unequal treatment in violation of FERA.

22 B. An injunction pursuant to 28 U.S.C. § 2202, Federal Rule of Civil Procedure
23 65, A.R.S. § 12-1801, Arizona Rule of Civil Procedure 65, and other applicable law
24 preliminarily and permanently enjoining Defendants from taking any enforcement action
25 against the Church for operating the Food Ministry or lawfully loading and unloading semi-
26 trucks on its property;

27 C. An award of nominal damages for all federal claims under 28 U.S.C. § 1343;

28 D. An order awarding Plaintiff’s attorney’s fees and nontaxable expenses

1 incurred in this action under 42 U.S.C. § 1988, A.R.S. § 41-1493.01(D), and any other
2 applicable law; and

3 E. Such other relief as the Court deems necessary, equitable, proper, and just.

4 **JURY TRIAL DEMAND**

5 The Church demands a jury trial on all issues so triable.
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DATED this 13th day of March, 2024.

SNELL & WILMER L.L.P.

By: /s/ Ryan J. Regula

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VERIFICATION

I, Jose Manuel Castro, have reviewed the foregoing Verified Complaint and verify under penalty of perjury that it is true and correct.

Dated: March 8, 2024

Jose Manuel Castro
Pastor, Gethsemani Baptist Church

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Signed and sworn before me this 8th day of March, 2024.

Notary Public

