IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CYNTHIA PAGE, Plaintiff, v. ANDREW CUOMO, in his official capacity as Governor of the State of New York; HOWARD A. ZUCKER, in his official capacity as Commissioner, Department of Health of the State of New York, Defendants.	No. 1:20-cv-732 (DNH/TWD) Hon. David N. Hurd

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The right to freely travel between States within our Union is a fundamental liberty interest protected by the Fourteenth Amendment and the Privileges and Immunities Clause of the United States Constitution. Travel bans infringing this right are not immune from challenge during this current pandemic. *See Roberts v. Neace*, No. 2:20cv054 (WOB-CJS), 2020 U.S. Dist. LEXIS 77987, at *14 (E.D. Ky. May 4, 2020) (preliminarily enjoining the Kentucky governor's travel ban and noting that "[t]he Court is aware that the pandemic now pervading the nation must be dealt with, but without violating the public's constitutional rights").

Indeed, neither *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), nor this current pandemic prevents this Court from declaring the challenged restriction unlawful and enjoining its enforcement—now and in the future. As recently stated by the Sixth Circuit, "While the law may take periodic naps during a pandemic, we will not let it sleep through one." *Roberts v. Neace*, 958 F.3d 409, 414-15 (6th Cir. 2020) (granting a preliminary injunction and enjoining the enforcement of Kentucky's ban on "mass gatherings" during the current pandemic as applied to in-person church attendances).

In *Jacobson*, amid a smallpox outbreak, a city (acting pursuant to a state statute) mandated the vaccination of all of its citizens. The Court upheld the statute against a Fourteenth Amendment challenge, clarifying that the State's action was a lawful exercise of its police powers and noting that, "[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members." *Jacobson*, 197 U.S. at 27. While the Court in *Jacobson* urges deferential review in times of emergency, it clearly demands that the courts enforce the Constitution. *See id.* at 28. In fact, the Court explicitly contemplates an important and essential backstop role for the

judiciary. *See id*. at 31 (acknowledging that during a public health crisis the courts have the "duty" to "give effect to the Constitution").

Under *Jacobson*, therefore, a State's emergency response can still be unlawful if it impinges on a fundamental right in a "plain, palpable" way or has "no real or substantial relation" to the public safety concerns at issue. *Id.* at 31. Accordingly, per *Jacobson*, requiring a vaccination for a disease that is the *source* of the public emergency is directly related to the government's public safety concerns. The same is not true of the challenged restriction at issue here.

Moreover, nothing in *Jacobson* supports the view that an emergency *displaces* normal constitutional standards. Rather, *Jacobson* provides that an emergency may justify temporary constraints *within* those standards.[1] As the Second Circuit observed, *Jacobson* merely rejected

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[1] The Supreme Court's denial of an injunction in *South Bay United Pentecostal Church v. Newsom*, No. 19-A1044, 590 U.S. ___ (May 29, 2020), is not to the contrary. *South Bay United Pentecostal Church* presented a challenge under the Free Exercise Clause and not the Free Speech Clause. That is significant. Under extant free exercise jurisprudence, "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability." *Emp't Div. v. Smith*, 494 U.S. 872, 879 (1990). The *principal* difference between the Chief Justice's concurrence and Justice Kavanaugh's dissent was the Chief Justice's conclusion that the restriction was a valid and neutral law of general applicability:

> Although California's guidelines place restrictions on places of worship, *those restrictions appear consistent with the Free Exercise Clause of the First Amendment*. Similar or more severe restrictions apply to comparable secular gatherings, including lectures, concerts, movie showings, spectator sports, and theatrical performances, where large groups of people gather in close proximity for extended periods of time. And the Order exempts or treats more leniently *only dissimilar activities*, such as operating grocery stores, banks, and laundromats, in which people neither congregate in large groups nor remain in close proximity for extended periods.

(Roberts C.J. at 2) (emphasis added). As a result, deference to California was in order. Justice Kavanaugh, however, concluded that the restriction *discriminated* against religion (*i.e.,* it was not a neutral law of general applicability). Therefore, California had to satisfy strict scrutiny, which it could not, *even in light of the current pandemic*:

> What California needs is a compelling justification for distinguishing between (i) religious worship services and (ii) the litany of other secular businesses that are not subject to an occupancy cap. California has not shown such a justification.

what would now be called a "substantive due process" challenge to a compulsory vaccination requirement, holding that such a mandate "was within the State's police power." *Phillips v. City of N.Y.*, 775 F.3d 538, 542-43 (2d Cir. 2015) (observing that "*Jacobson* did not address the free exercise of religion because, at the time it was decided, the Free Exercise Clause of the First Amendment had not yet been held to bind the states") (citing *Cantwell v. Conn.*, 310 U.S. 296, 303 (1940)). *Jacobson* does not give license to government officials to broadly suspend the Constitution during a public health crisis. *See Roberts*, 958 F.3d at 414-16 (acknowledging *Jacobson*, applying a traditional free exercise analysis in a challenge to the Kentucky governor's executive order issued during the pandemic, and enjoining the challenged provision).

If this Court were to accept Defendants' position, then it is the fiat of the Governor, and not the Constitution, that is the supreme law of the land. *Cf. Sterling v. Constantin*, 287 U.S. 378, 397–98 (1932) ("If this extreme position could be deemed to be well taken, it is manifest that the fiat of a state Governor, and not the Constitution of the United States, would be the supreme law of the land; that the restrictions of the Federal Constitution upon the exercise of state power would be but impotent phrases[.]"); *see also Planned Parenthood v. Casey*, 505 U.S. 833, 857 (1992) (citing *Jacobson* for the proposition that "a State's interest in the protection of life falls short of justifying any plenary override of individual liberty claims"). Here, Defendants seek a "plenary override of individual liberty claims" through the enforcement of Executive Order 205. The Court should forbid it and grant Plaintiff's motion.

(Kavanaugh, J., at 2). Free Exercise jurisprudence is not controlling here. Nonetheless, the Court's order makes clear that constitutional standards do apply during this current pandemic. *See also Soos v. Cuomo*, No. 1:20-cv-651 (GLS/DJS), 2020 U.S. Dist. LEXIS 111808, at *22 (N.D.N.Y. June 26, 2020) ("As the Chief Justice recognized in *Newsom*, it is not the judiciary's role to second guess the likes of Governor Cuomo or Mayor de Blasio when it comes to decisions they make in such troubling times, *that is, until those decisions result in the curtailment of fundamental rights without compelling justification*.") (emphasis added).

STATEMENT OF FACTS

On June 24, 2020, Defendant Cuomo signed Executive Order 205, which places quarantine restrictions on travelers arriving in the State of New York. (Page Decl. ¶ 2, Ex. A at Ex. 1). The order took effect on June 25, 2020. (*Id.*).

Pursuant to Executive Order 205, "The commissioner of the Department of Health [is] to issue a travel advisory to be communicated widely at all major points of entry into New York, including on highway message boards and in all New York airports, that: All travelers entering New York from a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, will be required to quarantine for a period of 14 days consistent with Department of Health regulations for quarantine." (Page Decl. ¶ 3, Ex. A at Ex. 1).

Pursuant to Executive Order 205, Defendant Zucker issued "Interim Guidance for Quarantine Restrictions on Travelers Arriving in New York State Following Out of State Travel" (hereinafter referred to as "DOH Guidance"). (Page Decl. ¶ 4, Ex. B, at Ex. 1).

Pursuant to Executive Order 205 and the DOH Guidance, persons traveling from one of the "restricted" states are required to quarantine for 14 days, unless the traveler is an "essential worker." (Page Decl. ¶ 7, Exs. A, B, at Ex. 1).

The quarantine requirements under the DOH Guidance and thus Executive Order 205 include the following restrictions:

- The individual must not be in public or otherwise leave the quarters that they have identified as suitable for their quarantine.
- The individual must be situated in separate quarters with a separate bathroom facility for each individual or family group. Access to a sink with soap, water, and paper towels is necessary. Cleaning supplies (e.g. household cleaning wipes, bleach) must be provided in any shared bathroom.

- The individual must have a way to self-quarantine from household members as soon as fever or other symptoms develop, in a separate room(s) with a separate door. Given that an exposed person might become ill while sleeping, the exposed person must sleep in a separate bedroom from household members.
- Food must be delivered to the person's quarters.
- Quarters must have a supply of face masks for individuals to put on if they become symptomatic.
- Garbage must be bagged and left outside for routine pick up. Special handling is not required.
- A system for temperature and symptom monitoring must be implemented to provide assessment in-place for the quarantined persons in their separate quarters.
- Nearby medical facilities must be notified, if the individual begins to experience more than mild symptoms and may require medical assistance.
- The quarters must be secure against unauthorized access.

(Page Decl. ¶ 8, Ex. B, at Ex. 1).

The quarantine restrictions required by Executive Order 205 and the DOH Guidance are the equivalent of a house arrest. *United States v. Traitz*, 807 F.2d 322, 325 (3d Cir. 1986) (noting that when the defendant is required to "abide by specified restrictions on his personal associations, place of abode, or travel," this is a "house arrest," which is a permissible condition of bail under 18 U.S.C. § 3142(c)(2)(D)). However, there is no requirement that Defendants demonstrate that the person quarantined actually has COVID-19 or was exposed to someone who has COVID-19. (Page Decl. ¶ 9, Exs. A, B, at Ex. 1).

Pursuant to Executive Order 205, "Any violation of a quarantine or isolation order issued to an individual pursuant to the Commissioner of the Department of Health's travel advisory by a local department of health or state department of health may be enforced pursuant to article 21 of

the public health law, and non-compliance may additionally be deemed a violation pursuant to section 12 of the public health law subject to a civil penalty of up to $10,000." (Page Decl. ¶ 10, Ex. A at Ex. 1).

The civil penalty for violating Executive Order 205 may be recovered by an action brought by Defendant Zucker in any court of competent jurisdiction. N.Y. Pub. Health Law § 2(2); (*see also* Page Decl. ¶ 11 at Ex. 1).

The DOH Guidance created a "snitch line" whereby a person can "file a report of an individual failing to adhere to the quarantine" restrictions. (Page Decl. ¶ 12, Ex. B at Ex. 1).

The "restricted" states are mostly Red States. Included amongst the restricted states is Arizona. (Page Decl. ¶ 13, Ex. C at Ex. 1).

Plaintiff had plans to go to Brooklyn, New York to assist with packing up the home of Miriam Yerushalmi in preparation for the sale of the home. The Yerushalmi's recently moved to California. (Page Decl. ¶ 14 at Ex. 1).

Plaintiff was scheduled to fly from her home in Arizona to New York on June 29, 2020, and she was scheduled to be in New York for two weeks. (Page Decl. ¶ 15 at Ex. 1).

Plaintiff was excited to go to New York as it has been her lifelong dream to visit New York City. (Page Decl. ¶ 16 at Ex. 1).

Not only was this Plaintiff's last chance to see the sights of New York City with the Yerushalmi family, but now it was more important than ever for her to go and help Miriam as her husband, David, dislocated his shoulder and is now recovering from surgery. Because of his recent surgery, David cannot fly to New York nor would he be able to assist in any way with packing up the home. (Page Decl. ¶ 17 at Ex. 1).

Just as Plaintiff was preparing to purchase her ticket on June 25, 2020, she learned that Defendant Cuomo had issued Executive Order 205 and that Arizona was one of the "restricted" states requiring her to quarantine for two weeks upon her arrival in New York. As a result, Plaintiff had to cancel her plans, even though Plaintiff does not have COVID-19 nor has she been exposed to anyone with COVID-19. (Page Decl. ¶ 18 at Ex. 1).

There was no way for Plaintiff to fly to New York and then quarantine under the restrictive requirements of the DOH Guidance for two weeks before she could begin to help her friend Miriam with her move. Plaintiff was only scheduled to be in New York for two weeks. Plaintiff could not extend her stay due to work and family obligations. This was and continues to be very upsetting for Plaintiff. (Page Decl. ¶ 19 at Ex. 1).

Under Executive Order 205 and its implementing guidance and regulations, a perfectly healthy person, such as Plaintiff, is not permitted to travel from Arizona to New York without subjecting herself to a 14-day quarantine. However, a person with COVID-19 can travel freely between New Jersey (or any other state not on the "restricted states" list) and New York. (*See* Page Decl., Exs. A, B, C, at Ex. 1).

Until this restriction is halted, Plaintiff will be unable to travel to New York, and she will be unable to assist the Yerushalmi's with their move. As a result, Plaintiff's travel to New York and the moving plans are now on hold, causing irreparable harm to Plaintiff and others. Plaintiff would like to travel to New York and will do so once this restriction is halted. (Page Decl. ¶¶ 20, 21 at Ex. 1).

ARGUMENT

I. Standard for Issuing a Preliminary Injunction.

"A plaintiff seeking a preliminary injunction must establish [1] that [she] is likely to succeed on the merits, [2] that [she] is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in [her] favor, and [4] that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Metro. Taxicab Bd. of Trade v. City of N.Y.*, 615 F.3d 152, 156 (2d Cir. 2010) ("In order to justify a preliminary injunction, a movant must demonstrate 1) irreparable harm absent injunctive relief; 2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff's favor."); *see also Am. Freedom Def. Initiative v. Metro. Transp. Auth.*, 880 F. Supp. 2d 456, 465 (S.D.N.Y. 2012) (noting that a mandatory preliminary injunction requires a "clear showing that the moving party is entitled to the relief requested").

Plaintiff satisfies the requirements for granting the requested injunction.

II. Plaintiff Satisfies the Factors for Granting a Preliminary Injunction.

A. Plaintiff Will Clearly Succeed on the Merits of Her Constitutional Claims.

Plaintiff's fundamental right to travel between States—in this case, from her home State of Arizona to the State of New York—without penalty is well established, and this right is grounded in the Fourteenth Amendment (equal protection, due process, and privileges and immunities) and in the Privileges and Immunities Clause.

It is axiomatic that the constitutional guarantee of equal protection embodies the principle that all persons similarly situated should be treated alike. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985); *Skinner v. Okla.*, 316 U.S. 535, 541 (1942) ("The guaranty of

equal protection of the laws is a pledge of the protection of equal laws.") (internal quotations and citation omitted). And this constitutional guarantee applies to executive as well as legislative acts. *Raymond v. Chi. Union Traction Co*., 207 U.S. 20, 35-36 (1907).

Supreme Court equal protection jurisprudence has typically been concerned with governmental classifications that "affect some groups of citizens differently than others." *McGowan v. Md.*, 366 U.S. 420, 425 (1961); *Ross v. Moffitt*, 417 U.S. 600, 609 (1974) ("'Equal Protection' . . . emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable."). And what is critically important here is that the equal protection guarantee is violated when the government creates benefits and burdens based on residency such that "some citizens are more equal than others." *See Zobel v. Williams*, 457 U.S. 55, 65 (1982) (holding that Alaska's dividend distribution plan which favored some residents over others violated equal protection). This is often expressed as infringing upon the right to travel and thus depriving a person of the privileges and immunities afforded all citizens,[2] but nonetheless a violation of equal protection. *See, e.g., id*. at 67, 70 (Brennan, J., concurring) (observing that "the right to travel achieves its most forceful expression in the context of equal protection analysis" and stating that "equality of citizenship is of the essence in our Republic").

As stated by the Court:

> A citizen of the United States has a *perfect constitutional right* to go to and reside in any State he chooses, and to claim citizenship therein, and an equality of rights with every other citizen; and the whole power of the nation is pledged to sustain him in that right. He is not bound to cringe to any superior, or to pray for any act of grace, as a means of enjoying all the rights and privileges enjoyed by other citizens.

[2] Article IV, section 2, provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art IV, § 2. The Fourteenth Amendment provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." U.S. Const. amend. XIV.

Saenz v. Roe, 526 U.S. 489, 503-504 (1999) (internal quotations and citation omitted) (emphasis added).

Indeed, the equal protection guarantee, like the Constitution itself, was "framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin v. G. A. F. Seelig, Inc.*, 294 U.S. 511, 523 (1935) (Cardozo, J.). Consequently, the enforcement of a law based upon where one resides (and thus travels from in this case) conflicts fundamentally with the constitutional purpose of maintaining a "Union" rather than a mere "league of States" and similarly runs afoul of our Constitution's pledge of equal protection and its guarantee of the "privileges and immunities" to all citizens. *See Paul v. Va.*, 8 Wall. 168, 180 (1869). As stated more fully by the Court:

> It was undoubtedly the object of the [Privileges and Immunities] clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; *it gives them the right of free ingress into other States, and egress from them*; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.

Id. (emphasis added). As confirmed by the Second Circuit, "Put differently, the Privileges and Immunities Clause of Article IV 'was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy.'" *Selevan v. N.Y. Thruway Auth.*, 584 F.3d 82, 103-04 (2d Cir. 2009) (citation omitted); *Williams v. Town of Greenburgh,*

535 F.3d 71, 75 (2d Cir. 2008) ("The Constitution protects a fundamental right to travel within the United States, which we have also called 'the right to free movement.'") (internal quotation marks omitted).

In the final analysis, the constitutional right to travel from one State to another without penalty occupies a position fundamental to the concept of our Republic. *See Saenz*, 526 U.S. at 498 (stating that the "constitutional right to travel from one State to another is firmly embedded in our jurisprudence") (internal quotations and citation omitted); *United States v. Guest*, 383 U.S. 745, 757 (1966) ("The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union."). "It is a right that has been firmly established and repeatedly recognized," *id*., and is thus a fundamental liberty interest protected by the Fourteenth Amendment.[3] *Shapiro v. Thompson*, 394 U.S. 618, 643 (1969) (Stewart, J., concurring) (observing that the right to "travel" is "a virtually unconditional personal right, guaranteed by the Constitution to us all").

As stated by the Supreme Court:

> In pursuing that important interest, the State cannot choose means that unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with "precision," *NAACP v. Button*, 371 U.S. 415, 438 (1963); *United State v. Robel*, 389 U.S. 258, 265 (1967), and must be "tailored" to serve their legitimate objectives. *Shapiro v. Thompson, supra*, at 631. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

Dunn v. Blumstein, 405 U.S. 330, 343 (1972); *see also Aptheker v. Sec. of State*, 378 U.S. 500, 508 (1964) ("Even though the governmental purpose be legitimate and substantial, that purpose

[3] It is wrong to say that this "perfect constitutional right" is only affected "incidentally" in this case. Since Plaintiff has the right to be treated equally, "the discriminatory classification [*i.e.*, her residence in Arizona] is itself a penalty." *Saenz*, 526 U.S. at 505.

cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." (quoting *NAACP v. Ala.*, 377 U.S. 288, 307-08 (1964)).

More specifically, as stated by the Court in *Saenz v. Roe*, "We further held that a classification that had *the effect of imposing a penalty on the exercise of the right to travel* violated the Equal Protection Clause unless shown to be necessary to promote a *compelling* governmental interest . . . ." *Saenz*, 526 U.S. at 499 (emphasis added) (internal quotations and citation omitted). Accordingly, for the challenged restriction to survive strict scrutiny, it must be *necessary* to promote a *compelling* government interest and *narrowly tailored* to achieve that interest. *See Seal v. Morgan*, 229 F.3d 567, 574 (6th Cir. 2000) ("Government actions that burden the exercise of those fundamental rights or liberty interests are subject to strict scrutiny, and will be upheld only when they are narrowly tailored to a compelling governmental interest."). The challenged restriction fails this "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997) (describing strict scrutiny as "the most demanding test known to constitutional law"). It is not even close.

While the government may have a compelling interest in preventing the spread of COVID-19, the challenged restriction is not narrowly tailored to achieve that interest. For example, a perfectly *healthy* person, such as Plaintiff, is not permitted to travel from Arizona to New York without subjecting herself to an onerous 14-day quarantine or a potential civil fine of up to $10,000. However, a person *with* COVID-19 can travel freely from New Jersey (or any other State not on the "restricted states" list) to and throughout New York. As stated by the Court in *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 547 (1993), "It is

established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." (internal quotations and citation omitted). As a means of pursuing its alleged objectives, the travel restriction "is so woefully underinclusive as to render belief in [its stated] purpose a challenge to the credulous." *Republican Party v. White*, 536 U.S. 765, 780 (2002); *see also Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 805 (2011) ("As a means of protecting children from portrayals of violence, the legislation is seriously underinclusive," noting that "it excludes portrayals other than video games").

In conclusion, the challenged restriction fails strict scrutiny and is unlawful. Plaintiff has clearly shown that she will succeed on the merits of her claims. We turn now to the remaining preliminary injunction factors.

B. Plaintiff Will Suffer Irreparable Harm in the Absence of Injunctive Relief.

The proof of irreparable harm suffered by Plaintiff is clear and convincing, and it is established upon finding a violation of her constitutional rights. As stated by the Second Circuit, "[W]e have 'held that the alleged violation of a constitutional right triggers a finding of irreparable injury.'" *Conn. Dep't of Envtl. Prot. v. OSHA*, 356 F.3d 226, 231 (2d Cir. 2004); *Statharos v. N.Y.C. Taxi & Limousine Comm'n*, 198 F.3d 317, 322 (2d Cir. 1999) ("Because plaintiffs allege deprivation of a constitutional right, no separate showing of irreparable harm is necessary."); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) ("[I]t is the *alleged* violation of a constitutional right that triggers a finding of irreparable harm."); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

C. The Balance of Equities Tips Sharply in Favor of Granting the Injunction.

The likelihood of harm to Plaintiff without the injunction is substantial because the deprivation of constitutional rights constitutes irreparable injury. (*See supra* § II.B.). Additionally, Defendants' public health interest can be advanced by ensuring social distancing, requiring the wearing of masks, and by quarantining those *who are infected* with COVID-19, regardless of the State within which they reside or visit. The challenged restriction is overbroad and grossly underinclusive. In short, the balance of equities favors the granting of the requested injunction.

D. Granting the Injunction Is in the Public Interest.

"Because Plaintiff [has] shown both a likelihood of success on the merits and irreparable harm, it is also likely the public interest supports preliminary relief." *Saget v. Trump*, 375 F. Supp. 3d 280, 377 (E.D.N.Y. 2019); *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest."); *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (stating that "the public as a whole has a significant interest in ensuring equal protection of the laws"); *Sajous v. Decker*, No. 18-cv-2447 (AJN), 2018 U.S. Dist. LEXIS 86921, at *45 (S.D.N.Y. May 23, 2018) ("The public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.") (citing *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984)); *Coronel v. Decker*, No. 20-cv-2472 (AJN), 2020 U.S. Dist. LEXIS 53954, at *23 (S.D.N.Y. Mar. 27, 2020) ("First, as this Court has previously stated, the 'public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.'").

In sum, "it is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079

(6th Cir. 1994). As noted previously, the challenged restriction violates "a virtually unconditional personal right, guaranteed by the Constitution to us all." It is in the public interest to issue the injunction.

CONCLUSION

For the foregoing reasons, this Court should grant the motion and issue the requested injunction.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ David Yerushalmi
David Yerushalmi, Esq. (NY Bar No. 4632568; DC Bar No. 978179; Cal. Bar No. 132011; Ariz. Bar No. 0096)
383 Kingston Avenue
Suite 103
Brooklyn, New York 11213
Tel: (646) 262-0500; Fax: (801) 760-3901

Robert J. Muise, Esq.* (MI P62849)
PO Box 131098
Ann Arbor, Michigan 48113
Tel: (734) 635-3756; Fax: (801) 760-3901
rmuise@americanfreedomlawcenter.org
*Subject to admission

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2020 a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. I further certify that a copy of the foregoing has been served by ordinary U.S. mail upon all parties for whom counsel has not yet entered an appearance electronically: none.

AMERICAN FREEDOM LAW CENTER

/s/ David Yerushalmi
David Yerushalmi, Esq.