

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

PAMELA S. MCKINLEY, as Parent and)
Guardian of GABRIEL MCKINLEY, A)
MINOR CHILD, MARGUERITE GARNER,)
VALERIE GEORGE, EVAN D. ROBERTS,)
SAUNDRA THOMPSON d/b/a Q SHOES,)
KRISTINE M. BLACKMAN AND PHILLIP)
BLACKMAN d/b/a BLACKMAN)
TAEKWONDO ACADEMY, LLC, MESA DE)
PLATA LLC d/b/a JALISCO CAFÉ, and)
SUSANA VASQUEZ d/b/a PET FOOD)
GONE WILD, INC., TRISHA D. KEEFE,)
JILL M. INANNA, DAVID G. STEPUTIS,)
And JOHN OR JANE DOES 1-100)

Plaintiffs,)

vs.)

Case No.: _____)

GOVERNOR MICHELLE LUJAN GRISHAM, in)
Her Official Capacity as well as Individually;)
PUBLIC HEALTH DIRECTOR KATHYLEEN)
KUNKEL, INTERIM DIRECTOR BILLY)
JIMENEZ, and TRACIE COLLINS, M.D.)
Secretary-Designate of NMDOH, Jane and)
John Does 1-20,)

Defendants.)

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COMPLAINT

I. INTRODUCTION AND PRAYER FOR RELIEF

1. Over 110 years ago, at a time when medicine was not yet sufficiently advanced to have developed penicillin and the germ theory of medicine was still new, the Supreme Court of the United States made a ruling related to a citizen's rights in healthcare that has remained largely unaddressed to this day. Over the century plus of time that has since passed the court has decided many critical cases revolving around individual rights that have never been squared with *Jacobson*. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

2. A century ago many of our most sacred and fundamental rights were still being sorted out. Suffrage had not yet occurred, civil rights barely existed, critical cases on fundamental rights such as interstate travel and bodily privacy had not come into play and the administrative state that we live in today simply did not exist.

3. Today, under the guidance of an unelected administrative structure, many of the rights our Supreme Court has determined are fundamental under our Constitution are being denied. These fundamental rights are being denied, not out of prudence, they are being denied due to unfounded fear and intentional manipulation.

4. But all is not lost. In its wisdom, the *Jacobson* court made clear that it never intended its decision to bar further review. To the contrary, the Court in *Jacobson* specifically stated:

“Before closing this opinion, we deem it appropriate, in order to prevent misapprehension as to our views, to observe -- perhaps to repeat a thought already sufficiently expressed, namely -- that the police power of a State, whether exercised by the legislature or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression.” (*Id.*, 197 US 38)

5. In recent months, the citizens of entire states have been imprisoned without due process and with the clear threat to continue such lockdowns¹ interstate travel has been severely restricted,² privacy rights have been devastated,³ innumerable business takings without compensation have and continue to occur, and many regulations being implemented without statutory process requirements under the guise of a health emergency that is orders of magnitude far less severe than originally predicted.⁴

6. The plaintiffs in this case have all been injured in various capacities by these unconstitutional actions, and without action by the Court, will be left without redress. Without action by the Court, the Court will be setting a precedent that will allow states to withhold fundamental Constitutional rights, in violation of US Supreme Court precedent, circumventing the various levels of scrutiny applied to such rights, and justifying such actions under public health emergency orders without subjecting those orders to any real review, i.e. -- just trust the bureaucrats because they are the experts.

7. Plaintiffs seek, among other remedies, a declaratory judgment and injunctive relief stating that Governor Lujan-Grisham's Executive Orders and Defendant Director of Public

¹ See Below, Timeline, Section IV.A.

²“Many jurisdictions have responded to the unevenness of the unfolding pandemic by battening down their borders. Nearly half the states have imposed interstate travel restrictions to date...” David M. Studdert, LL.B., Sc.D, et al., Partitioning the Curve — Interstate Travel Restrictions During the Covid-19 Pandemic, NEW ENGLAND JOURNAL OF MEDICINE, (Aug. 5, 2020) <https://www.nejm.org/doi/full/10.1056/NEJMp2024274>; This has been done without meeting the strict scrutiny standard that has repeatedly be applied to the right to travel in Shapiro v Thompson, 394 US 618, 629-631 (1969); and In 1966 in United States v. Guest 383 U.S. 745 (1966), the Court rearticulated that the Constitution did not explicitly mention the right to travel because: a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.... The constitutional right to travel from one State to another ... Occupies a position so fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

³Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) ; Contact tracing: Laura Matrajt, et al., Evaluating the Effectiveness of Social Distancing Interventions to Delay or Flatten the Epidemic Curve of Coronavirus Disease, EID JOURNAL (Aug 2020) https://wwwnc.cdc.gov/eid/article/26/8/20-1093_article

⁴ See below, section IV. J, How Dangerous is COVID?

Health's Orders are null and void because the premises upon which they are based clearly show a lack of exigencies to continue to justify an emergency; the Polymerase Chain Reaction (PCR tests, also referred to as RT-PCR test) relied upon to perpetuate the "emergency" are invalid (as shown below); and the disease is no more lethal than a bad flu season. Yet, the harm being done to individuals as well as to our economy far outweigh the threat of harm from the disease. This is discussed in more detail below.

In addition, we humbly ask the Court in this case to:

- a. Reaffirm its position as a coequal branch of the government with the power and authority to review, and if warranted, declare unconstitutional actions taken by the executive.
- b. Reaffirm the US Constitution is the supreme law of the land and that rights, especially fundamental human rights, may not be abridged unless necessary to serve a compelling governmental interest, and that even then, those restrictions must be narrowly tailored to meet a compelling governmental interest.
- c. Ensure there is an opportunity for redress under any emergency declaration. In fact, it is when exigent circumstances exist and public officials base decisions and orders on an emergency basis, that courts have warned that special care needs to be taken to insure that Constitutional rights are not abridged. "(T)he judiciary cannot dispense with constitutional principles, even in response to a dire emergency. Indeed, it is in the midst of emergencies that constraints on government power are most important. History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure... [W]hen we allow fundamental freedoms to be sacrificed in the name of real or perceived exigency, we invariably come to

regret it." Skinner v. Railway Labor Executives' Ass'n., 489 U.S. 602, 635 (1989) (Marshall, J., dissenting)...⁵

d. Recognize that the political process and operative orders are invalid if based on false or misleading information⁶ and recognize the criticality that all future emergency orders be based and maintained on clear, honest verifiable facts - particularly when such orders infringe on Constitutional rights.

8. Underlying all of this, and the foundation of this case is this question: if an emergency can be declared without the appropriate level of review based on the rights being limited, and under the guise of that emergency, all rights are only subject to a rational basis review, how then do any previous judicial opinions or Constitutional principles have any meaning whatsoever? Further, if under the same circumstances different levels of scrutiny are applied to the various rights being limited under an emergency declaration than would otherwise be applicable, what is the value of having various levels of review?

9. Plaintiffs request the court do the following:

a. Grant a preliminary injunction against all current state actions and orders in effect in New Mexico issued under the COVID-19 Emergency Declaration and against the declaration of emergency itself until this case has been decided by the court. We further ask the Court to review this emergency declaration

⁵ "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." Olmstead v. United States, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting) (overruled in part on other grounds by Katz v. United States, 389 U.S. 347 (1967))." See Justice Bradley's concurring opinion in Wisconsin Legislature v. Secretary-Designee Andrea Palm, Julie Willems Van Dijk and Lisa Olson, In Their Official Capacities As Executives of Wisconsin Department of Health Services, 2020 WI 42.

⁶ In Romero v Evans, 517 U.S. 620, 631 (1996) the Court stated actions must bear a rational relationship to some legitimate end. It necessarily follows that if the actions are based on false or fraudulent information that no rational relationship could be found.

and request for preliminary injunction under the strict scrutiny standard of review since fundamental Constitutional rights have been abridged under the guise of the emergency actions.

- b. Declare that the exigencies underlying the declaration for emergency no longer exist.
- c. Declare that the public health emergency based on Executive Order (EO) 2020-004 has ended.
- d. Declare that all restrictions now existing in response to what might have been an emergency in the beginning, are now invalid.
- e. Grant injunctive relief against future public health emergency declarations in the State of New Mexico without enabling legislation within 30 days from the declaration of public health emergency.
- f. Grant injunctive relief against enforcement of any existing penalties or fines against any person as a result of violations of orders which this Court determines to be invalid.
- g. Grant permanent injunctive relief against future actions taken under the guise of this public health emergency which are contrary to the ultimate decision of this court.
- h. Declare that the lowest standard of review available under an emergency declaration is intermediate scrutiny though higher standards are still available.
- i. Grant permanent injunction against future public health emergencies for more than an extremely limited period of time without regular reauthorization by the legislative body.
- j. Damages for Plaintiffs in an amount determined appropriate by the fact-finder pursuant to 42 U.S. Code § 1983.

II. STANDING, VENUE, AND JURISDICTION

10. This Court has subject matter jurisdiction over this matter as it pertains to multiple Federal Constitutional issues arising under the 1st, 4th, 5th, 6th, 9th, and 14th amendments and related precedent under 28 U.S.C. 1331. This Court also maintains subject matter jurisdiction to claims under 42 U.S. Code § 1983 within this case as they all include violations of Constitutional law. Under 28 U.S.C. 1367 this Court maintains supplemental jurisdiction over state constitutional claims.

11. Venue is proper within this Court under 28 U.S.C. 1391 as at least one of the defendants resides in this district.

12. Standing requires that the plaintiff must personally have: 1) suffered some actual or threatened injury; 2) that injury can fairly be traced to the challenged action of the defendant; and 3) that the injury is likely to be redressed by a favorable decision.⁷ The Plaintiffs have all suffered substantial injury in various ways due to the State's unconstitutional actions in response to COVID-19 and those injuries can be redressed through the various prayers for relief included in this complaint.

III. THE PARTIES

13. Plaintiffs are residents of various counties located in the State of New Mexico and have suffered various injuries as a result of the infringements of liberties guaranteed under the United States Constitution and the Constitution of the State of New Mexico.

⁷ Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992). Importantly, standing is not “dispensed in gross,” and, accordingly, a plaintiff must demonstrate standing for each claim “he seeks to press and for each form of relief that is sought.” See Davis v. FEC, 554 U.S. 724, 734 (2008). Moreover, when there are multiple parties to a lawsuit brought in federal court, “[f]or all relief sought, there must be a litigant with standing, whether that litigant joins the lawsuit as a plaintiff, a coplaintiff, or an intervenor as of right.” See Town of Chester v. Laroe Estates, Inc., 137 U.S. 1645 slip. op. at 6 (2017).

14. Plaintiffs are, as follows:

a. PLAINTIFF PAMELA S. MCKINLEY, AS PARENT AND GUARDIAN OF GABRIEL MCKINLEY A MINOR CHILD, resides in Edgewood, New Mexico, County of Santa Fe, New Mexico. Gabriel has been severely damaged by the public health policies and mandates concerning COVID-19. GABRIEL MCKINLEY is a 14-year-old 9th grader at Estancia Valley Classical Academy. Gabriel has done well in school before the shutdown of New Mexico schools and businesses, despite having learning disabilities. He had good friends, was popular and happy and participated in sports, robotics, STEM activities and Civil Air Patrol weekly. His parents witnessed visible joy in him before the spring of 2020. When Gabriel's school was shut down, Gabriel was no longer able to do the joyful events in his life, leading to severe depression and suicidal ideation. Due to his learning disability, his online teaching was ineffective and frustrating for him. His mother's heart would break as she witnessed his tears of frustration, crying as he sat at his computer because he could not understand or function in this type of computer distance learning. His grades began to fail and will likely have to repeat the 9th grade. Gabriel is greatly distressed by having to repeat a school year due to failing grades, as he had big dreams for college and life as an adult. He experiences pain and shame about this, as it will be on his record for life. His family cannot afford private tutors, even though this is what would help Gabriel maintain his grades and move on to the next grade with his friends.

His activities that he loved, especially seeing friends, sports and Civil Air Patrol (CAP), were stopped. He experienced hopelessness when his school had been approved by the government for in-person classes, and then a few days later, students were informed that the plan was denied. In October, he met with his CAP group outdoors in a parking lot, socially distanced,

to do drills. The group was reported due to some students not wearing masks, and CAP got shut down for a month as a penalty. Gabriel suffered much as a result of losing what was his favorite meaningful activity in life.

Gabriel's parents became frustrated at the lack of available resources to help a child experiencing suicidal depression. They were terrified of putting him into an in-patient program due to COVID-19 and being separated from his parents. Since the shutdown of school, as well as businesses (like restaurants, where he could no longer enjoy his weekly outings with his father), Gabriel has experienced severe emotional distress, isolation and pain, and depression. He has been deprived his Constitutional right of peaceful assembly with other students and especially his CAP program; and deprived of equal protection under the laws as a learning-disabled student, under the 5th and 14th Amendments. Furthermore, Gabriel has been deprived of his liberty in the current barren environment created by the shutdown of parks, outside sports, entertainment venues, fitness facilities and restaurants.

Unfortunately, Gabriel's story is not unique in New Mexico. There are many students with special needs who attend New Mexico schools who cannot learn through computers and require in-classroom instruction to succeed in school and life. Young people like Gabriel, require the socialization and activities with their peers that school provides. Many young people in New Mexico have considered and tragically, have accomplished, ending their lives. Gabriel is taking a stand for others similarly situated by being a Plaintiff.

b. PLAINTIFF VALERIE GEORGE ("Mrs. George") is a resident of Albuquerque, County of Bernalillo, State of New Mexico. She has suffered damages as a result

of the infringement of her Constitutional rights under the Constitution of the United States, First Amendment, 5th Amendment, 9th Amendment and 14th Amendment in the following manners:

Mrs. George has suffered economic damages from which she and her family may never recover. She has been deprived of being able to perform her career as a licensed massage therapist due to categorization of her services and that of her employer, Hyatt Regency Tamaya Spa, as “non-essential”. She is now in the second lockdown of citizens and cannot find suitable employment in her field as long as the lockdown restrictions are in place.

Mrs. George has been denied expression of her religious beliefs in that the church she attended, Calvary Chapel in Albuquerque, New Mexico, shut down except for remote participation by the computer/internet. Her free exercise of religion is not something that can be done in isolation from other worshippers and does not occur when wearing a mask. She has been deprived of the social interaction through fellowship with other church members, which is a necessary part of the practice of her religion, and cannot occur in isolation and while wearing a mask; and she feels deprived of the energizing and uplifting experience of being in the presence of the Holy Spirit when the pastor is delivering inspirational messages and also by participating in the music and songs with her congregation (lifting voices to God in praise).

Mrs. George has suffered emotional and psychological injuries as a result of the response to COVID-19 by the Governor and Public Health Director of New Mexico in the following particulars: depression from social isolation from orders prohibiting “mass gatherings” of more than five persons; the lockdowns causing depression (house arrest without a trial); anxiety and stress from mask wearing required to be able to shop for food and life necessities; stress while shopping for food when she attempts to lower the mask below her nose to be able to breathe

before passing out or having a panic attack, and being loudly and rudely harassed by employees and customers in stores; loss of enjoyment of life due to loss of pleasurable activities in which she engaged that contributed to her health and mental well-being, such as yoga, exercising at a gym, attending church, and being able to work. Without these activities, she feels bereft of meaning in life, highly stressed, depressed and anxious.

c. PLAINTIFF MARGUERITE GARNER (Ms. Garner) is a resident of Bernalillo County, Albuquerque, New Mexico. Ms. Garner is medically unable to wear a face mask and is deprived of her inalienable right to breathe without interference. She suffers from medical conditions which cause her distress when she is forced to wear a mask while shopping in order to purchase food and other necessities. The government requirement that she wear a mask while attending church makes her unable to attend her church, Hoffmantown Church, because it is complying with the Public Health Orders. She has been damaged by being deprived of her right to exercise her religious faith and congregate with members of her church during the lockdown; she has been deprived of experiencing the presence of the Holy Spirit by not being able to share her worshipping experience with others of her faith, singing and reading the Bible together. Further, as an elderly person who lives alone, she has been deprived of comfort and social interaction with her friends and other seniors due to closure of Senior Citizen Centers in Albuquerque and lockdowns, i.e. house arrest. This is in violation of her right to peaceful assembly.

Despite her overwhelming medical issues which prevent her from safely wearing a mask, she has been refused a medical exemption letter from her doctor.

d. PLAINTIFF EVAN D. ROBERTS is a resident of Bernalillo County, City of Albuquerque, New Mexico who was working at a fitness center/gym for many years and was suddenly laid off due to forced closure of his employer's business, when it was categorized as a "non-essential" business under PHO March 23, 2020. When the business was allowed to reopen with restrictions, his job resumed at half the number of weekly hours as before. With the most recent lockdown, he is completely out of work and does not know if he will have a job left as his employer's business has suffered irreparably and may never reopen. He has been damaged economically and deprived of the right to earn a living. He has also been damaged by the lockdown, aka house arrest, in that he is deprived of prior avenues of self-care, such as participating in his mixed martial arts practice and training, which is being conducted by video after the recent lockdown. Never before in our history have healthy people been quarantined.

e. PLAINTIFF SAUNDRA THOMPSON (Ms. Thompson), is the sole shareholder/owner of G.D.M. Thompson, Inc., d/b/a Q Shoes. Ms. Thompson resides in city of Albuquerque, county of Bernalillo, State of New Mexico. Her business, Q Shoes, is a specialty shoe store located in Albuquerque, New Mexico, which sells shoes to men and women, and also special shoes for healthcare workers who must stand on their feet all day. Ms. Thompson has operated this business successfully since June 15, 2018.

Ms. Thompson relies solely on the income from this business to support herself and her young adult children who reside with her.

Her Constitutional rights have been violated in the following manner:

As a result of her business and livelihood being declared "non-essential", she has suffered loss of income, taking of property without just compensation and deprivation of property without

due process. These violations have occurred in the name of a declared public health emergency, COVID-19. She has suffered emotional distress, anxiety and fear for her financial future around the financial devastation that having to close her business has caused. When she was allowed to reopen with restrictions, she continued to lose income due to the change in shopping trends resulting from the widespread economic devastation and ruin done in New Mexico under the guise of public health emergency, along with mandates restricting people to their homes unless absolutely necessary.

She calculated losses near \$200,000.00 from March 23 through December 16, and these losses are continuing. She has high anxiety that this business which she has nurtured and grown and which serves the general public as well as health care workers, may not survive any further business restrictions being passed by the governor and health department.

f. PLAINTIFFS KRISTINE M. BLACKMAN AND PHILLIP

BLACKMAN (Blackmans) are residents of Sandoval County, New Mexico, and are the managers of a formerly successful family-owned business of Blackman Taekwondo Academy, LLC, located in the county of Bernalillo, City of Albuquerque, State of New Mexico. The Blackmans have operated and managed this business since 1993, having grown the business over the decades, and have had much success in training children through adults in various martial arts forms. The Blackmans have been decades'-long active members and contributors to their community.

The business was shut down earlier on March 19, 2020, and then allowed to reopen to 25% capacity on August 3, 2020. Due to the limitations on the occupancy at 25%, the Blackmans were not able to offer any of their special events, i.e. Tournaments, Seminars,

Birthday Parties, Parents Nights Out and more, which all contribute to their income. They were able to enroll an additional 100 students since August and were starting to feel hopeful again, only to be shut down as a “non-essential” business again on November 16. They have suffered long-term infringement of their Constitutional rights in the following particulars:

The Blackmans have suffered economic damages from which their family may never recover. They have been deprived of their livelihood, income and property due to the categorization of their services as “non-essential”. The business is now in the second lockdown and shuttering of businesses with no end in sight.

The Blackmans have been harmed by the designation of their business as “non-essential”. This demeaning designation applied to a business which is critical to the physical and mental health of its participants, is degrading and consists of negative social programming. It is akin to calling a person a “useless eater”, which demeans and devalues, for example, older people who no longer work and contribute to taxes. This designation leads people to become indifferent to the consequences of losing businesses designated as such. The business shuttering that has occurred has caused the Blackmans severe financial and economic stress, frustration, anger and depression. The business had to lay off four out of the eight employees, because it could no longer sustain them during the severe restrictions imposed at the 25% capacity. This was distressing to the owners of the business. The Blackmans and their family are at risk of losing everything they have worked hard to achieve, and through no fault of their own. They have incurred substantial additional debt during the COVID-19 crisis, when by March of this year, they were projected to have one of their most financially successful years. Similar businesses to the Blackmans TKD located in

states that have fully reopened businesses, like Florida, are thriving. The Blackmans are being deprived of their right to a livelihood, as well as being deprived of their property in violation of the 5th and 14th Amendments of the United States. They have also been deprived of their freedom to associate and to move freely in their community and state as a result of the house arrest aka lockdown.

g. PLAINTIFF MESA DE PLATA LLC d/b/a JALISCO CAFÉ (Jalisco Cafe) located in Silver City, New Mexico, is a family run business. Jalisco Cafe is required, as are all restaurants and essential businesses, to force employees to submit to COVID-19 tests if they show any signs of being sick. Jalisco Cafe is also required to have all patrons list their personal information upon entry to the restaurant. These requirements are constitutionally violative as discussed hereinbelow.

Jalisco Cafe was the most popular and successful restaurant in Silver City serving almost gourmet quality Mexican food at affordable prices. Since the closure of dine-in restaurants by the Defendants approximately nine months ago, the subsequent re-openings, reclosures, restrictions on number of patrons and other restrictions, Jalisco Cafe has gone from a thriving business to one in which profits are meager or non-existent and is in danger of having to close its doors permanently. If this were to come to pass, this would not only damage the Plaintiff but would be a significant loss to the Silver City community as a whole which has already lost two of its more popular restaurants due to the closures and mandates of the Defendants.

Jalisco Cafe has been sued by the Defendants who are trying to collect substantial fines of up to \$85,000 for a very brief violation of the closure orders in May of this year.

h. PLAINTIFF SUSANA VASQUEZ (Ms. Vasquez) is the co-owner of Pet Food Gone Wild, Inc. and resides in Rio Rancho, New Mexico, County of Sandoval. Ms. Vasquez owns and operates a pet food store which was permitted to remain open as an “essential business” during the last 8 months of the COVID-19 crisis. She has experienced damages in the form of major anxiety surrounding the issue of mandatory mask wearing in her store. Ms. Vasquez believes in liberty for adults to be able to decide for themselves whether to wear a mask or not. Two of her employees are unable to wear a mask due to medical issues. Her business has been reported for violations of mask-wearing orders because she refuses to be an arm of the governor’s enforcement division. As a liberty loving, self-responsible adult, she respects the decision of an individual to decide for himself whether or not to wear a mask. She assumes that if a customer in her retail store is not wearing a mask, it is due to a medical exception, and it is violative of their rights to ask the reason or require a doctor’s letter. Unfortunately, many private citizens have taken it upon themselves to follow in the shoes of Hitler’s “brownshirts” to being “snitches” and to harass others in her store not wearing a mask. She has asked those harassing customers to leave her store. However, she is under duress on the pain of being fined if she fails to adhere to illegal and ineffective “Covid-safe practices”. Her store has been visited by Department of Health inspectors, which disrupts business and creates an atmosphere of anxiety for her employees.

Ms. Vasquez’ 4th Amendment Constitutional liberties are impinged by being bullied and involuntarily conscripted to act as an arm of the police, or governor’s enforcement division. She is in the business of providing pet food and supplies, not law enforcement. In addition, the mask mandates violate her 9th Amendment rights.

i. PLAINTIFF TRISHA D. KEEFE is a Registered Nurse who had lived with her husband for 16 years when the COVID-19 crisis began. They had raised his daughter together, who is now 22 years old. They had a close family life that she enjoyed. She had a successful private specialized health-care business and was able to shop and travel unmolested before the events of 2020 which changed life as we know it. Ms. Keefe has suffered losses and damages as a direct result of the unconstitutional mandates and Orders by the Governor and Public Health Department in response to COVID-19 disease. Her marriage became very polarized and stressful from the parties respective positions on the dangers of COVID-19, resulting in separation of the parties. The following Constitutional rights have been trampled in the following particulars: 9th Amendment, right to privacy and to make medical decisions about her own body; 5th and 14th amendments regarding deprivation of property and lack of equal protection by being treated differently by having a disability which prevents her from wearing a mask, depriving her of goods and services.

She has suffered psychologically and physically as a result of the mandatory mask requirement, and she has suffered economically as a result of loss of business. She is medically and psychologically unable to wear a mask. She suffers from asthma, and rebreathing in CO2 triggers asthma attacks. Ms. Keefe was diagnosed with severe PTSD (post-traumatic stress disorder) as a result of a childhood attack during which she was repeatedly smothered. Wearing a mask triggers the panic and hyperventilation which causes her to be in a state where she cannot function. Shopping for food and necessities has been traumatic, as she has been verbally, mentally and emotionally assaulted by other shoppers who scream at her for not covering her nose with a mask.

j. PLAINTIFF JILL MARIE INANNA is a resident of State of New Mexico, county of Rio Arriba, Village of Ojo Caliente. Ms. Inanna owns and operates a luxury guest resort and wellness retreat sanctuary in Ojo Caliente, New Mexico called Origin de Rancho at San Juan. The sanctuary is a high-end luxury resort, catering to large groups, weddings, spiritual and wellness events, as well as providing art, nature and history tours of the region. She has suffered loss of business at a pivotal time for her retreat, especially over the multiple closures, reopenings, and restrictions that left her as a business owner devastated by the continuous uncertainty regarding her business which was dependent on tourism with advance reservations. The business suffered massive depletion of bookings that were already earmarked for other financial expenditures for maintenance, improvements and upkeep of this 100-plus acre resort. She was forced to let employees go, due to insufficient cash-flow from the back and forth of numerous public health orders which flowed from the Governor's proclamation of public health emergency. Ms. Inanna had to take up the slack herself, further affecting her health and well-being as one who was recovering from breast cancer. The effects of the economic devastation will take years from which to recover, with effects from deterioration of infrastructure due to loss of bookings; economic harms and losses, and stress. The loss of her business has caused harm to her village, as she employed many local people. New Mexico is dependent on tourism for its thriving economy, and this type of business has been destroyed by the arbitrary and capricious actions of our state's officials.

k. PLAINTIFF DAVID G. STEPUTIS is a resident of Santa Fe County, New Mexico, City of Santa Fe. He is a businessman and inventor and owner of cooking stoves, among other businesses. He has been damaged in that he believed, due to the misinformation around

what restrictions would be imposed for travelers coming back into the state, he could not travel across state lines to attend shows for purposes of selling his stoves wholesale to distributors, without being subjected to a “quarantine” as a healthy person with no symptoms of COVID-19. He believed that he would be quarantined for 2 weeks upon each return into New Mexico from another state. This was in violation of his right to travel freely among the states.

15. Defendants are various governmental officials who reside in New Mexico. They are all being sued in their official capacity, with the exception of Governor Michelle Lujan-Grisham, who is also being sued in her individual capacity.

16. Defendants are Michelle Lujan-Grisham, individually and in her official capacity as Governor of New Mexico; as well as the interim acting Public Health Director, Billy Jimenez, and prior public health director, Kathyleen Kunkel, acting solely in their official capacity.

IV. GENERAL ALLEGATIONS

17. The fact pattern for this case is extremely complex. A number of sections below discuss errors or the debunking of what is misleading information put forth by the State or Centers for Disease Control (CDC). It is indisputable that the severity of COVID-19 was grossly overestimated (see below), and is less dangerous than many other infectious diseases that we have lived through without taking such drastic steps to control. The varied and numerous harms caused by the lockdown, business closures, and other restrictions ordered in response to COVID-19 are greater than the risk of the disease. The basis upon which the restrictions are founded, the PCR test, is highly unreliable and alone, cannot be used to diagnose a COVID-19 case. The State’s reaction to COVID-19 is the definition of arbitrary and capricious when these factors are

taken into consideration. The continuation of this overreaction has only occurred due to the reality that the facts are complex enough that few have realized how badly they have been misled. Here we attempt to simplify the facts into a digestible narrative.

A. Timeline

18. The following is a timeline of events and references to place this case in context:

PRE 2019

2014-19 National Institute for Allergy and Infectious Diseases, the organization led by Dr. Anthony Fauci, funded scientists at the Wuhan Institute of Virology and other institutions for work on “gain-of-function” research on bat coronaviruses. In 2019, with the backing of NIAID, the National Institutes of Health committed \$3.7 million over six years for research that included some gain-of-function work. The program followed another \$3.7 million, 5-year project for collecting and studying bat coronaviruses, which ended in 2019 bringing the total to \$7.4 million.⁸ “Gain-of-function” is the euphemism for biological research aimed at increasing the virulence and lethality of pathogens and viruses.⁹

2015 Testing method for COVID-19 was patented in Holland by Richard Rothschild.¹⁰

2017 Millions of COVID-19 test kits are sold worldwide, including to the United States for a disease that supposedly did not exist.¹¹

2019

- 10/18: EVENT 201, “Coronavirus Pandemic Exercise” held in New York City sponsored by John Hopkins Center for Health Security, Bill and Melinda Gates Foundation, and World Economic Forum.¹²
- 12/8 - First person to test positive (Wuhan, China).¹³

⁸<https://www.newsweek.com/dr-fauci-backed-controversial-wuhan-lab-millions-us-dollars-risky-coronavirus-research-1500741>

⁹ <https://ahrp.org/what-is-gain-of-function-research-who-is-at-high-risk/>

¹⁰ <https://principia-scientific.com/proof-that-the-pandemic-was-planned-with-purpose/>

¹¹ Id.

¹² <https://www.centerforhealthsecurity.org/event201/about>

¹³ US Department of Defense. “Coronavirus: DOD Response Timeline.” *US Department of Defense*, 2020, <https://www.defense.gov/Explore/Spotlight/Coronavirus/DOD-Response-Timeline/>. Accessed 20 August 2020.

- 12/31 – World Health Organization (WHO) China Country Office was informed of cases of pneumonia of unknown etiology (unknown cause) detected in Wuhan City, Hubei Province of China.¹⁴

2020

- 1/7 - China confirms a COVID-19 case.¹⁵
- 1/7 - CDC establishes the Coronavirus Incident Management System.¹⁶
- 1/10 - COVID-19 sequence was known in the National Institute of Health (NIH) vaccine trial – per Fauci’s congressional testimony on 5/12/20. Please note NIH/Fauci began a vaccine trial 2 days before WHO or China even released the COVID-19 sequence on 1/12. This was before there was even a confirmation it had spread outside of China on 1/13, before WHO confirmed it could even spread between humans on 1/14 and before declaring it a public health emergency on 1/30. Fauci’s congressional testimony is not consistent with the WHO facts - he testified “we actually started that [vaccine development] in January, literally days after the virus was known and its sequence was published. (Timestamp 01:16:50)¹⁷.
- 1/10 - CDC launches dedicated COVID-19 website.¹⁸
- 1/11 - Vaccine Research Center met to develop a plan – per Fauci’s congressional testimony on 5/12/20 (Timestamp 32:41)¹⁹
- 1/11 - First coronavirus death worldwide is reported in Wuhan, China.²⁰

¹⁴Pneumonia of unknown cause – China, WORLD HEALTH ORGANIZATION, (Jan 5, 2020), <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unkown-cause-china/en/>

¹⁵*Id*

¹⁶*Supra* at fn 13

¹⁷Dr. Anthony Fauci & CDC Director Senate Testimony Transcript May 12, REV.COM (Timestamp 01:16:50, May 12, 2020), <https://www.rev.com/blog/transcripts/dr-anthony-fauci-cdc-director-senate-testimony-transcript-may-12>

¹⁸*Supra* at fn 13

¹⁹*Supra* at fn 17

²⁰*Supra* at fn 13

- 1/14 - Officially started vaccine development - per Fauci's congressional testimony on 5/12/20²¹ (Timestamp 32:41)
- 1/20 - First reported U.S. case of coronavirus in Washington State, thought to be linked to what foreign sources describe as a "new" or "novel" coronavirus.²²
- 1/22 – New Mexico Department of Health (NMDOH) issues a statement that it is alerting healthcare providers to be proactive and vigilant with regards to a novel coronavirus (2019-nCoV), particularly with travelers returning home from traveling abroad.²³
- 1/23 WHO considered it "still too early to declare a Public Health Emergency of International Concern." (PHEIC)"²⁴
- 1/23 - China puts Wuhan on lockdown.²⁵
- 1/27 – NMDOH announces it has added a new page to its website NMHealth.org to provide information and answers to frequently asked questions about COVID-19.²⁶
- 1/29 – President Trump (POTUS) establishes a COVID-19 interagency task force.²⁷

²¹*Supra* at fn 17

²²*Supra* at fn 13

²³ Department of Health Cautions Medical Providers to Be Alert for Novel Coronavirus, NEW MEXICO DEPARTMENT OF HEALTH, (January 22, 2020), <https://cv.nmhealth.org/2020/01/22/departement-of-health-cautions-medical-providers-to-be-alert-for-novel-coronavirus/>

²⁴Rolling updates on coronavirus disease (COVID-19), WORLD HEALTH ORGANIZATION, (July 31, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

²⁵*Supra* at fn13

²⁶Department of Health Webpage Provides Answers for Residents About Novel Coronavirus, NM DOH (January 27, 2020), <https://cv.nmhealth.org/2020/01/27/departement-of-health-webpage-provides-answers-for-residents-about-novel-coronavirus/>

²⁷Statement from the Press Secretary Regarding the President's Coronavirus Task Force, (Jan 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>

- 1/30 – The International Health Regulations Emergency Committee of the WHO declared the outbreak of COVID-19 a public health emergency of international concern.²⁸
- 1/31 – Alex M. Azar II, Health and Human Services Secretary, declared a public health emergency for the US to aid the nation’s healthcare community in responding to COVID-19. ²⁹
- 2/6 - First alleged COVID-19 death in the United States.³⁰
- 2/11 - World Health Organization officially names the disease caused by the new coronavirus: COVID-19, as distinct from the virus which was designated as SAR CoV-2.³¹ WHO reported on its website, “Most people infected with the COVID-19 virus will experience mild to moderate respiratory illness and recover without requiring special treatment. Older people, and those with underlying medical problems like cardiovascular disease, diabetes, chronic respiratory disease, and cancer are more likely to develop serious illness.”³²
- 2/13 - NMDOH issues a statement advising against the use of face masks by the general public to protect against virus transmission.³³
- 2/20 - NMDOH issues a statement that the seasonal flu, not the coronavirus, is the illness of most concern to New Mexico residents.³⁴

28 Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV), WHO, (January 30,, 2020), [https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))

29 Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus, USDHHS, (January 31, 2020),<https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>

³⁰*Supra* at fn 13

³¹*Supra* at fn 13. And : [https://www.WHO.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-19\)-and-the-virus-that-causes-it](https://www.WHO.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-19)-and-the-virus-that-causes-it)

³² https://www.who.int/health-topics/coronavirus#tab=tab_1

³³Department of Health Advises General Public Against Using Face Masks to Prevent Novel Coronavirus, NEW MEXICO DEPARTMENT OF HEALTH, (February 13, 2020), <https://cv.nmhealth.org/2020/02/13/departement-of-health-advises-general-public-against-using-facemasks-to-prevent-novel-coronavirus/>

³⁴Flu – not coronavirus – continues to be the illness to worry about, NMDOH, (February 20, 2020), <https://cv.nmhealth.org/2020/02/20/flu-not-coronavirus-continues-to-be-the-illness-to-worry-about/>

- 3/3 – NMDOH announces that testing for COVID-19 is now available in New Mexico.³⁵
- 3/6 – NMDOH announces that the NMDOH Bureau of Health Emergency Management will be activating the Department Operations Center (DOC) at level 3 beginning Monday, March 9th in support of on-going pandemic-readiness activities related to the COVID-19 coronavirus. (Level 3 is a slightly higher alert status than standard operations at Level 4)³⁶
- 3/11 – Governor Lujan-Grisham declares a State of Emergency in Executive Order 2020-004.³⁷ Three citizens of New Mexico were presumed positive for COVID-19 and none dead when the emergency was declared.³⁸
- 3/11–WHO (World Health Organization) declared C-19 a pandemic. It defines pandemic as a “novel” or “new” virus and the term applies to how widespread the disease is, not how severe it is.³⁹
- 3/11 - NMDOH announces that New Mexico has one more presumptive positive case.⁴⁰
- 3/12 – NMDOH begins daily reporting of COVID-19 cases.⁴¹

³⁵COVID-19 coronavirus testing now available in New Mexico, NMDOH (March 3, 2020),

<https://cv.nmhealth.org/2020/03/03/covid-19-coronavirus-testing-now-available-in-new-mexico/>

³⁶Department of Health’s Bureau of Health Emergency Management to activate Department Operations Center, NMDOH (March 6, 2020,) <https://cv.nmhealth.org/2020/03/06/department-of-healths-bureau-of-health-emergency-management-to-activate-department-operations-center/>

³⁷EXECUTIVE ORDER 2020-004, ORDER DECLARING A STATE OF PUBLIC HEALTH EMERGENCY AND INVOKING THE POWERS PROVIDED BY THE ALL HAZARD EMERGENCY MANAGEMENT ACT AND THE EMERGENCY LICENSING ACT (March 11, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/03/Executive-Order-2020-004-r.pdf>

³⁸New Mexico Announces First Presumptive Positive COVID-19 Cases, NMDOH (March 11, 2020), <https://cv.nmhealth.org/2020/03/11/new-mexico-announces-first-presumptive-positive-covid-19-cases/>

³⁹WHO defines “pandemic” as the worldwide spread of a new disease. The definition does not address severity of the disease. <https://time.com/5791661/who-coronavirus-pandemic-declaration/> Also see: www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/

⁴⁰New Mexico Announces Another Positive COVID-19 Case, NEW MEXICO DEPARTMENT OF HEALTH (March 11, 2020), <https://cv.nmhealth.org/2020/03/11/new-mexico-announces-another-positive-covid-19-case/>

⁴¹New Mexico Announces Fifth Presumptive Positive COVID-19 Case, NEW MEXICO DEPARTMENT OF HEALTH, (March 12, 2020), <https://cv.nmhealth.org/2020/03/12/new-mexico-announces-fifth-presumptive-positive-covid-19-case/>

- 3/13 - POTUS declares the COVID-19 outbreak a national emergency.⁴²
- 3/13 - NMDOH issues Public Health Order (PHO) 03-13-2020 ordering nursing homes to limit visitors to those whose loved ones are receiving end of life care. ⁴³
- 3/13 - Governor Lujan-Grisham issues Executive Order 2020-005 Ordering the Closure of All Public Schools Until April 6, 2020.⁴⁴
- 3/15 - The CDC issued Interim Guidance for mass gatherings or large community events stating that such events that consist of 50 or more people should be cancelled or postponed.⁴⁵
- 3/16 –White House announces, “15 Days to Slow the Spread,” a nationwide effort to slow the spread of COVID-19 through the implementation of social distancing at all levels of society.⁴⁶
- 3/16 – NMDOH issues PHO 03-16-20 limiting mass gatherings of 100 people or more due to COVID-19. In the order, “New Mexico citizens are strongly advised to stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.”⁴⁷

⁴²Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, (Mar 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

⁴³Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19, New Mexico Department of Health, (March 13, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/03/031320-DOH-PHO-r.pdf>

⁴⁴Executive Order 005-2020, Order Directing the Closure of All Public School Until April 5, 2020, STATE OF NEW MEXICO, (March 13, 2020,) <https://www.governor.state.nm.us/wp-content/uploads/2020/03/Executive-Order-2020-005.pdf>

⁴⁵Krasny, Ros, and Kasia Klimasinska. “CDC Urges Scrapping All Mass Gatherings in the US for Eight Weeks.” *Bloomberg*, 15 March 2020, <https://www.bloomberg.com/news/articles/2020-03-15/cdc-says-gatherings-over-50-people-should-be-delayed-eight-weeks>. Accessed 9 December 2020.

⁴⁶15 Days to Slow the Spread, (Mar 16, 2020), <https://www.whitehouse.gov/articles/15-days-slow-spread/>

⁴⁷Public Health Emergency Order Limiting Mass Gatherings and Implementing Other Restrictions Due to COVID-19, New Mexico Department of Health, (March 16, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/03/031620-DOH-PHO-r.pdf>

- 3/17 - West Virginia is the last state to “confirm” a COVID-19 case. All 50 U.S. states have “confirmed” cases.⁴⁸
- 3/19 – NMDOH declares COVID-19 to be a “condition of public health importance” defined as a disease or infection “that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.”⁴⁹
- 3/19 – NMDOH issues PHO 03-19-2020 decreasing size of allowable mass gatherings from 100 to 10 people due to COVID-19. Food and drink establishments are limited to take out service only. Lodging businesses are limited to 50% capacity. Casinos, indoor shopping malls, recreational facilities, health and athletic clubs, movie theaters, and flea markets are directed to close.⁵⁰
- 3/23 – NMDOH issues PHO 03-23-20 closing all businesses and nonprofit entities except for those deemed “essential” and prohibiting mass gatherings of more than 5 people. Churches are exempt from the mass gathering limitation. The order states that “social distancing is the sole way New Mexicans can minimize the spread of COVID-19.”⁵¹
- 3/24 – NMDOH issues PHO 03-24-20 prohibiting non-essential health-care services, procedures, and surgeries, and establishing penalty of up to \$5000 for violating the order.⁵²
- 3/24 - National Vital Statistics System (NVSS) released the formal guidance regarding a “newly-introduced ICD code” (U07.1) to “accurately

⁴⁸*Supra at fn13*

⁴⁹ Public Health Emergency Order to Limiting Mass Gatherings and Implementing Other Restrictions Due to COVID-19, New Mexico Department of Health, (March 19, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/03/UPDATED-DOH-PHO-03-19-2020-r.pdf>

⁵⁰ *Id*

⁵¹ Public Health Emergency Order Closing All Businesses and Nonprofit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19, NMDOH (March 23, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/03/SignedPHO03-24-2019.pdf>

⁵² Public Health Emergency Order Imposing Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; Providing Guidance on those Restrictions; and Requiring a Report from Certain Health Care Providers, New Mexico Department of Health, (March 24, 2020,) https://cv.nmhealth.org/wp-content/uploads/2020/03/3_24_PHO_1.pdf

capture mortality data for Coronavirus Disease 2019 (COVID-19) on death certificates” (National Vital Statistics System, 2020). These guidelines usurped the 2003 data collection guidance that is used for all other infectious diseases and causes of death data and are unique to COVID-19.⁵³

- 3/25 – NMDOH reports the first COVID-19 *related* death in New Mexico, a man in his late 70's with multiple chronic health issues.⁵⁴
- 3/26 – Governor Lujan Grisham issues EO 2020-12 directing the closure of all public schools for the remainder of the 2019-2020 school year.⁵⁵
- 3/27 - Governor Lujan Grisham issues EO 2020-13 requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the NMDPH is directed to initiate isolation and quarantine proceedings.⁵⁶
- 4/1 – NMDOH announces relaxed testing criteria, allowing more New Mexicans to get tested for COVID-19.⁵⁷
- 4/3 - CDC advises the public to wear face coverings in public.⁵⁸ This advice is contradictory to what the NMDOH and CDC had earlier advised: that masks should not be worn by healthy people but only by symptomatic people.⁵⁹

⁵³NVSS: National Vital Statistics System COVID-19 Alert No. 2., CENTERS FOR DISEASE CONTROL AND PREVENTION. (Mar 24, 2020), <https://www.cdc.gov/nchs/data/nvss/coronavirus/Alert-2-New-ICD-code-introduced-for-COVID-19-deaths.pdf>

⁵⁴New Mexico COVID-19 Update: One Death, New Mexico Department of Health, (March 25, 2020), <https://cv.nmhealth.org/2020/03/25/new-mexico-covid-19-update-one-death/>

⁵⁵Executive Order 005-2020, Order Directing the Closure of All Public School for the Remainder of the 2019-2020 Academic School Year, 2020, STATE OF NEW MEXICO, (March 26 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/04/2020-012-schools.pdf>

⁵⁶Executive Order 005-2020, Order Individuals Traveling to New Mexico Through an Airport to Self-Isolate or Self-Quarantine for a Limited Period and Directing the New Mexico Department of Health to Initiate Lawful Isolation or Quarantine Proceedings for Individuals Who Do Not Self-Isolate or Self-Quarantine, State of New Mexico, (March 27 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/04/2020-013-air-travel.pdf>

⁵⁷Department of Health Announces Revised Testing Criteria for COVID-19, NEW MEXICO DEPARTMENT OF HEALTH, (April 1, 2020), <https://cv.nmhealth.org/2020/04/01/department-of-health-announces-revised-testing-criteria-for-covid-19/>

⁵⁸*Supra* at fn 13

⁵⁹<https://vocal.media/longevity/cdc-says-healthy-people-shouldn-t-wear-masks-for-protection-from-the-coronavirus>

- 4/6 – Governor Lujan Grisham states that “The only way for us to stop the spread of this virus is for New Mexicans to stop interacting with each other. New Mexicans must be crystal-clear on this point: Right now, every time you leave your house, you are putting yourself, your family and your community at risk.”⁶⁰
- 4/6 - Governor Lujan Grisham issues EO 2020-022 renewing the state of public health emergency and extending all powers and directives in the original emergency declaration.⁶¹
- 4/6 – Governor Lujan Grisham issues EO 2020-021 commuting the sentences of incarcerated individuals meeting certain criteria and instructing the New Mexico Department of Corrections to release those individuals.⁶²
- 4/6 – NMDOH issues PHO 04-06-2020 restricting “essential” retail businesses to 20% maximum occupancy and “essential” lodging businesses to 25% maximum occupancy.⁶³
- 4/8 - Wuhan, China, ends its more than two-month lockdown⁶⁴.
- 4/16 - POTUS announces guidelines on the three phases of Opening Up America Again.⁶⁵

⁶⁰“Governor officially extends emergency order to April 30,” New Mexico Department of Health, (April 6, 2020), <https://cv.nmhealth.org/2020/04/06/governor-officially-extends-emergency-order-to-april-30/>

⁶¹Executive Order 2020-022, Renewing The State Of Public Health Emergency Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Public Health Emergency, State of New Mexico, (April 6, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/04/PHO-4-6-2020.pdf>

⁶²Executive Order 2020-021, Commuting the Sentences of Incarcerated Individuals Who Meet Certain Criteria an Instructing the Department of Corrections to Release Those Individuals From Its Facilities, STATE OF NEW MEXICO, (April 6, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/04/2020-021.pdf>

⁶³Public Health Emergency Order Clarifying That Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; And Amending the March 20, 2020 Public Health Emergency Order Closing All Businesses and Nonprofit Entities Except For Those Deemed Essential And Providing Additional Restrictions On Mass Gatherings Due To COVID-19, New Mexico Health Department, (April 6, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/04/PHO-4-6-2020.pdf>

⁶⁴<https://www.thesun.co.uk/news/11237549/wuhan-coronavirus-lockdown-when-end-what-now/>

⁶⁵President Donald J. Trump Announces Guidelines for Opening Up America Again, (April 16, 2020), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-announces-guidelines-opening-america/>

- 4/30 - Governor Lujan Grisham issues EO 2020-026 renewing the state of public health emergency and extending all powers and directives identified in the original emergency declaration for an additional 30 days.⁶⁶
- 4/30 - NMDOH issues PHO 04-30-2020 allowing for the resumption of certain non-essential medical services in compliance with guidelines published by the NMDOH.⁶⁷
- 5/5- NMDOH issues PHO 05-05-2020 directing all employees of “essential” businesses to wear face masks.⁶⁸
- 5/8 - Bureau of Labor Statistics reports the U.S. jobless rate reached 14.7% in April, the highest level since the Great Depression. The White House noted that many of the job losses are due to temporary layoffs.⁶⁹
- 5/12 – NMDOH makes COVID-19 testing available to all workers in New Mexico, including employees at all levels of government, and employees in utility, construction, grocery, pharmacy, retail, wholesale, food service, and other service industries.⁷⁰
- 5/15 - Governor Lujan Grisham issues EO 2020-036 renewing the state of public health emergency and extending all powers and directives in the original emergency declaration for an additional 30 days.⁷¹

⁶⁶Executive Order 2020-026, Renewing The State Of Public Health Emergency Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Public Health Emergency, State of New Mexico, (April 30, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/04/EO-2020-026-renewing-public-health-emergency-fv.pdf>

⁶⁷Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries, New Mexico Department of Health, (April 30, 2020,), <https://cv.nmhealth.org/wp-content/uploads/2020/05/04.30.20-health-care-services-PHO.pdf>

⁶⁸Public Health Emergency Order Closing All Businesses and Nonprofit Entities Except For Those Deemed Essential And Providing Additional Restrictions On Mass Gatherings Due To COVID-19, New Mexico (May 5, 2020) https://cv.nmhealth.org/wp-content/uploads/2020/05/GovernorsOffice@state.nm.us_20200505_150440.pdf

⁶⁹*Supra* at fn13

⁷⁰Department of Health announces COVID-19 testing now open to all workers in New Mexico, New Mexico Department of Health, (May 12, 2020), <https://cv.nmhealth.org/2020/05/12/department-of-health-announces-covid-19-testing-now-open-to-all-workers-in-new-mexico/>

⁷¹Executive Order 2020-036, Renewing The State Of Public Health Emergency Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Public Health Emergency, State of New Mexico, (May 15, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/06/Executive-Order-2020-036.pdf>

- 5/15 – NMDOH issues PHO 05-15-2020 requiring all people to wear a face mask in public places unless in possession of a written doctor's exemption, and except when eating, drinking, or exercising. The order allows “non-essential” businesses and churches to re-open at 25% maximum occupancy, and requires those businesses and all individuals to comply with COVID-19 Safe Practices as defined in “All Together New Mexico: COVID-19 Safe Practices for Individuals and Employers.” State parks are allowed limited re-opening.⁷² The reopenings are the beginning of a phased plan to reopen the state based on “gating criteria” indicating improvements in transmission rate, testing availability, hospital capacity, and PPE supplies.⁷³
- 5/20 - For the first time since U.S. states implemented stay-at-home measures to mitigate the spread of COVID-19, all 50 states have begun to partially lift restrictions⁷⁴
- 5/27 – NMDOH issues PHO 05-27-20 allowing restaurants to offer dine-in service in outdoor seating areas at 50% maximum occupancy.⁷⁵
- 6/1 - Governor Lujan Grisham issues EO 2020-036 renewing the state of public health emergency and extending all powers and directives in the original emergency declaration for an additional 30 days.⁷⁶

⁷²Public Health Emergency Order Clarifying That Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; And Amending prior Orders; Public Health Emergency Order Closing All Businesses and Nonprofit Entities Except For Those Deemed Essential And Providing Additional Restrictions On Mass Gatherings Due To COVID-19, New Mexico Department of Health, (May 15, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/05/5-15-2020-PHO.pdf>

⁷³"Governor signs modified, extended public health order easing some restrictions and requiring face coverings," New Mexico Department of Health, (May 15, 2020), <https://cv.nmhealth.org/2020/05/15/governor-signs-modified-extended-public-health-order-easing-some-restrictions-and-requiring-face-coverings/>

⁷⁴*Supra* at fn 13

⁷⁵ Public Health Emergency Order Closing All Businesses and Nonprofit Entities Except For Those Deemed Essential And Providing Additional Restrictions On Mass Gatherings Due To COVID-19, New Mexico Department of Health, (May 27, 2020,) <https://cv.nmhealth.org/wp-content/uploads/2020/05/PHO-5-26-2020.pdf>

⁷⁶Executive Order 2020-36, Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, STATE OF NEW MEXICO, (June 1, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/06/Executive-Order-2020-036.pdf>

- 6/1 - Governor Lujan Grisham issues EO 2020-037 extending for 30 days the requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the NMDOH is directed to initiate isolation and quarantine proceedings.⁷⁷
- 6/1 - NMDOH issues PHO 06-05-2020 allowing gyms and swimming pools to re-open at 50% maximum occupancy, and increasing the allowable occupancy of lodging businesses from 25% to 50%.⁷⁸
- 6/12 – NMDOH issues PHO 06-12-2020 allowing indoor malls to re-open at 25% maximum occupancy.⁷⁹
- 6/30 - Governor Lujan Grisham issues EO 2020-053 renewing the state of public health emergency and extending all powers and directives in the original emergency declaration for an additional 30 days.⁸⁰
- 6/30 - NMDOH issues PHO 06-30-2020 requiring retail businesses to enforce the state mask mandate by requiring patrons to wear masks or provide written proof of medical exemption as a condition of entry, effectively denying food to those who cannot or will not wear masks and who cannot obtain proof of medical exemption. The order states that “social distancing and the consistent and proper use of face coverings in

⁷⁷Executive Order 2020-37, Amended Order Directing Individuals Traveling To New Mexico Through An Airport To Self-Isolate Or Self-Quarantine For A Limited Period And Directing The New Mexico Department Of Health To Initiate Lawful Isolation And Quarantine Proceedings For Individuals Who Do Not Self-Isolate Or Self-Quarantine, State of New Mexico, (June 1, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/06/Executive-Order-2020-037.pdf>

⁷⁸Public Health Emergency Order Clarifying That Current Guidance Documents, Advisories, And Emergency Public Health Orders Remain In Effect; And Amending The March 23, 2020, April 6, 2020, April 11, April 30, 2020, May 5, 2020, And May 15, 2020, Public Health Emergency Orders Closing All Businesses And Nonprofit Entities Except For Those Deemed Essential And Providing Additional Restrictions On Mass Gatherings Due To COVID-19, NMDOH (June 1, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/06/060120-PHO.pdf>

⁷⁹Public Health Emergency Order Clarifying That Current Guidance Documents, Advisories, And Emergency Public Health Orders Remain In Effect; And Amending The March 23, 2020, April 6, 2020, April 11, April 30, 2020, May 5, 2020, And May 15, 2020, and June 1, 2020 Public Health Emergency Orders Closing All Businesses And Nonprofit Entities Except For Those Deemed Essential And Providing Additional Restrictions On Mass Gatherings Due To COVID-19, NMDOH, (June 12, 2020), https://cv.nmhealth.org/wp-content/uploads/2020/06/GovernorsOffice@state.nm.us_20200612_082914.pdf

⁸⁰EO 2020-053, Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, State of New Mexico, (June 30, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/07/Executive-Order-2020-053.pdf>

public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19...”⁸¹

- 7/1 - Governor Lujan Grisham issues EO 2020-054 extending for 30 days the requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the NMDPH is directed to initiate isolation and quarantine proceedings.⁸²
- 7/1 – Governor Lujan Grisham issues a severe warning about rising COVID-19 case figures throughout the state and threatens to re-enact public health restrictions, adding that Phase 2 of the state reopening plan is on hold.⁸³
- 7/1 – NM Human Services Director (HSD) Secretary David Scrase states that “Until we have a vaccine that can be widely applied and provide immunity, most of us are still at risk. This is not the time to relax. New Mexicans need to take sensible measures and not let their guard down. The virus hasn’t changed: stay at home as much as you can, wear a face mask, maintain 6 feet of social distancing when in public and wash your hands often.”⁸⁴
- 7/3 – NMDOH Secretary Kathy Kunkel announces her pending retirement.⁸⁵

⁸¹Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, and June 15, 2020 Public Health Emergency Orders Closing All Businesses and Nonprofit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 , New Mexico Department of Health, (June 30, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/07/063020-PHO-1.pdf>

⁸²Executive Order 2020-053, Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, State of New Mexico, (July 1, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/07/Executive-Order-2020-053.pdf>

⁸³State extends emergency public health order, NMDOH (July 1, 2020), <https://cv.nmhealth.org/2020/07/01/state-extends-emergency-public-health-order/>

⁸⁴*Id*

⁸⁵State health secretary to retire, NMDOH, (July 3, 2020), <https://cv.nmhealth.org/2020/07/03/state-health-secretary-to-retire/>

- 7/9 – Governor Lujan Grisham states at her weekly virtual press conference that the virus is “a vicious, dangerous, silent, invisible enemy. Every time you go out of your house you are exposed to this virus. It is living amongst us. It is everywhere....[We must wear] face coverings at all times when you are outside of your house. If you go for a walk, you need to have a mask on. If you go to the gym, you need to have a mask on....We need to adopt a zero-tolerance policy for not wearing a face covering.”⁸⁶
- 7/13 – NMDOH issues PHO 07-13-2020 prohibiting once again indoor dining in restaurants. However, “close contact” businesses are allowed to re-open at 25% maximum occupancy. Gym allowable occupancy is reduced from 50% to 25%. Amateur “close contact” sports are prohibited. State Parks require proof of residency for entry.⁸⁷
- 7/30 - Governor Lujan Grisham issues EO 2020-055 renewing the state of public health emergency and extending all powers and directives in the original emergency declaration for an additional 30 days.⁸⁸
- 7/30 – NMDOH issues PHO 07-30-2020 requiring private K-12 schools to operate at 25% maximum occupancy and requiring students and staff to wear masks for in-person instruction in accordance with “Reentry Guidance” published by NMPED on June 20, 2020.⁸⁹
- 8/6 – Governor Lujan Grisham states that the COVID-19 public health measures of mask wearing, social distancing, avoiding large groups of people should be practiced “forever, irrespective of COVID,” adding, “Let's hold these behaviors beyond the vaccine, because these are good

⁸⁶ Weekly COVID-19 Update, Governor Michelle Lujan Grisham, (July 9, 2020), <https://www.facebook.com/GovMLG/videos/281572376392258/>

⁸⁷ Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, and June 30, 2020 Public Health Emergency Orders Closing All Businesses and Nonprofit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19, NEW MEXICO DEPARTMENT OF HEALTH, (July 13, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/07/7.13.20-PHO-1.pdf>

⁸⁸ Executive Order 2020-053, Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, State of New Mexico, (July 30, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/08/2020-055.pdf>

⁸⁹ [Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending numerous prior Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-1](https://cv.nmhealth.org/wp-content/uploads/2020/07/07.30.20-PHO.pdf), STATE OF NEW MEXICO, (July 30, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/07/07.30.20-PHO.pdf>

public health behaviors that will prevent the spread of influenza, that will prevent the spread of colds, that will create a healthier environment in general for New Mexicans.”⁹⁰

- 8/6 - Governor Lujan Grisham issues EO 2020-056 extending for 30 days the requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the NMDPH is directed to initiate isolation and quarantine proceedings.⁹¹
- 8/13 - Governor Lujan Grisham states she has “some degree of confidence” that the vaccine for COVID-19 will be mandatory for nursing home residents, healthcare workers, educators, first responders, and corrections populations. The state will develop a priority list for distribution of the vaccine beyond those groups.⁹²
- 8/27 - NMDOH issues statement that New Mexico’s gating criteria – a measurement of the public health data reflecting the incidence and spread of COVID-19 – show the state has been successful in suppressing the virus over the course of the late summer. Governor Grisham states, “New Mexicans ought to be very proud of the progress we’ve made all together, but we’ve got to remember progress in our fight against this virus does not mean we can let our guard down. A sense of complacency will once again elevate the dire potential health risks for New Mexico families, neighbors and communities.”⁹³
- 8/27 - Public Education Secretary Ryan Stewart announces work on a statewide plan for limited re-entry into face to face learning for K-5 students after Labor Day.⁹⁴

⁹⁰Weekly COVID-19 Update, Governor Michelle Lujan Grisham, August 6, 2020, https://www.facebook.com/watch/live/?v=588151218729018&ref=watch_permalink

⁹¹Executive Order 2020-56, (August 6, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/08/Executive-Order-2020-056.pdf>

⁹²Weekly COVID-19 Update, Michelle Lujan Grisham, (August 13, 2020), <https://www.facebook.com/2265648160428062/videos/400987460882197>

⁹³Governor announces revised emergency public health order, NMDOH (August 27, 2020), <https://cv.nmhealth.org/2020/08/27/governor-announces-revised-emergency-public-health-order/>

⁹⁴*Id*

- 8/28 – NMDOH publishes “Policies for Prevention and Control of COVID-19 in New Mexico,” documenting recommendations of NMDOH based on CDC guidance, scientific evidence, and New Mexico's experience with the virus to date. Kathy Kunkel states that the document is “meant to help New Mexico until a time when we have a widely available vaccine that prevents the spread of COVID-19 among our state's residents.”⁹⁵
- 8/28 – NMDOH issues PHO 08-28-2020 increasing the allowable mass gathering size from 5 to 10 people. Food and drink establishments are allowed to offer dine-in service at 25% of maximum occupancy in indoor dining areas and 75% maximum occupancy in outdoor dining areas. The maximum occupancy for churches is increased from 25% to 40%.⁹⁶
- 8/29 - Governor Lujan Grisham issues EO 2020-059 renewing the state of public health emergency and extending all powers and directives in the original emergency declaration for an additional 30 days.⁹⁷
- 9/3 - Governor Lujan Grisham issues EO 2020-063 extending for 30 days the requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the New Mexico Department of Health is directed to initiate isolation and quarantine proceedings.⁹⁸

⁹⁵Department of Health posts updated guidance to control COVID-19, NEW MEXICO DEPARTMENT OF HEALTH, (August 28, 2020), <https://cv.nmhealth.org/2020/08/28/department-of-health-posts-updated-guidance-to-control-covid-19/>

⁹⁶Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, June 30, 2020, July 13, 2020, and July 30, 2020 Public Health Emergency Orders Closing All Businesses and Nonprofit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19, NMDOH, (August 28, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/08/082820-PHO.pdf>

⁹⁷Executive order 2020-059 – Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, STATE OF NEW MEXICO, (August 29, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/08/Executive-Order-2020-059.pdf>

⁹⁸Executive Order 2020-63, Amended Order Directing Individuals Traveling To New Mexico Through An Airport To Self-Isolate Or Self-Quarantine For A Limited Period And Directing The New Mexico Department Of Health To Initiate Lawful Isolation And Quarantine Proceedings For Individuals Who Do Not Self-Isolate Or Self-Quarantine, STATE OF NEW MEXICO, (September 3, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/09/Executive-Order-2020-063.pdf>

- 9/3 – NMDOH issues PHO 09-03-2020 allowing lodging businesses to increase their maximum occupancy from 50% to 75% if they complete the NM Safe Certification Training.⁹⁹
- 9/10 – Governor Lujan Grisham states that New Mexico residents “will likely” not go to bars, movie theaters, or concerts until a COVID-19 vaccine is available.¹⁰⁰
- 9/17 – Governor Lujan Grisham announces that “New Mexicans have done incredible work,” and there has been improvement in gating criteria for the state. “The results are clear: A safer state, safer communities and fewer dangerous illnesses in New Mexico. We can keep up the great work, I am confident, and my goal will be to make additional moves in this direction this fall.”¹⁰¹
- 9/18 – NM EO 2020-064 issued, renewing the state of public health emergency and extending all powers and directives in the original emergency declaration for an additional 30 days.¹⁰²
- 10/9 - New Mexicans are advised to limit their travel outside of the home to 3 stops per day to reduce the risk of spreading the virus. “Every time we leave the house, we take a risk, because the virus is out there, and it is an awful, invisible enemy,” says Gov. Lujan Grisham.¹⁰³

⁹⁹Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending the March 23, 2020, April 6, 2020, April 11, 2020, April 30, 2020, May 5, 2020, May 15, 2020, May 27, 2020, June 1, 2020, June 12, 2020, June 15, 2020, June 30, 2020, July 13, 2020, and July 30, 2020, and August 28, 2020 Public Health Emergency Orders Closing All Businesses and Nonprofit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19, NEW MEXICO DEPARTMENT OF HEALTH, (September 3, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/09/090320-PHO.pdf>

¹⁰⁰Weekly COVID-19 Update, Governor Michelle Lujan Grisham, September 10, 2020, https://www.facebook.com/watch/live/?v=2391425587832086&ref=watch_permalink

¹⁰¹State to amend guidance for small groups in exercise settings, outdoor activities, NMDOH, (September 17, 2020), <https://cv.nmhealth.org/2020/09/17/state-to-amend-guidance-for-small-groups-in-exercise-settings-outdoor-activities/>

¹⁰²Executive Order 2020-064 Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, STATE OF NEW MEXICO, (September 18, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/09/Executive-Order-2020-064.pdf>

¹⁰³State of New Mexico encourages residents to ‘stay inside the triangle,’ limit daily activities outside the home, NEW MEXICO DEPARTMENT OF HEALTH, (October 9, 2020), <https://cv.nmhealth.org/2020/10/09/state-of-new-mexico-encourages-residents-to-stay-inside-the-triangle-limit-daily-activities-outside-the-home/>

- 10/13 – Governor Lujan Grisham issues a statement that the state has missed its reopening gating criteria – a measure of the spread of the virus that signals whether additional day-to-day activity is safe and can be permitted – for several weeks, and threatening to re-enact stricter public health regulations in order to stem the tide of increasing COVID “infections.” She states, “Without a vaccine, we have only a few tools against this awful, invisible enemy,” said Gov. Lujan Grisham. “...the virus is booming in New Mexico right now. Too many of us, succumbing to COVID fatigue, are no longer using those tools. We’re no longer taking those precautions. We are giving the virus too many opportunities to spread. And the enemy is taking advantage.”¹⁰⁴
- 10/15 – NMDOH reports the first flu case of the 2020-2021 season in New Mexico. “There is no better time to get your flu shot than now,” said Department of Health Acting Cabinet Secretary Billy Jimenez. “Flu-related illnesses make for busy times for medical professionals, especially in hospitals where ICU beds and ventilators are needed for the more severe flu cases – the same beds and equipment needed to treat severe cases of COVID-19.”¹⁰⁵
- 10/16 – NMDOH announces that the state has experienced successive days of record-breaking daily COVID-19 infection rates. The governor warns that the state’s “dramatically and rapidly worsening public health conditions” will, if unabated, compel significant additional restrictions on day-to-day activities for all New Mexicans in order to preserve lives and protect the state’s fragile health care capacity. “This is the most severe emergency New Mexico has ever faced,” says Gov. Lujan Grisham.¹⁰⁶
- 10/16 – NM EO 2020-072 extended for 30 days the requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the NMDOH is directed to initiate isolation and quarantine proceedings.¹⁰⁷

¹⁰⁴Gov. announces renewed public health regulations, reiterates that more will come if alarming rise of COVID-19 is not slowed, NM DOH, (October 13, 2020), <https://cv.nmhealth.org/2020/10/13/gov-announces-renewed-public-health-regulations-reiterates-that-more-will-come-if-alarming-rise-of-covid-19-is-not-slowed/>

¹⁰⁵Department of Health reports first flu case of 2020-2021 season, NMDOH (October 15, 2020), <https://cv.nmhealth.org/2020/10/15/department-of-health-reports-first-flu-case-of-2020-2021-season/>

¹⁰⁶New emergency public health order in effect, NMDOH, (October 16, 2020), <https://cv.nmhealth.org/2020/10/16/new-emergency-public-health-order-in-effect/>

¹⁰⁷Executive Order 2020-72, Amended Order Directing Individuals Traveling To New Mexico Through An Airport To Self-Isolate Or Self-Quarantine For A Limited Period And Directing The New Mexico Department Of Health To

- 10/16 - EO 2020-073 renews the state of public health emergency and extends all powers and directives in the original emergency declaration for an additional 30 days.¹⁰⁸
- 10/16 - NMDOH issues PHO 10-16-2020 reduces the allowable size of mass gatherings from 10 to 5 people, and requiring lodging businesses to decrease their maximum occupancy from 50% to 25%, or operate at 60% maximum occupancy if they complete the NM Safe Certification Training.¹⁰⁹
- 10/20 – The State announced upcoming enhanced mitigation efforts to crack down on COVID-19 throughout New Mexico, measures intended to break the chain of alleged escalating statewide “infections” and prevent the virus from overwhelming state hospitals without enacting wholesale business closings. Says Lujan Grisham, “It is unsettling and upsetting to see everyone's hard work and sacrifice undone in only a few short weeks.”¹¹⁰
- 10/22 - NMDOH issues PHO 10-22-2020 requiring retail and food and drink establishments to close between the hours of 10 pm and 4 am. In order to stay open during allowed business hours, food and drink establishments must also complete and comply with the NM Safe Certification training, requiring businesses to collect customer data for contact tracing purposes, screen customers for symptoms, and consent to spot testing of symptomatic employees. *In addition, any business reporting 4 COVID-positive employees in a two week period will be*

Initiate Lawful Isolation And Quarantine Proceedings For Individuals Who Do Not Self-Isolate Or Self-Quarantine, (October 16, 2020) <https://cv.nmhealth.org/wp-content/uploads/2020/10/Executive-Order-2020-072-1.pdf>

¹⁰⁸Executive Order 2020-073 Renewing The State Of Public Health Emergency Initially Declared In Executive Order 2020-004, Other Powers Invoked In That Order, And All Other Orders And Directives Contained In Executive Orders Tied To The Ongoing Public Health Emergency, (October 16, 2020), https://cv.nmhealth.org/wp-content/uploads/2020/10/EO-2020-073-renewing-public-health-emergency_Oct-16-fv.pdf

¹⁰⁹Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Nonprofit Entities’ Operations and Providing Additional Restrictions on Mass Gatherings Due to COVID-19, NMDOH, (October 16, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/10/101620-PHO-1-1.pdf>

¹¹⁰Governor, state officials detail crackdown on COVID-19, NMDOH, (October 20, 2020), <https://cv.nmhealth.org/2020/10/20/governor-state-officials-detail-crackdown-on-covid-19/>

*required to close for 14 days.*¹¹¹ This is without regard to the total number of employees of the business.

- 10/29 - Governor Lujan Grisham issues EO 2020-075 extending for 30 days the requirement that individuals traveling to New Mexico through an airport self-isolate or self-quarantine for a specified period. If they do not comply, the NMDPH is directed to initiate isolation and quarantine proceedings.¹¹²
- 11/4 – NMDOH announces a “Red to Green” COVID-19 testing surge, establishing 12 new testing sites across southern New Mexico, with the goal of lowering test positivity rates in hard hit counties and restoring the economy.¹¹³
- 11/4 – Lt. Governor Howie Morales states, “More testing does not lead to more cases. More testing helps us identify who is positive and ensure they are informed and are isolated before they spread the virus throughout the community.”¹¹⁴
- 11/5 - NMDOH issues PHO 11-05-2020 establishing a fine up to \$5000 for violating the current and future public health orders.¹¹⁵
- 11/13 – EO 2020-080 renews the state of public health emergency and extends all powers and directives in the original emergency declaration for an additional 30 days.¹¹⁶

¹¹¹Public Health Emergency Order, NMDOH, (October 22, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/10/102220-PHO.pdf>

¹¹²Executive Order 2020-75, (October 22, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/10/EO-2020-075.pdf>

¹¹³Department of Health announces ‘Red to Green’ COVID-19 testing surge across southern N.M., NMDOH, (November 4, 2020), <https://cv.nmhealth.org/2020/11/04/department-of-health-announces-red-to-green-covid-19-testing-surge-across-southern-n-m/>

¹¹⁴*Id*

¹¹⁵Public Health Emergency Order, NMDOH, (November 5, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/11/110520-PHO.pdf>

¹¹⁶Executive Order 2020-080, (November 13, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/11/EO-2020-080.pdf>

- 11/16 – Governor Lujan Grisham states that New Mexicans should not be spending time with non-household members, and that “we are going to be hearing from medical professionals that we should be wearing a mask, indoors, in our own homes.”¹¹⁷
- 11/16 - NMDOH issues PHO 11-16-2020 ordering a 14 day “reset”, closing “non-essential” businesses, requiring “essential” businesses to close between 10 pm and 4 am and operate at a maximum occupancy of 25%, eliminating dine-in service in food and drink establishments, closing indoor malls and decreasing allowable church maximum occupancy from 40% to 25%. Additionally, businesses with 4 positive employee COVID-19 tests must close for 14 days. This action resulted in the closure of over a dozen food stores throughout the state.¹¹⁸
- 11/18 – NMDOH issues PHO 11-18-2020 requiring laboratories to collect an increased amount of personal contact information for use in contact tracing or face a \$5000 fine.¹¹⁹
- 11/19 – Governor Lujan Grisham states in order to stop the spread of the virus New Mexico residents must limit their travel, adding that people “should not even be traveling from neighborhood to neighborhood right now.”¹²⁰
- 11/19 – Governor Lujan Grisham states that all New Mexicans should expect to get tested multiple times over the next year, and that testing will continue for another year or more “while a vaccine is being distributed,” and, “because this is such a deadly virus, the state will be ready to use

¹¹⁷Weekly COVID-19 Update, Governor Michelle Lujan Grisham, (November 19 2020), https://www.facebook.com/watch/live/?v=291481612144067&ref=watch_permalink.

¹¹⁸Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Provide Additional Temporary Restrictions Due to COVID-19, NMDOH, (November 16, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/11/111620-PHO.pdf>

¹¹⁹Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements For All Laboratories And Submitters Submitting Notifiable Condition COVID-19 Test Results To The New Mexico Epidemiology And Response Division, NMDOH, (November 18, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/11/111820-PHO.pdf>

¹²⁰Weekly COVID-19 Update, Governor Michelle Lujan Grisham, November 19, 2020), <https://www.facebook.com/GovMLG/videos/291481612144067>

“broader surveillance systems” that “most people won't even know exist out there” in the future.¹²¹

- 11/23 – NMDOH announces that it has added saliva testing to its testing arsenal in an effort to accommodate faster, safer, and more widespread testing in New Mexico. According to the press release, saliva testing has proven to be “at least as accurate” as the nasal swab test.¹²²
- 11/23 –As of today, 25 essential businesses across the state, including grocery stores and a food distribution center, have been closed for two weeks because of the provisions of a public health order issued by NMDOH on 11/16.¹²³ It is subsequently reported that people are standing in lines, in the cold, for 2 to 4 hours to purchase food and obtain essential medications.¹²⁴ The governor office responded that the state is “not forcing anyone to stand in a crowded line.”¹²⁵
- 11/24 – Special Legislative Session held for the purpose of allocating over \$300 million in federal CARES funds, including \$194 million in unemployment aid, \$100 million in grants to local small businesses and nonprofits, including Planned Parenthood, with smaller amounts to provide aid for rent and mortgage payments, money for COVID-19 testing, contact tracing and vaccine rollout.¹²⁶
- 11/30 –NMDOH issues PHO 11-30-2020 implementing statewide “Red to Green” three-tiered system imposing COVID-19 restrictions by county, effective 12/2/2020. Counties are graded according to number of

¹²¹ *Id*

¹²² NMDOH to introduce COVID-19 saliva tests, NMDOH, (November 23, 2020), <https://cv.nmhealth.org/2020/11/23/nmdoh-to-introduce-covid-19-saliva-tests/>

¹²³ Blankely, Bethany. “New Mexico governor shuts down grocery stores for two weeks.” *Washington Examiner*, 24 November 2020, <https://www.washingtonexaminer.com/politics/new-mexico-governor-shuts-down-grocery-stores-for-two-weeks>.

¹²⁴ Bleau, Hannah. “Elisa Martinez: 2-4 Hour Lines Outside Supermarkets Due to New Mexico Gov’s Lockdown.” *Breitbart*, 28 November, 2020, <https://www.breitbart.com/politics/2020/11/28/elisa-martinez-2-4-hour-lines-outside-supermarkets-due-to-new-mexico-govs-lockdown/>.

¹²⁵ *Id*

¹²⁶ Dunlap, Susan, and Andy Lyman. “Legislature passes COVID relief bill during quick special session.” *NM Political Report*, 24 November 2020, <https://nmpoliticalreport.com/2020/11/24/legislature-passes-covid-relief-bill-during-quick-special-session/>.

cases and test positivity rate. Certain businesses are exempted from closure if they agree to ongoing employee testing and contact tracing¹²⁷

- 12/4 - Governor Lujan Grisham issues EO 2020-83 directing NMDOH to take necessary steps to credential physicians and other healthcare providers to work independently to treat COVID-19 patients, to designate credentialed physicians as public employees for purposes of the Tort Claims Act, and to initiate the implementation of crisis standards of care if and when the need arises.¹²⁸

B. Lockdown Policy Based on Flawed Computer Models Predicting Millions of Deaths

19. Actions taken in response to COVID-19 began with a model developed by Neil Ferguson of the Imperial College of London which predicted 2.2 million deaths from COVID-19 in the United States, and tens of millions of deaths worldwide. The model was cited by the World Health Organization and influenced policy in both the UK government and to some degree the U.S. Government. COVID-19 was compared to the Spanish flu, which killed approximately 50 million people in 1918. Ferguson's report stated that the only way to prevent massive deaths would be for the entire population of the planet to be locked down and for people to remain separated for 18 months until a vaccine was available. Total isolation would be needed

¹²⁷ [Public Health Emergency Order Clarifying That Current Guidance Documents, Advisories, And Emergency Public Health Orders Remain In Effect; And Amending Prior Public Health Emergency Orders To Impose County By County Restrictions Due To COVID-19](https://cv.nmhealth.org/wp-content/uploads/2020/11/113020-PHO.pdf), NMDOH, (November 30, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/11/113020-PHO.pdf>

¹²⁸ Executive Order 2020-83, State of New Mexico, (December 4, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/12/Executive-Order-2020-083.pdf>

because the isolation of just vulnerable populations like the elderly would only reduce deaths by half.¹²⁹

20. Ferguson's report was deemed so convincing that the World Health Organization, which had previously stated that lockdowns were not effective for containing infectious diseases, recommended that the world follow China's example, which included mandatory lockdowns and contact tracing.¹³⁰ But the model turned out to be seriously flawed.^{131 132}

21. This was not surprising, given Ferguson's past work. In 2002, he predicted that 150,000 people would die from Mad Cow Disease, but only 2704 died – an estimation 55 times higher than the real number. A few years later he predicted that 65,000 people would die of swine flu, and only 457 people died – an estimation was 142 times higher than the real number.¹³³ His predicted deaths from bird flu was 200,000,000 and only 455 people died – a prediction 439,560 times higher than the real number.¹³⁴

¹²⁹ Ferguson NM, Laydon D, Nedjati-Gilani G et al. "Report 9: Impact of non-pharmaceutical interventions (NPIs) to reduce COVID-19 mortality and healthcare demand." *Imperial College COVID-19 Response Team* March 16 2020

¹³⁰ World Health Organization, *Non-Pharmaceutical Public Health Measures for Mitigating the Risk and Impact of Epidemic and Pandemic Influenza*, October 2019; World Health Organization, "Considerations for Quarantine of Individuals in the Context of Containment for Coronavirus Disease (COVID-19)," March 19, 2020.

¹³¹ Mark Landler and Stephen Castle, *Behind the Virus Report that Jarred the US and the UK to Action*, New York Times, March 17, 2020 (updated April 2, 2020) <https://www.nytimes.com/2020/03/17/world/europe/coronavirus-imperial-college-johnson.html>

¹³² Kevin Dayaratna, Ph.D., *Failures of an Influential COVID-19 Model Used to Justify Lockdowns*, May 18, 2020, The Heritage Foundation. <https://www.heritage.org/public-health/commentary/failures-influential-COVID-19-model-used-justify-lockdowns>

¹³³ National CJD Research and Surveillance Unit. "Disease in the UK (By Calendar Year)." University of Edinburgh May 4 2020

¹³⁴ Sturcke J. "Bird flu pandemic could kill 150,000." *The Guardian* Sept 30 2005, <https://www.theguardian.com/world/2005/sep/30/birdflu.jamessturcke>

22. As of December 9, total COVID-19 deaths worldwide were improperly claimed to have reached 1.56 million (135) – a number we will show to be overinflated – and certainly not close to tens of millions Ferguson predicted.

23. Tom Frieden, the Director of the CDC under President Obama, was more conservative, but still wrong, when estimating in early March of this year that a figure of 1,000,000 U.S. deaths was plausible.¹³⁶ Predictably, the media jumped on the bandwagon of dire predictions and spread fear throughout the population. Although these predictions initially influenced public policy to a considerable degree in the United States, we now know that these dire predictions were wrong. Not only are the number of deaths from COVID-19 far fewer than initially predicted, there is strong evidence that the death numbers are inflated.¹³⁷

24. A group of researchers at Stanford Prevention Research Center published an article on June 11 expressing significant concerns about not only Ferguson's, but other models, some of which were not accompanied by any disclosure concerning methodology, and the actions taken in response. They concluded that reliance on this faulty model has resulted in a misallocation of hospital resources and unjustified delayed healthcare for non-COVID patients, in addition to the negative impacts on mental health, increased unemployment, the loss of health insurance, prospect of starvation, and the potential spread of other infectious diseases. The Stanford group also wrote that even if a calamity the size of which the models predicted were to

¹³⁵ <https://covid19.who.int/> accessed 12.9.2020

¹³⁶ Tom Frieden, *Could Coronavirus Kill a Million Americans?*, Think Global Health, March 10, 2020, <https://www.thinkglobalhealth.org/article/could-coronavirus-kill-million-americans>

¹³⁷ See Section IV. D below.

occur, policies like lockdowns have little impact on the death rate and generally do more harm than good, and add that exaggerated forecasts "...may cause more harm than the virus itself."¹³⁸

25. This finding was affirmed by a JP Morgan research study, which stated that lockdowns do nothing to control the spread of COVID-19 but have been quite effective at destroying lives and businesses.¹³⁹

C. What Happened to the Curve?

26. When COVID-19 first struck in the USA there was a tremendous amount of discussion related to flattening the curve. We were told that there was a very real danger that our healthcare system would be overrun, and people could be dying in the streets.¹⁴⁰ Because of this unprecedented danger, we were told that an emergency would be declared so that we could "flatten the curve" and that once it was flattened, we could begin moving towards normalization.¹⁴¹ We were led to believe that if we stayed in our homes for two weeks, and avoided other people, this disease would most likely run its course. Of course, we were willing to take these extreme measures for a finite and short period. However, this was not the outcome, and it has continued now for over 9 months.

¹³⁸ Ioannidis JPA, Cripps S, Tanner MA. "Forecasting for COVID-19 has failed." *International Institute of Forecasters* June 11 2020 <https://forecasters.org/blog/2020/06/14/forecasting-for-covid-19-has-failed/>

¹³⁹ Stickings, Tim. "Lockdowns failed to alter the course of pandemic and are now destroying millions of livelihoods worldwide, JP Morgan study claims," *DailyMail.com*, (May 22, 2020), <https://www.dailymail.co.uk/news/article-8347635/Lockdowns-failed-alter-course-pandemic-JP-Morgan-study-claims.html>

¹⁴⁰ Helen Branswell, [Why 'flattening the curve' may be the world's best bet to slow the coronavirus.](https://www.statnews.com/2020/03/11/flattening-curve-coronavirus/) STATNEWS.COM, (Mar. 11, 2020), <https://www.statnews.com/2020/03/11/flattening-curve-coronavirus/>

¹⁴¹ "...with several weeks of focused action, we can turn the corner and turn it quickly," said President Trump. Gideon Lichfield, [We're not going back to normal.](https://www.technologyreview.com/2020/03/17/905264/coronavirus-pandemic-social-distancing-18-months/) MIT TECHNOLOGY REVIEW, (Mar. 17, 2020), <https://www.technologyreview.com/2020/03/17/905264/coronavirus-pandemic-social-distancing-18-months/>

27. The curve was a reference to the CDC's graph (model) that predicted a tremendous surge in the need for hospitalization around the country due to COVID-19.¹⁴² To deal with this potential crisis, the State of New Mexico, other states around the country, and the federal government declared emergencies to allow for the bypass of laws and procedures that would have slowed their ability to create a mechanism to deal with this upcoming crisis. PPE (Personal Protective Equipment) and ventilators were inventoried, temporary hospitals were built to deal with overflow, and funding was approved.¹⁴³

28. State officials have stated repeatedly, when making the case for emergency declarations, that the virus is not going anywhere, that "we must learn to live with it as it lives amongst us," that we will continue to see cases recorded every day for the foreseeable future, and that we must sustain preventative measures such as mask wearing, social distancing, avoidance of mass gatherings, and staying at home for the foreseeable future, as part of "living in a COVID positive world".¹⁴⁴ The governor also stated that future pandemics are likely, and that the adoption of these personal behaviors will prepare us for what is likely coming.¹⁴⁵ In fact, she stated that New Mexico residents should adopt these practices, "forever," irrespective of COVID."¹⁴⁶

¹⁴² Caitlin O'Kane, "Flattening the curve": Why we need to cancel everything and stay home to help stop coronavirus, CBS NEWS, (Mar. 13, 2020), <https://www.cbsnews.com/news/flattening-the-curve-coronavirus-graph-social-distancing-self-quarantine-no-large-events-covid-19/>

¹⁴³ Carrie Ghose, Covid-19 field hospital ready in Greater Columbus Convention Center, COLUMBUS BUSINESS FIRST, (Apr. 14, 2020), <https://www.bizjournals.com/columbus/news/2020/04/14/covid-19-field-hospital-ready-in-greater-columbus.html>

¹⁴⁴ COVID-19 Weekly update, Governor Lujan Grisham, (April 30, 2020), <https://www.facebook.com/2265648160428062/videos/236908234248154>

¹⁴⁵ *Id*

¹⁴⁶ COVID-19 Weekly update, Governor Lujan Grisham, (August 6, 2020), <https://www.facebook.com/2265648160428062/videos/588151218729018>

D. Deaths

29. The reporting of deaths related to COVID-19 has been so incredibly misleading that we believe even the Supreme Court of the United States was misled about the seriousness of the disease.¹⁴⁷ While we hope to develop a more accurate number through the discovery process, the number of deaths primarily caused from COVID-19 is likely far fewer than the number reported.

30. For the past 17 years, all infectious diseases and causes of death have been categorized based on the *2003 CDC's Medical Examiners' & Coroners' Handbook on Death Registration and Fetal Death Reporting and the CDC's Physicians' Handbook on Medical Certification of Death*. This document instructs physicians and coroners to differentiate between 1) immediate cause of death, 2) underlying cause of death, and 3) any other illness, condition, or injury that contributed to but did not cause the underlying cause of death.¹⁴⁸

31. A critical item of note is that the Coroner's Handbook specifically notes that it was designed following guidelines from the World Health Organization. The WHO has an organization that is responsible for the creation of ICD codes and, in fact, ICD stands for International Classification of Disease. It requires no formal knowledge of statistics to recognize that, from a statistical standpoint, it is critical that diseases be categorized and tracked similarly

¹⁴⁷ In *South Bay Pentecostal Church v. Newsome*, 590 U. S. ____ (2020), the majority opinion specifically and wrongly stated that COVID-19 had killed more than 100,000 people nationwide. This opinion was issued on May 29, 2020. Even using the misleading rule promulgated by the NCVS that number was likely inflated due to false positives in testing and misdiagnoses as laid out elsewhere in this complaint.

¹⁴⁸ 2003 CDC's Medical Examiners' & Coroners' Handbook on Death Registration and Fetal Death Reporting and the CDC's Physicians' Handbook on Medical Certification of Death, *Centers for Disease Control and Prevention*, (2003).

across nations if statistical comparisons are to be meaningful. In fact, it is so important that the 2003 Coroners Handbooks specifically states:

For statistical and research purposes, it is important that the causes of death and, in particular, the underlying cause of death, be reported as specifically and as precisely as possible. Careful reporting results in statistics for both underlying and multiple causes of death (i.e., all conditions mentioned on a death certificate) reflecting the best medical opinion.¹⁴⁹

32. On March 24, 2020 the National Vital Statistics System (NVSS) introduced a new ICD code for Coronavirus Disease 2019 (U07.1) to “accurately capture mortality data for Coronavirus Disease 2019 (COVID-19) on death certificates.”¹⁵⁰ Instead of differentiating between primary and underlying causes of death, the new coding instructions lump the two together, and instructs physicians to report as COVID-19 deaths should be reported any death where the disease caused **or is assumed to have caused or contributed to death**. [emphasis added.]

33. Public health officials across the United States including Dr. Birx of the President's Commission on COVID-19 have openly stated that they consider anyone who died *with* a positive PCR test to have died *from* COVID-19. Dr. Birx said: “There are other countries that if you had a preexisting condition, and let’s say the virus caused you to go to the ICU and then have a heart or kidney problem—some countries are recording

¹⁴⁹ Id

¹⁵⁰ National Vital Statistics System. COVID-19 Alert No. 2. March 24 2020
<https://www.cdc.gov/nchs/data/nvss/coronavirus/Alert-2-New-ICD-code-introduced-for-COVID-19-deaths.pdf>

that as a heart issue or a kidney issue, and not a Covid-19 death. Right now...if someone dies with COVID, we are counting that as a COVID death.”¹⁵¹

34. The Director of the Illinois Department of Health, Dr. Ngozi Ezike had this to say:

“The case definition is very simplistic. It means, at the time of death, it was COVID positive diagnosis. That means, that if you were in hospice and had already been given a few weeks to live, and then you also were found to have COVID, that would be counted as a COVID death. It means, technically even if you died of a clear alternative cause, but you had COVID at the same time, it’s still listed as a COVID death. So, everyone who’s listed as a COVID death doesn’t mean that that was the cause of the death, but they had COVID at the time of the death.”¹⁵²

35. This is a fundamentally different approach to what is laid out in the Coroner’s Handbook and, not only appears arbitrary, but is intentionally misleading. The major issue in this approach stems from the fact that, under the 2003 rule, in any situation where two or more possible reasons for a death exist, the medical examiner and/or coroner “must choose the sequence of conditions that had the greatest impact and report this sequence.” (153) Under the new rule that is heavily financially incentivized (*see* below), even an asymptomatic person with known COPD who tested positive for COVID-19 and died of a heart attack could be listed as a COVID-19 death.

¹⁵¹ Id

¹⁵³ Lauren Melendez, “IDPH Director Explains How COVID Deaths are Classified,” 25 New Week.com, <https://week.com/2020/04/20/idph-director-explains-how-COVID-deaths-are-classified/>.

¹⁵³ 2003 CDC’s Medical Examiners’ & Coroners’ Handbook on Death Registration and Fetal Death Reporting and the CDC’s Physicians’ Handbook on Medical Certification of Death, *Centers for Disease Control and Prevention*, (2003), pg. 17

36. When discussing the CDC's new coding rule for death certificates, Dr. Ezike also stated that in 90% of deaths listed as caused by COVID, the patient had underlying health conditions.¹⁵⁴

37. The CDC published similar findings. From the CDC webpage, Weekly Updates by Select Demographic and Geographic Characteristics, comes this statement, under the Comorbidities heading:

“Table 3 shows the types of health conditions and contributing causes mentioned in conjunction with deaths involving coronavirus disease 2019 (COVID-19). For 6% of the deaths, COVID-19 was the only cause mentioned. For deaths with conditions or causes in addition to COVID-19, on average, there were 2.6 additional conditions or causes per death. The number of deaths with each condition or cause is shown for all deaths and by age groups.” (155)

38. This incredible statement substantiates our entire discussion related to the misleading nature of the death counts. It also means that of the total reported “COVID-19 deaths” only 6% of those deaths not include “conditions or causes” other than COVID-19. This clearly indicates that it is highly unlikely that the United States has reached even 20,000 deaths caused from COVID-19 even at this late date. The actual number is less than 10% of the “death count” represented by our governor and other untruthful media sources. Our Supreme Court of the United States, the American public, and the citizens of New

¹⁵⁴ Dr. Ezike: 90% of Illinois' COVID-19 deaths had underlying medical condition, 17 News My State Line, April 27, 2020, <https://www.mystateline.com/news/local-news/live-gov-pritzkers-daily-illinois-coronavirus-briefing-for-monday-april-27th/>

¹⁵⁵ Weekly Updates by Select Demographic and Geographic Characteristics, CENTERS FOR DISEASE CONTROL AND PREVENTION, (Last visited Aug 28, 2020), https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm#Comorbidities

Mexico have been egregiously misled. This will seem like an incredible statement for anyone listening to the news. The key to understanding this statement is that the 269,715 COVID-19 death number (as of December 12, 2020) could be a number of the people in the United States that have died with a positive COVID-19 test (or any of the symptoms that would be present with a cold), but instead has been presented as the number of people that have died from COVID-19. If 6% of that number reflects a more accurate number, then the death count is closer to 16,000 for the entire United States, and fewer than 100 for New Mexico. Gross statistics may not be comforting to those whose friends or loved ones have died during this alleged pandemic. But it is critical to understand the inflated nature of death counts because inflated figures are used to drive case counts, which in turn drive damaging public health measures that negatively affect every New Mexican.

39. As further support for this assertion, Genevieve Briand Ph.D. of John Hopkins University published a study demonstrating that the death rate in the United States has remained the same despite the exaggerated number of deaths attributed to COVID-19. Analyzing data published by the CDC, comparing deaths in 2018 and 2020, Dr. Briand found that, while deaths allegedly due to COVID-19 increased, deaths from all other causes decreased by nearly the same amount compared to 2018.¹⁵⁶ This raises the query of whether deaths from other causes are being coded as COVID deaths, rather than how they were coded last year. Certainly, with all the panic inducing numbers portrayed by the media and government officials, one would expect a

¹⁵⁶ Via, Yanni Gu, "Johns Hopkins: U.S. Death Rate Remains Normal Despite COVID-19," *Technocracy.News*, (November 30, 2020), <https://www.technocracy.news/johns-hopkins-u-s-death-rate-remains-normal-despite-covid-19/>

much higher overall death rate, or excess deaths, if this disease were as dangerous as represented.

40. It is also critical to note the financial incentive to include deaths as COVID-19 deaths. In New Mexico, according to Becker's Hospital Review, hospitals are being reimbursed an additional \$171,000 per COVID-19 case and a death from COVID-19 can qualify as a "case" without a lab test.¹⁵⁷ COVID coding on a death certificate is evidence of a probable case and can result in an additional 20% hospital reimbursement from Medicare under provisions of the federal CARES legislation.¹⁵⁸ In fact, CDC Director Robert Redfield acknowledged this in sworn testimony in front of the House Oversight and Reform Select Subcommittee on the Coronavirus Crisis. On Friday, July 31, 2020, he said, "I think you're correct in that we've seen this in other disease processes too, really in the HIV epidemic, somebody may have a heart attack, but also have HIV – the hospital would prefer the classification for HIV because there's greater reimbursement."¹⁵⁹

41. All of this has led to absurd results¹⁶⁰ with the entire count being thrown further off by epicenters for the disease, such as New York, putting the sick in nursing homes with

¹⁵⁷ Ayla Ellison, State-by-state breakdown of federal aid per COVID-19 case, BECKER'S HOSPITAL CFO REPORT, (Apr. 14, 2020) <https://www.beckershospitalreview.com/finance/state-by-state-breakdown-of-federal-aid-per-covid-19-case.html>

¹⁵⁸ CARES Act Sec. 3710

¹⁵⁹ The Urgent Need for a National Plan to Contain the Coronavirus, CDC, (July 31, 2020), <https://www.cdc.gov/washington/testimony/2020/t20200731.htm>

¹⁶⁰ Governor DeSantis referenced a Florida motorcyclist who died in a crash. It was initially counted as a COVID death and actually argued that COVID caused the crash. 2 days after a FOX 35 investigation, health officials confirm that a motorcycle death that was initially counted among COVID-19 fatalities but has since been removed from the state's data. Danielle Lama, FOX 35 INVESTIGATES: Questions raised after fatal motorcycle crash listed as COVID-19 death, FOX35 ORLANDO, (JULY 18, 2020), <https://www.fox35orlando.com/news/fox-35-investigates-questions-raised-after-fatal-motorcycle-crash-listed-as-covid-19-death>; Andrew Mark Miller, Florida health official says man who died in motorcycle crash listed as coronavirus death, WASHINGTON EXAMINER, (July 17, 2020), <https://www.washingtonexaminer.com/news/florida-health-official-admits-man-who-died-in-motorcycle-crash-listed-as-coronavirus-death>

others that are most at risk.¹⁶¹ Because the Plaintiffs have not had the opportunity to examine the New Mexico COVID-19 death certificates we cannot say with certainty how many of the deaths in New Mexico being counted as deaths are actually from COVID and how many are simply with COVID and more likely due to comorbidities.

42. What we can say is that the death counts related to COVID-19 are grossly inflated. As of November 2020, the NM Epidemiological Mortality Report lists that 422 of the NM COVID-19 deaths had cardiovascular disease, 420 of the NM COVID-19 deaths had diabetes, 240 of the NM COVID-19 deaths had chronic lung disease, 182 of the NM COVID-19 deaths had chronic kidney disease, etc.¹⁶² It is clear that, if the CDC had not changed its rules for reporting deaths, many of the NM COVID-19 deaths would have actually been listed as deaths due to heart disease, diabetes, kidney disease, etc.

43. The NM Epidemiological Report also indicates that 2.6% of the so-called COVID-19 deaths did not have a positive COVID-19 test. NM's death counts related to COVID-19 are highly inflated because of the change in CDC death count rules and the resulting financial incentives for reporting the deaths as COVID-19. One has to wonder what the underlying agenda really is. NM Epidemiology Division Mortality Reports indicate that the percentage of deaths identified as COVID-19 deaths in the absence of a positive COVID-19 test result varies each week, but has been as high as 3.1% in recent months.¹⁶³

44. Further, plaintiffs have suffered direct and concrete injury directly attributable to the false and misleading data disseminated by the CDC to the public concerning COVID-19

¹⁶¹ Joe Ruiz, Cuomo says New York followed federal guidelines when sending coronavirus patients to nursing homes, CNN, (May 23, 2020), <https://www.cnn.com/2020/05/23/politics/cuomo-new-york-nursing-homes-coronavirus-patients/index.html>

¹⁶² NEW MEXICO COVID-19 MORTALITY UPDATE November 9th 2020, https://cv.nmhealth.org/wp-content/uploads/2020/11/COVID-19-Mortality-Rates-Public-Report_11.09.2020.pdf

¹⁶³ **Previous Epidemiology Reports," NMDOH, (September 14, 2020 - December 14, 2020), <https://cv.nmhealth.org/epidemiology-reports/previous-epidemiology-reports/>**

deaths and cases. For the past nine months, most of 2020, Plaintiffs and New Mexicans in general have been bombarded by constant messages of the high death and case count, and how frighteningly dangerous this disease is. Plaintiffs and New Mexicans in general, have been terrorized by the media reports as well as messages from government officials, billboards and flashing highway signs concerning the prevalence and deadliness of the disease, creating anxiety, panic and psychological manipulation. The mental duress¹⁶⁴ from the constant bombardment of media reports of the disease based upon false death data coerced many residents, including plaintiffs, into giving up their Constitutional rights and freedoms in the name of safety for themselves and to ostensibly protect the more vulnerable population who were reported to be at higher risk for dying from the disease, such as elderly and otherwise fragile people due to poor health.

E. The Impact of the State's Reaction to COVID-19

45. The damage being done by the response to COVID-19, whether to our rights, or the welfare of the general public, or the economy due to shuttering of businesses, is beyond count. The following is a short synopsis which clearly demonstrates that the greater danger to New Mexicans and the American public stems not from COVID-19, but from the public health impacts caused by the response to it:

1. Impact on Hospitals & Patient Care

- a. NM hospitals have suffered a loss of \$519 Million in revenue due to the shutdown. Additionally, primary care providers and offices are facing layoffs and closures as a result of the shutdown. The hospitals have not been “overburdened” by this event, rather the response has prohibited non-emergency surgeries which has closed off many floors and beds of hospitals, leaving only ICU units open to await the flood of anticipated COVID-19 patients that never occurred. This is even more dire considering that NM had a shortage of

¹⁶⁴ Legal duress is defined as *Unlawful pressure exerted upon a person to coerce that person to perform an act that he or she ordinarily would not perform.* <https://legal-dictionary.thefreedictionary.com/duress>

primary care doctors before the pandemic. The shutdown is therefore leading to a situation where New Mexicans will have increasingly inadequate medical care.¹⁶⁵

- b. Substantial evidence is accumulating that patients are avoiding treatments that could prevent more severe conditions. This has and will result in excess deaths because people fear getting the treatment they need. The CDC estimates 93,814 non-COVID “excess deaths” this year in the USA, including 42,427 from cardiovascular conditions, 10,686 from diabetes, and 3,646 from cancer, and many of these are caused by the cancellation of “nonessential” care in the midst of the COVID panic.¹⁶⁶

2. Impact on Physical Health

- a. New Mexicans are experiencing lower levels of physical and mental health as well as weaker immune systems and other issues due to mandatory mask wearing, lockdown, isolation, fear and social distancing.
- b. There are substantial negative impacts on the wellbeing of mothers and children due to reductions in routine health services. These negative impacts are expected to be “more catastrophic for mothers and children than COVID-19 itself.” It is expected that the result will be a substantial increase in the number of maternal and especially child deaths.¹⁶⁷
- c. Mask mouth (referring to dental problems resulting from wearing a mask) has the potential to be very dangerous. Some dentists are already reporting issues as high as 50% of their patients. These increased oral health problems can lead to increased risks of strokes and heart attacks.¹⁶⁸

¹⁶⁵ “New Mexico hospitals face massive revenue losses, many primary care services struggling,” KOB4 Albuquerque, October 21, 2020. <https://www.kob.com/albuquerque-news/new-mexico-hospitals-face-massive-revenue-losses-many-primary-care-services-struggling/5902043/>

¹⁶⁶ “Trump, COVID, and Reason,” Wall Street Journal, October 6 2020. https://www.wsj.com/articles/trump-covid-and-reason-11602026102?mod=opinion_lead_pos3

¹⁶⁷ “A wake-up call: COVID-19 and its impact on children’s health and wellbeing,” The Lancet, May 2020. [https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X\(20\)30238-2.pdf](https://www.thelancet.com/pdfs/journals/langlo/PIIS2214-109X(20)30238-2.pdf)

¹⁶⁸ “Dentists say ‘mask mouth’ can cause serious health complications, including strokes,” Washington Examiner, August 7 2020. <https://www.washingtonexaminer.com/news/mask-mouth-dentists-warn-prolonged-use-of-masks-leading-to-poor-oral-hygiene>

- d. Motor vehicle fatalities have increased by 23.5% due to drivers taking advantage of reductions in enforcement and empty roads.¹⁶⁹
 - e. Mask wearing by healthy people may increase their risk for COVID-19 like symptoms by 18 fold according to a recent study published by the CDC. See Table below, p.
1. Impact on Substance Abuse, Violence, & Deaths of Despair
- a. There has been a substantial spike in domestic violence in New Mexico related to the lockdown and social isolation. Shelter-in-place orders allow abusers to control, manipulate, and isolate their victims. Depending on the area of the state, it is estimated that domestic violence has increased 30-80% around New Mexico. The violence has increased in both severity and numbers. For instance, the Esperanza Domestic Violence Shelter in Santa Fe has been continuously full since the pandemic began.¹⁷⁰
 - b. With millions forced into extended isolation, drug and alcohol usage has spiked and overdose deaths have surged to record levels.¹⁷¹ The negative emotions associated with joblessness and lockdown are known to trigger relapse and increased substance usage in substance abusers.¹⁷² Addiction will increase resulting in a long-term impact.

¹⁶⁹ “Highway deaths spike for third-straight month as drivers take advantage of empty roads,” NBC News, July 2020, <https://www.nbcnews.com/business/autos/highway-deaths-spike-third-straight-month-drivers-take-advantage-empty-n1234651>

¹⁷⁰ “Virus behind rise in domestic violence incidents,” Albuquerque Journal, August 2 2020, <https://www.abqjournal.com/1481602/virus-behind-rise-in-domestic-violence-incidents-ex-local-esperanza-shelter-has-been-full-since-the-pandemic-hit.html>

¹⁷¹ “Officials worry of potential spike in overdose deaths amid COVID-19 pandemic,” ABC News, April 15, 2020. <https://abcnews.go.com/US/officials-worry-potential-spike-overdose-deaths-amid-covid/story?id=70149746>

¹⁷² “The COVID-19 pandemic and its impact on substance use: Implications for prevention and treatment,” Psychiatry Research, July 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7219362/>

- c. Suicide and depression rates have increased dramatically – particularly in younger people. CDC Director Robert Redfield stated “But there has been another cost that we’ve seen, particularly in high schools. We’re seeing, sadly, far greater suicides now than we are deaths from COVID. We’re seeing far greater deaths from drug overdose that are above the excess that we had as background than we are seeing the deaths from COVID.”¹⁷³ A CDC study reported that depression in adults is four times higher than the previous year at 24.3% of people (compared to 6.5% in 2019), and the rate of suicidal ideation in adults has doubled compared to the previous year.¹⁷⁴ Farmington, NM recently reported a 175% increase in suicides compared to 2019, and 30% of these are in children.¹⁷⁵
 - d. One study estimated that there will be 75,000 additional “deaths of despair” due to the response to COVID-19. New Mexico already has one of the highest rates of “deaths of despair” in the country, and the study estimates that the pandemic and lockdown could result in an additional 48 deaths per 100,000 people over the next ten years.¹⁷⁶
 - e. The New England Journal of Medicine recently discussed the “pandemic within the pandemic” of increased intimate partner violence. This type of violence has become far more pervasive when victims cannot escape their abusers in a no-travel, lockdown situation.¹⁷⁷
3. Impacts on Human Trafficking
 - a. There was an estimated 40% increase in human trafficking during the statewide house arrest orders (also known as shelter-in-place orders). When

¹⁷³ Robert Redfield, MD, Director, Centers for Disease Control and Prevention, July 14 2020.

<https://www.buckinstitute.org/covid-webinar-series-transcript-robert-redfield-md/>

¹⁷⁴ “Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic — United States, June 24–30, 2020,”. Centers for Disease Control. <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6932a1-H.pdf>

¹⁷⁵ “Farmington experiencing spike in suicides,” Albuquerque Journal, <https://www.abqjournal.com/1496762/farmington-experiencing-spike-in-suicides.html>

¹⁷⁶ “Projected Deaths of Despair from COVID-19,” Well-Being Trust, May 2020. https://wellbeingtrust.org/wp-content/uploads/2020/05/WBT_Deaths-of-Despair_COVID-19-FINAL-FINAL.pdf

¹⁷⁷ A pandemic within a pandemic: intimate partner violence: (New England Jour Med) <https://www.nejm.org/doi/full/10.1056/NEJMp2024046?query=TOC>

“people are out of work or unable to work, when they are not stably housed, when they don’t feel that they can get safety when they need it, that is when trafficking flourishes.”¹⁷⁸

- b. This has likely occurred because an estimated 75% of humanitarian operations worldwide stopped due to the COVID-19 response.¹⁷⁹

4. Impacts on Children

- a. The economic impact on many families is likely to result in malnutrition for children.¹⁸⁰
- b. In families that are food secure, many other children will be at risk for obesity as they are isolated and given fewer options for activity. “Children and teens struggling with obesity are placed in an unfortunate position of isolation that appears to create an unfavorable environment for maintaining healthy lifestyle behaviors.”¹⁸¹
- c. Psychological damage to children includes social isolation, inability to participate in athletics, instilling fear of people not wearing masks, and collapse of family relationships when children are not allowed to be close to grandparents and other relatives. These damages will be seen for at least a generation. An 11-year-old boy in Hobbs, NM killed himself as a direct result of the social isolation imposed by the NM Government.¹⁸²
- d. School closures and online-only schooling are having tremendous negative educational impacts on children as well as the loss of socialization and activities

¹⁷⁸ “COVID-19 Has Led to an Increase in Human Trafficking, Experts Say,” The Daily Signal, July 28 2020. <https://www.dailysignal.com/2020/07/28/covid-19-has-led-to-an-increase-in-human-trafficking-expert-say/>

¹⁷⁹ “The Dynamics of Human Trafficking: Before & After COVID-19,” Domestic Preparedness, June 2020. <https://www.domesticpreparedness.com/resilience/the-dynamics-of-human-trafficking-before-after-covid-19/>

¹⁸⁰ “Policy Brief: The Impact of COVID-19 on children,” United Nations, April 2020. https://www.un.org/sites/un2.un.org/files/policy_brief_on_covid_impact_on_children_16_april_2020.pdf

¹⁸¹ “COVID-19 lockdowns worsen childhood obesity, study finds,” Science Daily, June 2020. https://www.sciencedaily.com/releases/2020/06/200603194444.htm?fbclid=IwAR1NDusT76f2vJAoxHdHPwnbZ_9GYSzgWCHX4h4UyTWlCxxqLvzs4H39_IY

¹⁸² : “Shadow Deaths of the Virus,” Albuquerque Journal, <https://www.abqjournal.com/1472694/shadow-deaths-of-the-virus.html>

with their peers. In some NM school districts, as many as 4 out of 5 children are failing at least one class.¹⁸³ In Las Cruces, 47% of high school students are failing at least one class, as compared to 26% last year, and 57% of middle school students are failing at least one class, as compared to 20% last year.¹⁸⁴

5. Impacts on Food Security and Access to Medications

- a. The Governor’s policy forcing closure of essential businesses, as well as limiting the number of customers allowed in these businesses at one time, threatens food security and access to medications for New Mexicans. Businesses that have four “rapid responses” within a 2-week period are forced to close for two weeks. This closure policy includes grocery stores and their pharmacies, and does not have any scaling depending on the size of the business or number of employees.
- b. This dangerous policy, in combination with the previous policies (policies are periodically ordered, then modified creating a constant feeling of uncertainty about the regulations) of not allowing more than 75 people to enter grocery stores, regardless of the size of the building, has resulted in >1-hour-long entrance lines and food shortages at grocery stores throughout the state.¹⁸⁵ As of November 19, twelve grocery stores in New Mexico were ordered to close for 2 weeks, and 29 additional grocery stores are on the “Watch List” for potential closure.¹⁸⁶ As of November 24, there are approximately 30 grocery store closures, with another

¹⁸³ “Report: Remote learning fails many New Mexico students,” Education Week, https://www.edweek.org/ew/articles/2020/10/28/report-remote-learning-fails-many-new_ap.html

¹⁸⁴ “Las Cruces Public Schools data shows students failing at ‘alarming’ rates,” KVIA ABC7, <https://kvia.com/news/education/2020/10/26/las-cruces-public-schools-data-shows-students-failing-at-alarming-rates/>

¹⁸⁵ “Two grocery stores in Las Cruces close for two weeks,” Las Cruces Sun News November 19 2020, <https://www.lcsun-news.com/picture-gallery/news/2020/11/19/grocery-stores-close-due-covid-19-regulations/6345484002/>

¹⁸⁶ “Rapid Response COVID-19 Watchlist,” New Mexico Environment Department, accessed November 21 2020. <https://www.env.nm.gov/rapid-response-data/>

250 on a watch list for closure if they have another employee who tests positive.

New Mexico has attracted national attention about its long “breadlines”.¹⁸⁷

- c. The required two-week closures of grocery stores will negatively impact New Mexican’s access to fundamental food items and medications, while also leading to the potential waste of tremendous amounts of perishable foods.

6. Impacts on the Economy

- a. The economic shock brought on by the reaction to COVID-19 is greater than the 2008 economic meltdown and likely to be more similar to the Great Depression.¹⁸⁸

- b. Over 45 million Americans filed jobless claims as a result of the COVID-19 reaction. New Mexico’s unemployment rate in September was 9.4%, as compared to 4.8% in September 2019. Over 88,000 New Mexicans were unemployed as of September, 2020 as compared to 43,600 in September 2019.¹⁸⁹ Unemployment has been linked to a 20-30% increase in suicide.¹⁹⁰

- c. Housing insecurity is at a crisis level with an estimated 50+ million renters living in US households that have suffered job or income loss. As of June 2020, “About a quarter of all renters in Albuquerque are considered extremely low income and almost all are ‘rent burdened,’ meaning their rent costs are more than 30 percent of their household income.”¹⁹¹

- d. Although New Mexico issued a moratorium on evictions, the lockdowns still have negative economic impacts on the ability to afford housing. “According to the

187 Bleau, Hannah. “New Mexico Governor Accused of Causing ‘Modern Breadlines’ with Coronavirus Lockdown Orders,” Breitbart, (November 24, 2020), <https://www.breitbart.com/politics/2020/11/24/new-mexico-governor-accused-of-causing-odern-readlines-with-coronavirus-lockdown-orders/>

188 “COVID-induced economic uncertainty and its consequences,” VoxEu April 2020.

<https://voxeu.org/article/covid-induced-economic-uncertainty-and-its-consequences>

189 Reference: New Mexico Workforce Connection, accessed November 14 2020,

<https://www.jobs.state.nm.us/vosnet/lmi/default.aspx>

190 “Modelling suicide and unemployment: a longitudinal analysis covering 63 countries, 2000-11,” Lancet Psychiatry, March 2015. <https://pubmed.ncbi.nlm.nih.gov/26359902/>

191 Reference: “Report: Albuquerque homelessness on the rise,” NM Political Report, <https://nmpoliticalreport.com/2020/06/11/report-albuquerque-homelessness-on-the-rise/>

National Council of State Housing Agencies, between 60,000 and 80,000 renters across the state will owe between \$105 million and \$150 million in unpaid rent by the end of the year.”¹⁹²

e. Hundreds of New Mexico small businesses have failed as a result of the lockdown and business restrictions.¹⁹³ Each failed business represents the long-term loss of employment for numerous New Mexicans.

f. The New Mexico restaurant industry has been particularly crippled by the lockdown restrictions, including the ban on indoor dining for nearly half the year and the limitation to 25% capacity during the few months when restaurants were able to operate indoor dining. As of August 2020, the New Mexico Accommodation and Food Industry was down 31% over last year.¹⁹⁴ A July 2020 survey of New Mexico restaurant owners revealed that 54% reported sales being down from 20-70%. As of September 2020, one-third of restaurants reported they only have three months until they will have to close permanently, and another 30% would have to close permanently in six months (and those statistics are from before the November 2020 statewide ban on indoor and outdoor restaurant dining).¹⁹⁵ The state has produced no data thus far which proves that increased transmission was actually occurring in NM restaurants. This is indeed a severe loss to our economy which benefits from tourism.

7. Policies Related to Nursing Homes

a. As of October 22, 32% of NM’s COVID-19 deaths were in nursing home residents.

¹⁹² [“Falling through the cracks: Pandemic worsens Santa Fe's housing crisis,” Santa Fe New Mexican, November 1 2020.](https://www.santafenewmexican.com/news/coronavirus/falling-through-the-cracks-pandemic-worsens-santa-fes-housing-crisis/article_f4c13dd4-fc30-11ea-9d3f-53fccfb772d8.html)

https://www.santafenewmexican.com/news/coronavirus/falling-through-the-cracks-pandemic-worsens-santa-fes-housing-crisis/article_f4c13dd4-fc30-11ea-9d3f-53fccfb772d8.html

¹⁹³ [“Yelp reports hundreds of New Mexico businesses have closed,” KOAT Action 7 News, July 29 2020.](https://www.koat.com/article/hundreds-of-nm-businesses-permanently-closed-report-shows/33450338)
<https://www.koat.com/article/hundreds-of-nm-businesses-permanently-closed-report-shows/33450338>

¹⁹⁴ [“Quarterly Economic Summary: New Mexico,” NM Economic Development Department, August 2020,](https://gonm.biz/uploads/documents/August_2020_Economic_Summary_-_New_Mexico.pdf)
https://gonm.biz/uploads/documents/August_2020_Economic_Summary_-_New_Mexico.pdf

¹⁹⁵ [“Sobering Restaurant Statistics – September 2020,” New Mexico Restaurant Association,](https://www.grantcountybeat.com/editorial/60650-sobering-restaurant-statistics-september-2020)
<https://www.grantcountybeat.com/editorial/60650-sobering-restaurant-statistics-september-2020>

- b. Nursing homes house the highest-risk population in regard to COVID-19 (elderly people with comorbidities).

46. In short, there are drastic impacts from the mandates and orders promulgated by the Governor and Secretary of Public Health which have caused more damage to citizens than COVID-19. The response by these officials demonstrates a “cure” that is worse than the disease.

47. Although this Complaint is focused on New Mexico, it is worth noting that the lockdown response of governments worldwide is having a much greater impact on the health and welfare of humanity than the virus itself. In a New York Times article entitled, *Instead of Coronavirus, the Hunger Will Kill Us. A Global Food Crisis Looms*, May 13, 2020, the author states: “The world has never faced a hunger emergency like this, experts say. It could double the number of people facing acute hunger to 265 million by the end of this year.” By the end of June, it was reported that a little over 500,000 people had succumbed to the disease. But that could be a drop in the ocean compared to the humanitarian fallout. “We’ve seen 400,000 die from COVID-19,” David Beasley, the Executive Director of the World Food Programme, warned in June. “We could see **300,000 die a day**, for several months, if we don’t handle this right.”¹⁹⁶ (emphasis added)

Global extreme poverty is expected to rise in 2020 for the first time in over 20 years as the disruption of the COVID-19 pandemic compounds the forces of conflict and climate change, which were already slowing poverty reduction progress, the World Bank said today.

The COVID-19 pandemic is estimated to push an additional 88 million to 115 million people into extreme poverty this year, with the total rising to as many as 150 million by 2021, depending on the severity of the economic contraction.¹⁹⁷

The Covid-19 pandemic has gravely wounded the world economy with serious consequences for everyone.....(M)illions of jobs have already been lost, millions of livelihoods are at risk, and an estimated additional 130 million people will be living in extreme poverty if the crisis persists.¹⁹⁸

¹⁹⁶ <https://unglobalcompact.org/take-action/20th-anniversary-campaign/covid-related%20hunger-could-kill-more-people-than-the-virus>

¹⁹⁷ <https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021>

¹⁹⁸ <https://unctad.org/webflyer/impact-covid-19-pandemic-trade-and-development-transitioning-new-normal>

By granting the relief requested the Court can begin to reverse the trend of government measures worldwide which have applied a cure that is causing more deaths and suffering than the disease the measures allegedly are aimed at reducing.

48. The Defendants have taken the position that this pandemic is unprecedented justifying drastic means to avert it. It is only the draconian measures that have been taken in response to it that are unprecedented. The Court should take judicial notice of the facts that the Asian flu of 1957 and the Hong Kong flu of 1968-1970, in each case, killed an estimated one to four million people worldwide.¹⁹⁹ The Hong Kong flu an estimated 100,000 in the U.S.²⁰⁰ and the Asian flu killed an estimated 116,000 in the U.S.²⁰¹ These two pandemics occurred when the U.S. population was roughly half of what it is today.²⁰²

49. A final note on the impacts of the reaction to COVID-19 – the Plaintiffs recognize that the Court’s role is not to determine policy and we do not ask it to do so. That said, the fact that the responses based on policy of protecting health and life are causing greater harm to health and life than the disease, clearly demonstrates that the policy is arbitrary and capricious. The State simply cannot claim it is declaring an emergency to save life and then take actions which cause the very harms its orders claim to help prevent. The response is unnecessarily causing further harm to life.

50. Lockdowns have affected children and young people disproportionately from the mental health standpoint, due to being denied needed social interaction. The effects of the lockdowns require

¹⁹⁹ Wikipedia, *List of Epidemics*, August 10, 2020; https://en.wikipedia.org/wiki/List_of_epidemics

²⁰⁰ <https://www.cdc.gov/flu/pandemic-resources/1968-pandemic.html>

²⁰¹ <https://www.cdc.gov/flu/pandemic-resources/1957-1958-pandemic.html>

²⁰² <https://www.pewresearch.org/global/2014/01/30/chapter-4-population-change-in-the-u-s-and-the-world-from-1950-to-2050/>

our young to bear the burden of controlling a disease from which they face little or no risk.²⁰³

Further, arbitrarily taking actions such as this, is simply not Constitutional when it is infringing on our rights.

F. Testing

51. New Mexico Department of Human Services Secretary David Scrase, MD, has identified the types of COVID-19 testing available, or soon to be available, in New Mexico as of December 10, 2020. Listed in order of accuracy, according to Scrase, they are:

- Lab PCR test
- Lab Antigen tests (not yet available)
- rapid PCR test
- rapid Antigen test
- home test strips (not yet available)

Also available is a serum antibody test, which identifies past infections and is not used as a diagnostic test.²⁰⁴

Note that the Lab PCR test is identified as the most accurate test, and it is the most widely used test for detecting SARS-CoV-2, the virus believed to cause symptoms of the illness COVID-19. Yet there is ample evidence that the PCR test is riddled with problems and is unreliable, as this section will demonstrate.

52. From the beginning, COVID-19 testing in the U.S. (indeed, the world) has been problematic. While the World Health Organization had developed testing specifications for COVID-19 by January 2020 (205), the CDC decided to develop its own test, which was ready by early

²⁰³ <https://imprimis.hillsdale.edu/sensible-compassionate-anti-covid-strategy/>

²⁰⁴ COVID-19 Weekly Update, Governor Michelle Lujan Grisham, (December 10, 2020), <https://cv.nmhealth.org/wp-content/uploads/2020/12/December-10-Press-Conference.pdf>, slide 8

²⁰⁵ “Archived: WHO Timeline – COVID-19,” World Health Organization, (April 27, 2020),

<https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>

February. (206) The test was manufactured and distributed by the CDC to health centers throughout the U.S., and within a few days, the tests were found to be inaccurate, (207, 208) and it was later discovered that early test kits produced by the CDC were contaminated by the coronavirus itself, resulting in false positive test results. 209 In spite of these problems, the FDA insisted that hospitals, academic centers, and private companies should not develop their own tests. When the agency finally lifted the ban on test development at the end of February, there was a rush to get tests ready for market. **The FDA provided no standards for how COVID-19 was to be detected, meaning all test makers could decide what standards to use.** Test manufacturers could determine how the virus would be identified (210, 211) and what test results would be regarded as “a positive” result. (212, 213)

53. The PCR test works as follows. The test requires a sample of mucus from a person’s nose or throat or sputum (and more recently, PCR tests using saliva have been introduced), then uses that sample to search for viral RNA, which is a fragment of genetic material belonging to a virus.

206 [Chen](#), Caroline, [Allen](#), Marshall, [Churchill](#), Lexi, and [Arnsdorf](#), Isaac, “Key Missteps at the CDC Have Set Back Its Ability to Detect the Potential Spread of Coronavirus,” *ProPublica*, (February 28, 2020), <https://www.propublica.org/article/cdc-coronavirus-covid-19-test>

207 *Id*

208 Conarck, Ben, “The CDC sent novel coronavirus testing kits to Florida. They might not work,” *Miami Herald*, (February 12, 2020), <https://www.miamiherald.com/news/health-care/article240223446.html#storylink=cpy>

209 Beth Mole. CDC’s failed coronavirus tests were tainted with coronavirus, feds confirm. *Ars Technica* April 20 2020 <https://arstechnica.com/science/2020/04/cdcs-failed-coronavirus-tests-were-tainted-with-coronavirus-feds-confirm/> accessed 9.2.2020

210 David Pride. Hundreds of different coronavirus tests are being used – which is best? *The Conversation* April 4 2020 <https://www.marketwatch.com/story/hundreds-of-different-coronavirus-tests-are-being-used-which-is-best-2020-04-02> accessed 9.2.2020

211 “In Vitro Diagnostics EUAs”, Food and Drug Administration, <https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/vitro-diagnostics-euas>

212 [Mandavilli](#), Apoorva. “Your Coronavirus Test Is Positive. Maybe It Shouldn’t Be.” *New York Times*, (August 29, 2020), <https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>

213 *Supra* at fn 211

RNA is then converted to DNA through a process called reverse transcription, which is then amplified many times to make it detectable, through a process called polymerase chain reaction, or PCR. (214) The PCR process of amplification involves creating copies of the viral DNA and is done in cycles, and cycles can be repeated until there are as many as one billion copies of the original viral fragment. In most of the United States' lab settings, the cycle is repeated at least 35-40 times before a specimen is declared "negative", or devoid of viral material (215), although the WHO established a standard cycle threshold limit of 45 cycles. (216)

54. Hundreds of companies are currently producing PCR tests for detecting viral RNA claimed to be from SARS-CoV-2, and these tests were approved by the FDA under Emergency Use Authorization (EUA) without an established reference method; but rather testing the tests against other EUA approved tests to establish an acceptable degree of performance. (217) This process involved testing specimens from people who the researchers already knew had COVID-19. This results in significant bias. (218) Without control groups of blinded testing, it is impossible to determine the magnitude of the inaccuracy of a given test. (219)

55. There are other issues with the PCR tests. One is that the viral RNA detected by the test is likely to remain in a person for up to 3 months after the infectious period has passed. (220)

²¹⁴ Jawerth, Nicole. "How is the COVID-19 Virus Detected using Real Time RT-PCR?", International Atomic Energy Agency, (March 27, 2020), <https://www.iaea.org/newscenter/news/how-is-the-covid-19-virus-detected-using-real-time-rt-pcr>

²¹⁵ Polymerase Chain Reaction (PCR) Fact Sheet. National Human Genome Research Institute. National Institutes of Health. accessed 11.6.2020

²¹⁶ WHO.int Diagnostic detection of 2019-nCoV by real-time RT-PCR, January 17, 2020 (PDF)

²¹⁷ Motley, Michael P. BS; Bennett-Guerrero, Elliott MD; Fries, Bettina C. MD; Spitzer, Eric D. MD, PhD, Review of Viral Testing (Polymerase Chain Reaction) and Antibody/Serology Testing for Severe Acute Respiratory Syndrome-Coronavirus-2 for the Intensivist, Critical Care Explorations: June 2020 - Volume 2 - Issue 6 - p e0154 doi: 10.1097/CCE.000000000000154,

https://journals.lww.com/ccejournal/Fulltext/2020/06000/Review_of_Viral_Testing__Polymerase_Chain.22.aspx

²¹⁸ Heather Boerner. COVID-19 Test Results: Don't Discount Medical Intuition. Medscape, May 16, 2020

<https://www.medscape.com/viewarticle/930650> accessed 9.2.2020

²¹⁹ Heather Boerner. COVID-19 Test Results: Don't Discount Medical Intuition. Medscape May 16 2020

<https://www.medscape.com/viewarticle/930650> accessed 9.2.2020

²²⁰ Duration of Isolation and Precautions for Adults with COVID-19, CDC, October 19, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>

This means the tests are useless for determining who should be quarantined as they do not differentiate between active virus vs. inactive or dead virus from a previous infection or exposure that was effectively controlled by the body's immune system. Another is the risk of cross contamination, of collected specimens or reagents (chemical components of the test), from improper handling, in the laboratory or when collecting specimens from large numbers of people in crowded settings. (221, 222) Even the tiniest amount of cross contamination can lead to a false positive result, which means people who have never been exposed to COVID-19 could be subjected to unwarranted quarantines.

56. Adding to the PCT test lack of reliability is the fact that false-negative results can result from procedural and handling issues including “a poorly collected specimen, a delay in transport of the specimen to the lab, not storing or transporting specimens at the appropriate temperature, problems encountered during testing extraction, analysis errors and more,” says Dr. Michael Pintella, Director of the State Hygienic Lab in Iowa. (223) But if a false-negative result is obtained for a symptomatic person, they are still likely to be diagnosed with COVID-19 based on symptoms alone. False negatives are not as much of a problem as meaningless positive results, as the latter are what drive “emergency” orders and public health decisions, that in turn have a far greater negative impact on the well-being of New Mexicans. (224)

57. And the test's reliability is dependent on even more factors, such as where in the body a sample is collected or the stage of illness at collection time. A meta-analysis published in the *British Medical Journal* looked at the accuracy of PCR testing specifically for COVID-19. The researchers reported that while no test is 100% accurate, the sensitivity (true measure of positive

221 False-positive COVID-19 results: hidden problems and costs,” *The Lancet: Respiratory Medicine*, Surkova et al.,

[https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30453-7/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30453-7/fulltext)

222 *Supra* at fn 217

223 Laura Terrell. ‘False negatives are harmful’ according to medical professionals. *KCCI*, April 3 2020

<https://www.kcci.com/article/false-negatives-are-harmful-according-to-medical-professionals/32038917> accessed 9.2.2020

224 see Section IV. E, The Impact of the State’s Reaction to COVID-19

results) and specificity (true measure of negative results) of a test is evaluated by comparison with a gold standard, and there is no gold standard for COVID-19. One of the reasons is that it is impossible to know the actual false positive rate without having tested people and comparing results with other clinical indications of disease, and this was not done in any studies we could find.

58. The *BMJ* analysis showed that the false-negative rate ranges between 2% and 29%. Accuracy of viral RNA swabs was highly variable. In one study, sensitivity was 93% for bronchoalveolar lavage, 72% for sputum, 63% for nasal swab, and only 32% for throat swabs. (225) The researchers stated that results vary for many reasons, including stage of disease. (226) This analysis was published in May, long after thousands of people had been tested.

59. Aside from the issue of accuracy, there is the issue of suitability of the PCR test as a diagnostic tool. The inventor of the PCR test, Kary Mullis, Ph.D., who won a Nobel Prize in chemistry for the invention in 1993, developed the test as a tool for use in laboratory research, but said that the test was never designed to diagnose disease. (227) That is because, while COVID-19 PCR tests identify the presence of viral fragments in DNA, the tests do not provide accurate information about the presence of infectious, live virus as opposed to non-infectious (dead) viral fragments. (228) The CDC apparently agrees. The instruction manual for its 2019-Novel Coronavirus (2019-nCoV) Real Time RT-PCR Diagnostic Panel includes these statements:

“Detection of viral RNA may not indicate the presence of infectious virus or that 2019-nCoV is the causative agent for clinical symptoms.”

also,

225 Watson J, Whiting PF, Brush JE. “Interpreting a covid-19 test result.” *BMJ* 2020 May;369:m1808, <https://www.bmj.com/content/369/bmj.m1808>

226 Id

227 “Kary Mullis Explains Why His PCR Test Is Not a Diagnostic Test,.” YouTube, 2020, <https://www.facebook.com/2265648160428062/videos/236908234248154>

228 “The Inventor Kary Mullis, of method used to test for COVID-19 said it can’t be used in virus detection,” *Australian National Review*, August 1, 2020, <https://australiannationalreview.com/health/the-inventor-kary-mullis-of-method-used-to-test-for-covid-19-said-it-cant-be-used-in-virus-detection/>

“This test cannot rule out diseases caused by other bacterial or viral pathogens.”²²⁹

As if all of this is not absurd enough, there are even PCR test kits that contain the statement, “The detection result of this product is only for clinical reference, and it should not be used as the only evidence for clinical diagnosis and treatment.”²³⁰ Another PCR test instruction manual states:

- “These assays are not intended for use as an aid in the diagnosis of coronavirus infection”
- “For research use only. Not for use in diagnostic procedures.”²³¹

60. In addition, PCR test development took place in the absence of an isolated SARS-CoV-2 virus, the virus alleged to cause COVID-19. (232) From the final paragraph of the instructions for the CDC's 2019-Novel Coronavirus (2019-nCoV) Real Time RT-PCR Diagnostic Panel:

Since no quantified virus isolates of the 2019-nCoV are currently available, assays designed for detection of the 2019-nCoV RNA were tested with characterized stocks of in vitro transcribed full length RNA (N gene; GenBank accession: MN908947.2) of known titer (RNA copies/ μ L) spiked into a diluent consisting of a suspension of human A549 cells and viral transport medium (VTM) to mimic clinical specimen.²³³

And from the journal article “Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR,” published in January 2020,

²²⁹ CDC 2019-Novel Coronavirus (2019-nCoV) Real Time RT-PCR Diagnostic Panel Instructions for Use. <https://www.fda.gov/media/134922/download> accessed 11.6.2020

²³⁰ This is from the “Kit Information” for Creative Diagnostics (although others have been seen to have this) retrieved from: <https://www.creative-diagnostics.com/pdf/CD019Rt.pdf>

²³¹ BIO-RAD SARS-CoV-2/Covid-19 Diagnosis and Confirmation Solutions. <https://www.bio-rad.com/featured/en/sars-cov-2-covid-19-testing-solutions.html> accessed 9.2.2020

²³² Corman, Victor M et al. “Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR.” *Euro surveillance : bulletin Européen sur les maladies transmissibles = European communicable disease bulletin* vol. 25,3 (2020): 2000045. doi:10.2807/1560-7917.ES.2020.25.3.2000045, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6988269/>

²³³ CDC 2019-Novel Coronavirus (2019-nCoV) Real Time RT-PCR Diagnostic Panel Instructions for Use. <https://www.fda.gov/media/134922/download> accessed 11.6.2020

We aimed to *develop* and deploy robust diagnostic methodology for use in public health laboratory settings without having virus material available. (234)

61. In fact, recently, 22 scientist researchers called for the retraction of the above-mentioned article (235), published in January 2020 and referred to as the Corman-Drosten Report, in which a group of scientists claimed to have validated the use of PCR testing for COVID-19. (236) The researchers listed ten serious flaws in the paper, which established a methodology for using the PCR test to identify SARS-CoV-2 using “theoretical genetic sequences” of a “closely related” virus. Obviously, the most serious of the flaws was the fact that it is impossible to develop a valid test without actual viral material, and the use of viral material referred to as “closely related” is not a proper substitute. “Theoretical genetic sequencing” means bits of genetic material fed into a computer to guess at the remaining sequence. In other words, it is made up. Also, as stated elsewhere, it was determined that the test could not distinguish between whole live virus and dead viral fragments. Further, the Corman-Drosten scientists failed to establish a Ct value at which a sample is considered positive and negative.²³⁷

62. In plain English this means that there are no available pure SARS-CoV-2 isolates to test against so instead an educated best guess is being used. This leads us to question is how

²³⁴Supra at fn 230

²³⁵ Borger P, Malhotra BR, Yeadon M et al. “Review report Corman-Drosten et al. Eurosurveillance 2020.” <https://cormandrostenreview.com/report/?fbclid=IwAR0sSncAmhHhhwzQ21ODbrVgEtYZ0zfZDkG9ZGqRFGQocXDNM8KW7YBd41A> accessed 12.5.2020

²³⁶ Corman VM, Landt O, Kaiser M et al. “Detection of 2019 novel coronavirus (2019-nCoV) by real time RT-PCR.” *Euro Surveill* 2020 Jan;25(3):2000045

²³⁷ Supra at 233

accurate can a test be for a virus “causing” COVID when the virus “causing” COVID has never been isolated?²³⁸

63. There is yet another problem with the use of the PCR test as a diagnostic test. As the result of what could be called misinterpretation of results, PCR tests have been shown to produce an elevated rate of “positive” results in people who are likely not infectious, especially in asymptomatic (healthy) people.²³⁹ This is a by-product of the PCR process, in which a viral genetic fragment is amplified in cycles. Each amplification cycle (cycle threshold, Ct) is a doubling, so it is exponential. This means that an amplification factor of 40 is 1×2 to the 40th power or more than a trillion times amplification. As explained in a review of PCR tests, published by the *Society of Critical Care Medicine*,

Through the use of fluorescent probes and detection steps between replication cycles, the test allows quantitation of the amount of viral RNA (viral load) in a sample. As DNA is replicated exponentially during PCR, the fluorescence also increases exponentially. The [testing] instrument reports a Ct (cycle threshold), which is the number of replication cycles that are required to produce a fluorescent signal that exceeds a baseline. Samples that contain a large starting amount of viral RNA require fewer cycles to produce a detectable fluorescent signal (and therefore have a lower Ct). The Ct has a simple negative linear correlation with the logarithm of the number of viral copies in the original sample. This relationship quantifies the amount of viral RNA in a specimen; however, the

238 “COVID 19 PCR Tests Are Scientifically Meaningless,” Off Guardian, (June 27, 2020), https://off-guardian.org/2020/06/27/covid19-pcr-tests-are-scientifically-meaningless/?fbclid=IwAR3G6Fuq8C-8XW7szL43scbKOYFx78irq52A6ZQCRdZmPMWiHTqD_2jv4Zo

²³⁹ Engelbrecht T, Demeter K. “COVID19 PCR Tests are Scientifically Meaningless.” Bulgarian Pathology Association. Jan 7, 2020. <https://bpa-pathology.com/covid19-pcr-tests-are-scientifically-meaningless/>

assays [tests] must then include additional standards containing known concentrations of viral RNA.²⁴⁰

64. There are three important things to note in this description. One is reference to a “baseline”, a point at which viral RNA presence is deemed significant, which is determined by each test manufacturer, not a standard established by a centralized public health authority like the FDA. The other is that in order to quantify the amount of virus in a specimen, the test must compare the resultant Ct value to “some known concentration of RNA.” It is not known if the tests do this but our research has indicated that the test result is simply a binary 64. There are three important things to note in this description. One is reference to a “baseline”, a point at which the viral presence is deemed significant, which is determined by each test manufacturer, not a result, yes or no.

65. The third important point to emphasize from the above passage is that “the Ct has a simple negative linear correlation with the logarithm of the number of viral copies in the original sample.”²⁴¹ The number of cycles at which viral fragment is detected varies with the viral load, or the amount of virus, that an individual is carrying. So individuals who “test positive” at a higher cycle threshold have a lighter viral load, and are therefore not

²⁴⁰ Motley, Michael P. BS1; Bennett-Guerrero, Elliott MD2; Fries, Bettina C. MD3; Spitzer, Eric D. MD, PhD4 , Review of Viral Testing (Polymerase Chain Reaction) and Antibody/Serology Testing for Severe Acute Respiratory Syndrome-Coronavirus-2 for the Intensivist, Critical Care Explorations: June 2020 - Volume 2 - Issue 6 - p e0154 doi: 10.1097/CCE.000000000000154, https://journals.lww.com/ccejournal/Fulltext/2020/06000/Review_of_Viral_Testing_Polymerase_Chain.22.aspx

²⁴¹ *Id.*

infectious.^{242, 243, 244} . Current practice is to report test results as binary results, “positive” or “negative”, with no reference to Ct value, and therefore with no consideration of how much of a viral load a person may carry or how infectious they may or may not be, grossly inflating the number of people who pose a risk to others. Also, without any standardized guidance from the FDA, the number of cycles at which a test result is deemed “positive” or “negative” varies from lab to lab, test to test. (245) And as a result, healthy people who are not infectious are being unnecessarily subjected to self-isolation, quarantine, and/or contact tracing, and their places of employment can be shut down.

It is worth noting that the tests manufacturers will continue selling tests only as long as the “crisis” continues. Once it ends, sales drop. They are incentivized to find cases and do not even have to report how they determine a case exists, in that they do not have to even report Ct values (except in Florida, a recent occurrence, described below).

66. The New York Times conducted a review of testing data that included cycle thresholds, compiled by officials in Massachusetts, New York and Nevada, and concluded that up to 90 percent of people testing positive carried barely any of the viral RNA being tested for.²⁴⁶

²⁴² Jaafar R, Aherfi S, Wurtz N et al. “Correlation Between 3790 Quantitative Polymerase Chain Reaction-Positive Samples and Positive Cell Cultures, Including 1941 Severe Acute Respiratory Syndrome Coronavirus 2 Isolates.” *Clin Infect Dis* 2020 Sep; <https://doi.org/10.1093/cid/ciaa1491>

²⁴³“COVID-19 with Dr. Anthony Fauci,” This Week in Virology, (July 16, 2020), https://www.youtube.com/watch?v=a_Vy6fgaBPE&feature=youtu.be&t=260

²⁴⁴ “False-positive COVID-19 results: hidden problems and costs,” *The Lancet: Respiratory Medicine*, Surkova et al., [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30453-7/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30453-7/fulltext)

²⁴⁵ “In Vitro Diagnostics EUAs”, Food and Drug Administration, <https://www.fda.gov/medical-devices/coronavirus-disease-2019-covid-19-emergency-use-authorizations-medical-devices/vitro-diagnostics-euas>

²⁴⁶ ²⁴⁶ Mandavilli, Apoorva. “Your Coronavirus Test Is Positive. Maybe It Shouldn’t Be.” *New York Times*, 29 August 2020, <https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>.

67. Others have explored the relationship between Ct value and “infectious” in greater depth. A September 2020 letter to the editor, which appeared in the *Journal of Clinical Infectious Diseases*, included research conducted by the authors concerning PCR testing. Supported by a grant from the French government, the authors performed 250,566 COVID-19 PCR tests on 179,151 patients and found that 13,161 were positive. They selected 3790 “positive” samples and attempted to grow a virus in a culture medium. They were only successful in growing a virus in about half of the samples. For those samples, in which the cycle threshold was 25 cycles for a positive test, 70% grew a virus. But when the cycle threshold was 35 cycles, only 3% of the samples grew a virus. (247) This is important since many of the FDA approved tests use a Ct value of 35-45 cycles or higher when testing for COVID-19 (see list below), which means that we can expect a false-positive rate as high as 97% based on this study.

68. For reference, below are examples of PCR tests approved by the FDA under the Emergency Use Authorization, along with the recommended cycle threshold limit:

CDC 2019-Novel Coronavirus Real Time (RT-PCR Diagnostic Panel)	40 cycles (248)
SARS-CoV-2 Test Kit (Real-time PCR)	45 cycles (249)
Opti Sars CoV-2 RT-PCR Test	45 cycles (250)
Wren Labs COVID-19 PCR Test	38 cycles (251)

²⁴⁷ Jaafar R, Aherfi S, Wurtz N et al. “Correlation Between 3790 Quantitative Polymerase Chain Reaction-Positive Samples and Positive Cell Cultures, Including 1941 Severe Acute Respiratory Syndrome Coronavirus 2 Isolates.” *Clin Infect Dis* 2020 Sep; <https://doi.org/10.1093/cid/ciaa1491>

²⁴⁸ CDC 2019-Novel Coronavirus (2019-nCCoV) Real Time RT-PCR Diagnostic Panel Instructions for Use. <https://www.fda.gov/media/134922/download> accessed 11.6.2020

²⁴⁹ <https://www.fda.gov/media/140717/download> accessed 12.5.2020

²⁵⁰ <https://www.fda.gov/media/137739/download> accessed 12.5.2020

²⁵¹ <https://www.fda.gov/media/140776/download> accessed 12.5.2020

LabCorp COVID-19 RT-PCR

35 cycles (252)

69. The French study cited above concludes that positive test results at Ct values over 30 should not be used to guide public health decisions. (253) Other experts agree with this. Dr. Michael Mina, an epidemiologist from the Harvard T.H. Chan School of Public Health, was quoted in a New York Times article:

We've been using one type of data for everything, and that is just plus or minus — that's all," Dr. Mina said. "We're using that for clinical diagnostics, for public health, for policy decision-making.

But yes-no isn't good enough, he added. It's the amount of virus that should dictate the infected patient's next steps. "It's really irresponsible, I think, to forgo the recognition that this is a quantitative issue," Dr. Mina said. (254)

The article continues:

The PCR test amplifies genetic matter from the virus in cycles; the fewer cycles required [to detect the presence of the virus], the greater the amount of virus, or viral load, in the sample. The greater the viral load, the more likely the patient is to be contagious.

This number of amplification cycles needed to find the virus, called the cycle threshold, is never included in the results sent to doctors and coronavirus patients, although it could tell them how infectious the patients are.

One solution would be to adjust the cycle threshold used now to decide that a patient is infected. Most tests set the limit at 40, a few at 37. This means that you are positive for the coronavirus if the test process required up to 40 cycles, or 37, to detect the virus.

Tests with thresholds so high may detect not just live virus but also genetic fragments, leftovers from infection that pose no particular risk — akin to finding a hair in a room long after a person has left, Dr. Mina said.

²⁵² <https://www.fda.gov/media/136151/download> accessed 12.5.2020

²⁵³ Jaafar R, Aherfi S, Wurtz N et al. "Correlation Between 3790 Quantitative Polymerase Chain Reaction-Positive Samples and Positive Cell Cultures, Including 1941 Severe Acute Respiratory Syndrome Coronavirus 2 Isolates." *Clin Infect Dis* 2020 Sep; <https://doi.org/10.1093/cid/ciaa1491>

²⁵⁴ Mandavilli, Apoorva. "Your Coronavirus Test Is Positive. Maybe It Shouldn't Be." *New York Times*, 29 August 2020, <https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>.

Any test with a cycle threshold above 35 is too sensitive, agreed Juliet Morrison, a virologist at the University of California, Riverside. “I’m shocked that people would think that 40 could represent a positive,” she said.

A more reasonable cutoff would be 30 to 35, she added. Dr. Mina said he would set the figure at 30, or even less. Those changes would mean the amount of genetic material in a patient’s sample would have to be 100-fold to 1,000-fold that of the current standard for the test to return a positive result — at least, one worth acting on. (255)

70. The CDC’s own calculations suggest that it is extremely difficult to detect any live virus in a sample above a threshold of 33 cycles. (256) Even Dr. Anthony Fauci is aware that PCR is useless and unreliable for diagnosing COVID-19 when run at 35 cycles or higher. In fact, he said this in a podcast on July 16, 2020 called *This Week in Virology*:

What is now evolving into a bit of a standard is that if you get a cycle threshold of 35 or more that the chances of it being replication competent are miniscule...We have patients, and it is very frustrating for the patients as well as for the physicians...somebody comes in and they repeat their PCR and it’s like 37 cycle threshold...you can almost never culture virus from a 37 threshold cycle. So I think if somebody does come in with 37, 38, even 36, you gotta say, you know, it’s dead nucleotides, period.” In other words, it is not a COVID-19 infection.

He goes on to say that when someone has a positive test, “...they don’t give them the cycle threshold unless they go back and ask for it.”²⁵⁷

71. Which brings us to a recent critical decision by The State of Florida’s Department of Health, which has now mandated PCR test “*Cycle threshold (CT) values and their reference ranges, as applicable, must be reported by laboratories to FDOH via electronic laboratory reporting or by*

²⁵⁵ *Id*

²⁵⁶ Duration of Isolation and Precautions for Adults with COVID-19, CDC, October 19, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>

²⁵⁷ COVID-19 with Dr. Anthony Fauci,” *This Week in Virology*, (July 16, 2020), https://www.youtube.com/watch?v=a_Vy6fgaBPE&feature=youtu.be&t=260

fax immediately.” (258) The mandate, sent on letterhead from both Florida Surgeon General, Scott A. Rivkees, MD, and Governor Ron DeSantis, is historic since it marks the first time a U.S. state public health department has acknowledged the critical importance of counting cycle thresholds when reporting PCR test results that drive COVID-19 ‘case’ numbers. (259)

72. And in Portugal, the Lisbon Appeals Court, citing the French study cited above (fn 245), ruled that the quarantine of four foreign individuals based on positive PCR test results violated Portuguese and international law. The conclusion of their 34-page ruling included the following: “*In view of current scientific evidence, this test shows itself to be unable to determine beyond reasonable doubt that such positivity corresponds, in fact, to the infection of a person by the SARS-CoV-2 virus.*” (260, 261) The two most important reasons for this, said the judges, are that, “*the test’s reliability depends on the number of cycles used*” and that “*the test’s reliability depends on the viral load present.*” (262) In other words, there are simply too many unknowns surrounding PCR testing for it to be meaningful.

73. The bottom line is that this test is useless for diagnosing COVID-19. If the error rate were only 5% this could mean that the number of cases worldwide is off by millions. But the error rate has been shown to be much higher, which means that the world’s population is suffering due to a made-up pandemic.

²⁵⁸ “Florida Becomes First US State to Mandate Reporting of CT Values for PCR Tests,” *21st Century Wire*, (December 11, 2020), <https://21stcenturywire.com/2020/12/11/florida-becomes-first-us-state-to-mandate-reporting-of-ct-values-for-pcr-tests/>

²⁵⁹ *Id*

²⁶⁰ “Landmark legal ruling finds that Covid tests are not fit for purpose. So what do the MSM do? They ignore it”, RT, (27 Nov, 2020) <https://www.rt.com/op-ed/507937-covid-pcr-test-fail/>

²⁶¹ “Judgement of the Lisbon Court of Appeal,” English translation, Google, <http://www.dgsi.pt/jtr1.nsf/33182fc732316039802565fa00497eec/79d6ba338dcb5e28025861f003e7b30>, (accessed December 13, 2020)

²⁶² *Id, Supra at fn 258*

G. Cases

74. The accuracy of tests is important since “tests” determine “cases”, which is the metric used to determine business and school closures, event cancellations, lockdowns, withdrawal of civil rights and liberties, whether people can congregate, and if the useless masks are required. But the term “case” has not been clearly defined. The World Health Organization has defined a “case” as a symptomatic individual confirmed to have COVID, distinguished from an “infected” individual who may carry the virus but be asymptomatic.²⁶³ The CDC includes “confirmed” and “presumptive” “cases” in its case counts, defined as follows:

A confirmed case is defined by meeting confirmatory laboratory evidence for COVID-19.

A probable case is defined by one of the following:

- Meeting clinical criteria AND epidemiologic evidence with no confirmatory laboratory testing performed for COVID-19
- Meeting presumptive laboratory evidence AND either clinical criteria OR epidemiologic evidence
- Meeting vital records criteria with no confirmatory laboratory testing performed for COVID19²⁶⁴

75. In New Mexico, it appears that a “case” is defined as anyone who has tested positive for COVID-19, whether that person has any symptoms or not, and “cases” may include individuals presumed to be positive in the absence of testing. Also, in New Mexico, “case” has been used interchangeably with “infection”. Infection is a disease process which does not apply to a healthy, non-symptomatic person. The presumption of “infection” or “infectious” cannot be

²⁶³ “Estimating mortality from COVID-19,” Scientific Brief, WHO, August 4, 2020), <https://www.who.int/news-room/commentaries/detail-y-from-covid-estimating-mortalit19>

²⁶⁴ <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/about-us-cases-deaths.html>

based simply on a positive test result that does not consider the Ct value at which the test detected the virus, as discussed previously. The designation of healthy people as a “case” which is “infected” contributes to the continued hysteria and fear around the disease.

76. After the State of Public Health Emergency was declared on March 11, 2020, plaintiffs and other New Mexico citizens were exposed to daily reports of rising cases, deaths, and the danger related to COVID-19.²⁶⁵ The number of tests being performed in New Mexico has been greatly increased over time. In April, NM was aiming for 3,000 tests per day. In June NM was aiming for 5,000 tests/day. As of November, NM is averaging over 10,000 tests per day. Increased testing will always result in increased positive case numbers, especially given the practice of reporting false or meaningless positive results obtained at high Ct values. As such, using total case numbers to drive public health orders and lockdown decisions does not make sense.

77. Casting further doubt on the accuracy of “case” numbers is the fact that the number of COVID-19 cases reported by NMDOH may not be simply the number of people who tested positive (without regard to whether the person has symptoms or is infectious or not) but **three times** the number who have tested positive. The NMDOH calls this number by which tests are multiplied the “Positive Test Multiplier”, and depending on the week, that multiplier will vary from 2.8 or so to well over 3.²⁶⁶ NMDOH defines this assumed number as that which is used to multiply current cases to estimate “actual number of cases”, as “many people with COVID-19 have mild/no symptoms.”²⁶⁷ Not only that, but NMDOH is constantly changing this Positive Test Multiplier.

78. Despite the unreliability of the PCR tests, the State has gone to great lengths to argue recently that the number of cases of COVID-19 in NM are increasing,²⁶⁸ ignoring the reporting of false or meaningless positive results, and those increased case counts are being used

²⁶⁵ Press releases of Governor Michelle Lujan Grisham. <https://www.governor.state.nm.us/press-releases/>

²⁶⁶ NMDOH, “New Mexico Modeling Assumptions,” <https://cvmodeling.nmhealth.org/>

²⁶⁷ *Id*

²⁶⁸ Press Releases from the Office of NM Governor Michelle Lujan Grisham. <https://www.governor.state.nm.us/press-releases/>

to justify lockdown measures and school and business closures. Given that many of the people who are being tested for COVID-19 are asymptomatic (and therefore much less likely to actually transmit illness per WHO and studies cited above), given that there is a known problem with false or meaningless-positivity in PCR tests, and given that the number of people being tested per day has increased dramatically, using case counts as a measure of the severity of the COVID-19 impacts is flawed and dishonest. In addition, grading counties in the NMDOH “Red to Green” three-tiered system, based on inflated case counts and test positivity rates, when all “positive” tests are counted regardless of the Ct value at which the virus was detected, and every “positive” test result may be tripled using some multiplier, sets every county up for failure. This ensures the unending imposition of restrictions and the continuation of every devastatingly negative impact of those restrictions on New Mexicans, as outlined elsewhere in this complaint.

79. In some states, it has been acknowledged that multiple successive tests which are positive for the same person may be counted as additional “cases”. In other words, a single person who had a positive test may be tested several more times and if those tests are positive they would add to the number of COVID-19 cases in the state. It is not clear whether this practice is being used in New Mexico, however, upon information and belief, this is true in New Mexico’s numbers as well.

80. Given the inaccuracies of the PCR test, the State's disregard for Ct values when reporting COVID-19 test results, the resultant assumption that all positive test results reflect equally infectious people, and given the use of positive test multipliers, there is already ample reason to distrust the “total case” figures reported daily by the State. But consider also that the “total cases” reported are cumulative, that case figures are never subtracted to reflect “infected” people who never become symptomatic and those who recover from their illness.

81. The number reported as “total cases” is extremely misleading for most people who assume that this figure reflects the actual number of persons who are *currently* “infected” and therefore “infectious”, or who, by symptoms, have been diagnosed as having COVID-19. The public has been brainwashed to believe that a “case” is an infectious person walking among the public, a dangerous “silent spreader” of a virus. The public is being misled by the fear-inducing, ever-increasing, cumulative case count that is constantly and verbally projected at

them, believing that these numbers demonstrate a serious state of emergency. It is no wonder that so many people are living in extreme panic and hysteria over this disease.

H. The Fallacy of Asymptomatic Spread

82. The designation of healthy people as a “case” which represents an “infection” is part of the “asymptomatic spread” argument, which the state uses to justify isolating everyone, throwing them out of work, closing businesses, and destroying the learning and social lives of children in the name of public safety. But there is *no credible scientific evidence* that demonstrates that the phenomenon of “asymptomatic spread” is real. To the contrary, on June 7, Dr. Maria Von Kerkhov, head of the WHO’s emerging Diseases and Zoonosis Unit, told a press conference that from the known research, asymptomatic spread was “very rare”. “From the date we have, it still seems to be rare that an asymptomatic person actually transmits onward to a secondary individual.” She added for emphasis: “it’s very rare.”²⁶⁹ Researchers from Southern Medical University in Guangzhou, China, published a study in August 2020 concluding that asymptomatic transmission of COVID-19 is ***ALMOST NON-EXISTENT***. “Asymptomatic cases were least likely to infect their close contacts,” the researchers found.²⁷⁰ A more recent study involving nearly 10 million residents of Wuhan, China found that there were no, zero, positive COVID-19 tests amongst 1,174 ***close contacts*** of asymptomatic cases, ***indicating the complete absence of asymptomatic transmission***.²⁷¹

I. Psychological Approach to State/National Public Manipulation

²⁶⁹ Tucker, Jeffrey, “Asymptomatic Spread Revisited,” American Inst. Economic Research, (Nov. 22, 2020) <https://www.aier.org/article/asymptomatic-spread-revisited->

²⁷⁰ Lei Luo, Dan Liu, Xinlong Liao, et al. [Contact Settings and Risk for Transmission in 3410 Close Contacts of Patients With COVID-19 in Guangzhou, China: A Prospective Cohort Study](#). *Ann Intern Med.*2020;173:879-887. [Epub ahead of print 13 August 2020]. doi:[10.7326/M20-2671](https://doi.org/10.7326/M20-2671)

²⁷¹ Cao S, Gan Y, Wang C, Bachmann M, Wei S, Gong J, Huang Y, Wang T, Li L, Lu K, Jiang H, Gong Y, Xu H, Shen X, Tian Q, Lv C, Song F, Yin X, Lu Z. Post-lockdown SARS-CoV-2 nucleic acid screening in nearly ten million residents of Wuhan, China. *Nat Commun.* 2020 Nov 20;11(1):5917. doi: 10.1038/s41467-020-19802-w. PMID: 33219229; PMCID: PMC7679396.

83. We begin this section with the titles of some well-known studies that are valuable in understanding the communications approaches being taken by the CDC and New Mexico officials:

- A meta-analysis of fear appeals: implications for effective public health campaigns²⁷²
- Predicting Public Support for Government Actions in a Public Health Crisis: Testing Fear, Organization-Public Relationship, and Behavioral Intention in the Framework of the Situational Theory of Problem Solving²⁷³
- The fear of COVID-19 and its role in preventive behaviors²⁷⁴
- How Fear Appeal Approaches in COVID-19 Health Communication May Be Harming the Global Community²⁷⁵
- The Biderman Report of 1956²⁷⁶

84. The idea of using fear to manipulate the public is not new and is quite commonly used in public health. The underlying idea of each of the first three articles cited above can be summed up in a quote from the fourth article which states:

“... behavior change can result by increasing people’s perceived severity and perceived susceptibility of a health issue through heightened risk appraisal coupled by raising their self-efficacy and response-efficacy about a behavioral

²⁷² K.Witte, et al., A meta-analysis of fear appeals: Implications for effective public health campaigns, HEALTH EDUCATION AND BEHAVIOR, (Oct 1, 2000), <https://doi.org/10.1177/109019810002700506>

²⁷³ MG Chon, et al., Predicting Public Support for Government Actions in a Public Health Crisis: Testing Fear, Organization-Public Relationship, and Behavioral Intention in the Framework of the Situational Theory of Problem Solving, HEALTH COMMUNICATION, (Dec 9, 2019), <https://doi.org/10.1080/10410236.2019.1700439>

²⁷⁴ A.H. Pakpour, et al., The fear of COVID-19 and its role in preventive behaviors, JOURNAL OF CONCURRENT DISORDERS. (Apr 3, 2020), <https://concurrentdisorders.ca/2020/04/03/the-fear-of-covid-19-and-its-role-in-preventive-behaviors/>

²⁷⁵ JA Stolow, et al., How Fear Appeal Approaches in COVID-19 Health Communication May Be Harming the Global Community, HEALTH EDUCATION AND BEHAVIOR, (June 11, 2020), <https://doi.org/10.1177/1090198120935073>

²⁷⁶ Vanderleun, “Communist Coercive Methods for Eliciting Individual Compliance: The Biderman Report of 1956 and Covid-19”, American Digest, (November 15, 2020), <http://americandigest.org/communist-coercive-methods-for-eliciting-individual-compliance-the-biderman-report-of-1956-and-covid-19/>

solution. In this model, fear is used as the trigger to increase perceived susceptibility and severity.”²⁷⁷

85. It is interesting to note that this article was specifically published to make the point that the use/continued use of fear appeals in response to COVID-19 was against the recommendation of the authors. The reason for the article stems from the well-known fact that fear-based appeals are being used to manipulate the public and have been the core justification for 9 months of consistently unlawful behavior by states such as New Mexico. Bearing in mind that after 9 months, COVID-19 has not even resulted in 1500 “COVID-related” deaths (as opposed to deaths *from* COVID-19) in New Mexico as of Nov. 21, 2020 (even with the highly incentivized miscounting that is occurring). New Mexican residents are being bombarded by fear messages in various media: on television and newspapers; when they surf the internet each window that opens has “COVID-19” messages; obnoxious emergency alerts are being sent to our cell phones just before a holiday warning that “COVID risk remains high”; and Department of Transportation or Public Safety have flashing signs throughout highways projecting scary warnings to “Stay home, shop alone, COVID kills”, billboards on the interstate between Santa Fe and Albuquerque picturing tired medical workers who “can save lives because you stayed home”.

86. As further evidence of social manipulation fear tactics, additional quotes from Lujan Grisham:

1. “New Mexico's 7-day new case count average continues to be high – too high. The emergency public health order has been extended and will remain in effect. If we want students to be able to be in classrooms this year, we have to do better.” #MaskUpNM (@GovMLG) Twitter (July 31, 2020) <https://twitter.com/GovMLG/status/1289219552853671937>
2. “The state shouldn't have to fine anybody. Doing the right thing in a crisis shouldn't be something we have to argue about. But anyone endangering the lives of New Mexicans will face the consequences. My thanks to everyone doing their part every day.” (@GovMLG) Twitter (August 4, 2020) <https://twitter.com/GovMLG/status/1290718342534201345>

²⁷⁷ *Supra* at fn 270

3. “The president's disregard for science, for evidence-based decision-making, is a danger to New Mexicans and to all Americans. New Mexico's guidance has not changed. @NMDOH encourages all contacts of those who test positive for COVID-19 to be tested.” (@GovMLG) Twitter (August 27, 2020)
<https://twitter.com/GovMLG/status/1298987471481397255>
4. “We know the path to continued success by now: Wearing masks, avoiding groups, keeping physical distance and regularly washing our hands. At the end of the day, I can’t make New Mexicans stick to these safeguards – we’ve all got to make those decisions ourselves every day.” (@GovMLG) Twitter (August 28, 2020)
<https://twitter.com/GovMLG/status/1299437397411676161>
5. “This is a year of tragedy. We cannot allow ourselves to become numb to the loss our country has experienced: Almost 200,000 American souls have been taken by this virus, more every day. It's the worst national calamity we have all experienced together since this day 19 years ago. (@GovMLG) Twitter (September 11, 2020)
<https://twitter.com/GovMLG/status/1304438324837249027>
6. “Our positivity rate is rising, our number of new cases is rising – COVID-19 is beginning to spread rapidly again. These are troubling signs. The good news is, we know how to crush this trend. Wear masks. Keep our distance. Limit travel outside the home.” (@GovMLG) Twitter (September 25, 2020)
<https://twitter.com/GovMLG/status/1309508166879604737>
7. “Please don’t let COVID-fatigue prevent you from doing what you know is right. People die from this virus. Any behavior that allows for potential spread is just not worth the risk. We have already sacrificed so much – don’t let that have been in vain. (@GovMLG) Twitter (October 2, 2020)
<https://twitter.com/GovMLG/status/1312082492472479746>
8. “There can be no doubt: We are headed for a painful winter,” she said. “More New Mexicans will contract this virus and fall seriously ill. Some will lose their lives. Today alone we lost 40 New Mexicans to this virus. We cannot become numb to this tragedy.” (@GovMLG) Twitter

(December 2, 2020)

<https://twitter.com/GovMLG/status/1334281245262430208>

9. “900 New Mexicans, killed by this virus. It’s not about not being afraid, Mr. President. COVID-19 has cost hundreds of thousands of Americans their lives and long-term health. Your reckless actions and dismissive attitude have endangered everyone in the U.S. Please get a grip.” (@GovMLG) Twitter (October 5, 2020)
<https://twitter.com/GovMLG/status/1313202255760220160>
10. “New Mexico’s COVID outlook has rarely been worse than right now. Our recent infection rates are some of the worst in the U.S. We’re heading in the wrong direction – & it’s extremely dangerous. Please double down on being safe. Wear your mask. Avoid groups. (@GovMLG) Twitter (October 9, 2020)
<https://twitter.com/GovMLG/status/1314609100613844992>
11. “The virus is *everywhere*....it is at the grocery store. It is at the gas station. It is at your school. It is at the hospital. It is in nursing homes. It is in corrections facilities. So we need to stop going to those places. We are bringing it home.” *Weekly COVID-19 Update*, Governor Michelle Lujan Grisham, (October 15, 2020)
<https://www.facebook.com/2265648160428062/videos/339564490447047>
12. “New Mexicans should not succumb to the national rhetoric that it’s not as bad of a problem, that there are plenty of great treatments, that most of us won’t get sick, that’s it’s not going to spread as fast, that it’s just like a cold. All of that is nonsense...” “This is a deadly virus and it’s looking for opportunities to spread,” she said. “And in New Mexico, right now, it has found it.” Governor Michelle Lujan Grisham, *Albuquerque Journal* (October 17, 2020)
https://www.abqjournal.com/1508276/virus-spike-strains-nm-hospitals.html?utm_source=abqjournal.com&utm_medium=sidebar+-+popular+posts+-+home&utm_campaign=popular+posts
13. “If COVID-19 continues to exponentially spread like last week, New Mexico will not have the health care and hospital capacity for every New Mexican who needs care. Step up. Save lives. Stay home. And protect

New Mexico hospitals.” (@GovMLG) Twitter (October 19, 2020)
<https://twitter.com/GovMLG/status/1318205292530683904>

14. Every time you leave the house, ask yourself if it is an absolutely necessary trip. If it’s not – stay home. We all want to see our friends & gather with family, but is it really worth the risk of giving them COVID-19? Of contracting COVID-19? Stay home. (@GovMLG) Twitter (November 9, 2020)
<https://twitter.com/GovMLG/status/1325835571646795778>
15. “Preventing deaths, getting kids back in the classroom, ensuring businesses can open safely – it all depends on slowing the spread of the virus. Together, we can do it. Everyone has a role to play – do your part to protect New Mexico.” (@GovMLG) Twitter (November 18, 2020)
<https://twitter.com/GovMLG/status/1329102163117711362>
16. "A lot of them regret not doing the proper things that we've all been asked to do, not having parties and getting together and stuff." Don't risk that regret. Keep New Mexico's health care workers safe – stay home and slow the spread. (@GovMLG) Twitter (November 19, 2020)
<https://twitter.com/GovMLG/status/1329499704292384768>
17. “Remember: New Mexico is currently in a "reset" period in our fight against COVID-19. If you don't have to leave the house for work or essentials, please stay home and do not gather with friends or family. We can all do our part to protect our fellow New Mexicans.” (@GovMLG) Twitter (November 19, 2020)
<https://twitter.com/GovMLG/status/1329551315442155520?s=20>
18. “Because of the long incubation period and the fact that you can be contagious without having any symptom¹⁴. Every time you leave the house, ask yourself if it is an absolutely necessary trip. If it’s not – stay home. We all want to see our friends & gather with family, but is it really worth the risk of giving them COVID-19? Of contracting COVID-19? Stay home. (@GovMLG) Twitter (November 9, 2020)
<https://twitter.com/GovMLG/status/1325835571646795778>

19. “If you are still planning on holding a Thanksgiving gathering, please realize that it's not worth the risk. Be safe this year so that we're able to gather together next year. Together, we can slow the spread and save lives. Together, we can get through this – by staying apart.” (@GovMLG) Twitter (November 22, 2020)
<https://twitter.com/GovMLG/status/1330654812120072193>
20. “The pandemic has never been more dangerous in our state, and the economic pain caused by the spread of the virus is felt in every corner of New Mexico,” Lujan Grisham said. “We must remain vigilant in our fight against the virus. We must continue to evaluate how we can get more assistance to more New Mexicans who need it in this time of crisis.” Governor Michelle Lujan Grisham, *New Mexico Political Report* (November 25, 2020) <https://nmpoliticalreport.com/2020/11/25/lujan-grisham-signs-covid-19-relief-package-into-law/>
21. “Today New Mexico passed multiple tragic & heartbreaking thresholds in the COVID-19 pandemic. Our state became the 37th in the nation to record 100,000 cases of COVID-19.” (@GovMLG) Twitter (December 2, 2020)
<https://twitter.com/GovMLG/status/1334895387832774658>
22. “COVID-19 is real, it is not the flu, and it continues to pose the greatest threat New Mexico has ever faced. Beating back this virus requires that every single New Mexican take it seriously and act responsibly. Please do your part to slow the spread.” (@GovMLG) Twitter (December 4, 2020)
23. “We cannot become numb to this tragedy. Families all across our state are grappling with unfathomable grief. Each of these New Mexicans was loved. Each is mourned with our whole hearts.” (@GovMLG) Twitter December 3, 2020)
<https://twitter.com/GovMLG/status/133454303036839116834281243832172544>

87. When examining the Biderman Coercion Chart of 1956, tactics used on American prisoners of war by Chinese Communists, we can see that the various responses by our

Governor and public health officials follow this predictable psychological breakdown.²⁷⁸

"COMMUNIST COERCIVE METHODS FOR ELICITING INDIVIDUAL COMPLIANCE".* The Biderman Report of 1956 and COVID-19	
Chart of Coercion	COVID-19
Isolation <ul style="list-style-type: none"> • Deprives individual of social support of his ability to resist • Makes individual dependent upon the captor • Individual develops an intense concern with self. 	Isolation <ul style="list-style-type: none"> • Social distancing • Isolation from loved ones, massive job loss • Solitary confinement semi-isolation • Quarantines, containment camps
Monopolization of Perception <ul style="list-style-type: none"> • Fixes all attention upon immediate predicament; • Frustrates all actions not consistent with compliance • Eliminates stimuli competing with those controlled by the captor 	Monopolization of perception <ul style="list-style-type: none"> • Restrict movement • Create monotony, boredom • Prevent gathering, meetings, concerts, sports • Dominate all media the 24/7, censor information
Induced Debility and Exhaustion <ul style="list-style-type: none"> • Weakens mental and physical ability to resist • People ...become worn out by tension and fear 	Induced debility <ul style="list-style-type: none"> • Forced to stay at home, all media is negative • not permitted to exercise or socialize
Threats <ul style="list-style-type: none"> • Cultivates anxiety and despair • Gives demands and consequences for non compliance 	Threats and Intimidation <ul style="list-style-type: none"> • Threaten to close business, levy fines • Predict extension of quarantine, force vaccines • Create containment camps
Occasional Indulgences <ul style="list-style-type: none"> • Provides motivation for compliance • Hinders adjustment to deprivation. • Creates hope for change, reduces resistance • This keeps people unsure of what is happening. 	Occasional Indulgences <ul style="list-style-type: none"> • Allow reopening of some stores, services • Let restaurants open but only at a certain capacity • Increase more people allowed to gather • Follow concessions with tougher rules
Demonstrate Omnipotence <ul style="list-style-type: none"> • Demonstrates futility of resistance • Shows who is in charge • Provides positive motivation for compliance 	Demonstrate Omnipotence <ul style="list-style-type: none"> • Shut down entire economies across the world • Create money out of nowhere, force dependency • Develop total surveillance with nanochips and 5G
Degradation <ul style="list-style-type: none"> • Makes resistance seem worse than compliance • Creates feelings of helplessness. • Creates fear of freedom, dependence upon captors 	Humiliation or Degradation techniques <ul style="list-style-type: none"> • Shame people who refuse masks, don't distance • Make people stand on circles and between lines • Make people stand outside and wait in queues • Sanitation stations in every shop
Enforcing trivial demands <ul style="list-style-type: none"> • Develops habit of compliance • Demands made are illogical and contradictory • Rules on compliance may change • Reinforces who is in control 	Enforcing trivial demands <ul style="list-style-type: none"> • Family members must stand apart • Masks in home and even when having sex • Random limits on people allowed to be together • Sanitizers to be used over and over in a day

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The Chart of Coercion above is drawn from the Biderman Report on communist brainwashing techniques used by the Chinese and North Koreans on captured American servicemen to make them psychological as well as physical prisoners. Dr. Alfred D. Biderman M.A. and presented his Report at the New York Academy of Medicine Nov 13, 1956. Compare right column with your experience this year.

The foregoing allegations raise the inference that defendants have intentionally manipulated the public with false numbers, undefined terms (“cases”), and constant bombardment of fearful messages.

J. Masks

²⁷⁸ Supra at fn 271

88. The NM Public Health Order requires masks to be worn in any public space, indoors and outdoors, including during exercise. It only allows medical exemptions with a written doctor's note. As a practical matter, many physicians (especially those who are hospital employees) are reluctant to give the medical exemptions. If someone is not under a physician's care ordinarily, and encounters problems breathing with a mask, she will incur a burden in terms of cost or accessibility in attempting to obtain such a letter. Further, national businesses including chains like Office Depot and Trader Joe's, refuse to honor medical exemptions. People who have medical conditions which preclude mask wearing are currently being discriminated against and denied essential services (even with a doctor's note) such as in person doctor's visits and grocery stores in New Mexico. This discrimination is being encouraged by the Governor who has repeatedly advocated a "zero-tolerance" mask policy during her press briefings and will fine businesses who do not strictly enforce her mask mandate. She has encouraged "snitching" and bullying of people who cannot or will not wear a mask. It is reasonable to assume that the threat of heavy fines up to \$5,000 per violation is driving much of the corporate policy regarding mandatory mask-wearing.

89. An overview of the lack of evidence for mask efficacy in public settings as well as the actual negative health effects of wearing masks follows:

1. As acknowledged by the CDC, the vast majority of COVID-19 transmissions are happening indoors with extended close contact. It has been acknowledged that transmission is not likely to occur in passing interactions.²⁷⁹
2. Studies have shown that asymptomatic transmission is actually very rare. One study traced the contacts of 3,410 COVID-positive people ranging from asymptomatic to severe symptoms. Transmission increased with the severity of the symptoms. Out of 305 asymptomatic COVID-positive people, there was apparently one transmission.²⁸⁰ Thus, mandating the use of masks in public spaces is not likely to have any significant impact on overall rates of community spread. Masks are ineffective for

²⁷⁹ "How COVID-19 Spreads," Centers for Disease Control and Prevention, accessed November 15, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

²⁸⁰ "Contact Settings and Risk for Transmission in 3410 Close Contacts of Patients With COVID-19 in Guangzhou, China," *Annals of Internal Medicine*, August 2020, <https://www.acpjournals.org/doi/full/10.7326/M20-2671>

- preventing transmission because the size of a coronavirus is too small to be stopped by a cloth face covering.
3. Masks have been shown to raise resting blood pressure in both pregnant and non-pregnant women.²⁸¹
 4. Masks have been shown to reduce oxygen uptake and increase carbon dioxide intake (and especially in pregnant women).²⁸²
 5. Masks have been shown to induce headaches in over 80% of wearers.²⁸³
 6. New Mexico's mask mandate specifically goes against World Health Organization guidance which states, "People should NOT wear masks when exercising, as masks may reduce the ability to breathe comfortably. Sweat can make the mask become wet more quickly which makes it difficult to breathe and promotes the growth of microorganisms."²⁸⁴
 7. Wearing a mask can result in dangerously low oxygen levels. Oxygen levels for people wearing masks have been shown to be lower than the levels required by OSHA (Occupational Health and Safety Administration). This is especially so in higher elevations found in New Mexico, where, for example, in Santa Fe at 7000 ft. altitude, the oxygen in the air is already lower than OSHA standards for oxygen requirement in enclosed spaces.²⁸⁵

²⁸¹ "Effect of external airflow resistive load on postural and exercise-associated cardiovascular and pulmonary responses in pregnancy: a case control study," Jung-Hyun Kim et al., BMC Pregnancy Childbirth, Feb 2015, <https://pubmed.ncbi.nlm.nih.gov/25886031/>

²⁸² "Respiratory consequences of N95-type Mask usage in pregnant healthcare workers—a controlled clinical study," Pearl Shuang Ye Tong et al, BMC Antimicrobial Resistance and Infection Control, November 2015, <https://aricjournal.biomedcentral.com/articles/10.1186/s13756-015-0086-z>

²⁸³ "Headaches Associated With Personal Protective Equipment - A Cross-Sectional Study Among Frontline Healthcare Workers During COVID-19," Jonathan J Y Ong et al., Headache, May 2020, <https://pubmed.ncbi.nlm.nih.gov/32232837/>

²⁸⁴ World Health Organization, accessed November 15, 2020, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public/myth-busters#exercising>

²⁸⁵ Tenpenny, Sherri. "Conclusion Regarding Masks They Do Not Work." November 13, 2020. *Healthy Referral*, <https://www.healthyreferral.com/blog/241389-conclusion-regarding-masks-they-do-not-work-by-dr-sherri-tenpenny-do-aobnmm-abihm>

8. The increased CO₂ (Carbon Dioxide) levels caused by masks can actually lead to cognitive impairment.²⁸⁶
9. There are substantial psychological impacts to wearing masks that may have a particularly negative impact on children.^{287, 288} Mask-wearing does not allow for people to see each other's facial expressions, hear clearly what the mask wearer is saying and impedes the important personal interactions between human beings. It dehumanizes people by not being able to see individual facial features and expressions.
10. People who wear masks "always" or "often" are at 18 times the risk to develop respiratory symptoms that resemble COVID.²⁸⁹ Table below is excerpted from CDC website²⁹⁰:

Reported use of cloth face covering or mask 14 days before illness onset (missing = 2)			
Never	6 (3.9)	5 (3.1)	0.86
Rarely	6 (3.9)	6 (3.8)	
Sometimes	11 (7.2)	7 (4.4)	
Often	22 (14.4)	23 (14.5)	
Always	108 (70.6)	118 (74.2)	

90. The collective data leaves us with an inexorable conclusion – mandating masks in public spaces puts the health of New Mexicans at risk and is not an effective measure in reducing the spread of COVID-19 in these spaces. These policies are leading to discrimination of people with health conditions that preclude mask wearing and ignore the fact that mask-wearing has

²⁸⁶ *Id*

²⁸⁷ Children Wearing Face Masks Experience Psychological Effects, According To Experts, *Celebrity Parents*, <https://celebrityparentsmag.com/kids-health/children-wearing-face-masks-experience-psychological-effects-according-to-experts/>

²⁸⁸ Palmer, Dr. Alan, "The Risks vs. Benefits of Face Masks," Children's Health Defense, (May 26, 2020), <https://childrenshealthdefense.org/news/the-risks-vs-benefits-of-face-masks-is-there-an-agenda/>

²⁸⁹ Community and Close Contact Exposures Associated with COVID-19 Among Symptomatic Adults ≥18 years in 11 Outpatient Health Care Facilities—United States, July 2020, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6936a5-H.pdf#page=4>

²⁹⁰ *Id*

significant unhealthy consequences. The decision as to whether to wear a mask should be left to the individual under the 4th and 9th Amendments, as a fundamental right to freely breathe and exercise one's right to personal decisions regarding his body, as well as exercising the right to freedom of expression of religion, as the breath is the gift of God. The government should not impose any restrictions on the right to breathe freely, an inalienable God-given right that cannot be abrogated by government laws.

K. How Dangerous is COVID-19 Really?

91. Given the above facts the natural reaction is to ask how dangerous COVID-19 really is. Dr. Anthony Fauci and his co-authors reported in their March 2020 editorial in the *New England Journal of Medicine*:

If one assumes that the number of asymptomatic or minimally symptomatic cases is several times as high as the number of reported cases, the case fatality rate may be considerably less than 1%. This suggests that the overall clinical consequences of Covid-19 may ultimately be more akin to those of a severe seasonal influenza (which has a case fatality rate of approximately 0.1%) or a pandemic influenza (similar to those in 1957 and 1968) rather than a disease similar to SARS or MERS, which have had case fatality rates of 9 to 10% and 36%, respectively.²⁹¹

92. In an update to its data on September 10, 2020, the CDC released figures on COVID-19 fatality, from which survival ratio can be calculated:

Age	Infection Fatality Ratio	Survival Ratio
Age 0-19	0.003%	99.997%
Ages 20-49	0.02%	99.98%
Ages 50-69	0.5%	99.5%
Ages 70 and above	5.4%	94.6%

²⁹¹ Fauci AS, Lane HC, Redfield RR. "Covid-19 – Navigating the Uncharted." *NEJM* 2020 Mar;382:1268-1269, DOI: 10.1056/NEJMe2002387, <https://www.nejm.org/doi/full/10.1056/NEJMe2002387>

This indicates an Infection Fatality Ratio (IFR) for COVID-19 in the same order of magnitude as Dr. Fauci's March 2020 assessment for some age groups, and significantly lower than the IFR's he offered for past pandemics for which no stay at home orders or mask mandates were issued. And while COVID-19 appears to have a disproportionate effect on the elderly, the same is true for the seasonal flu. Indeed, the majority of deaths from influenza occur in people over the age of 65.²⁹² As more estimated COVID-19 "infections" are considered, some are now calculating the overall survival ratio for COVID-19 to be as high as 99.875%.²⁹³

93. We acknowledge that a true comparison of deaths caused from – not with – COVID-19 and the flu is not possible given that COVID-19 is the only disease to be reported under the singular cause of death rules. Also, because of the unknowns surrounding New Mexico's calculation of its COVID-19 data, discussed above, it is not possible for us to determine how COVID-19 and flu deaths compare in New Mexico. It is not even possible for us to accurately calculate an IFR for COVID-19 in New Mexico because it is erroneously assumed that every positive COVID-19 test represents an "infection," because of Positive Test Multipliers, and because death figures are inflated by comorbidities. For all of these reasons, it is reasonable to assert that the danger from COVID-19 in New Mexico is roughly comparable to that of the seasonal flu and not as deadly as we have been led to believe.

94. We conclude by asserting that the figures presented above do not justify the prolonged State of Public Health Emergency, the drastic and detrimental measures that have

²⁹² "Flu & People 65 Years and Older" CDC, <https://www.cdc.gov/flu/highrisk/65over.htm>

²⁹³Schachtel, Jordan, "Global data: COVID-19 recovery rate approaching 99.9%, with record cases comes a record low death rate," (Nov. 5, 2020) <https://jordanschachtel.substack.com/p/global-data-covid-19-recovery-rate>

stemmed from it, and the egregious violation of Constitutional rights that is the subject of this suit.

95. We believe the State will attempt to rely on modeling as a justification for the actions taken. While the Plaintiffs would relish in the opportunity to affirmatively rebut the State's models, in litigation in New Mexico, and to declare unlawful COVID-19 mandates of the Defendants, the State has gone to great lengths to keep the science on which their models are based from being disclosed. The Plaintiffs and all the citizens of New Mexico would like to see a full disclosure of the models being used.

L. Irrational Behavior of Governor

96. The irrationality and arbitrariness of the Governor's actions are meaningful for the Court's analysis of the constitutionality of those orders and actions. The governor has recently, at an August 6th press conference, made a statement which shows that, at least on the subject of her mandates regarding COVID-19, she has lost all sense of proportion at the amount of invasion of rights her mandates have caused and is causing, with the harm being caused being greater than the disease itself. However, if she is aware of the harm she is causing, then her actions are truly Machiavellian and probably *ultra vires*.

97. Unbelievably she stated that the current COVID-19 measures are "the right public health path forever irrespective of COVID." She was referring specifically to social distancing, mask wearing, lockdowns, and mass gathering restrictions. She said, "Let's hold these behaviors beyond the vaccine, because these are good public health behaviors that will prevent the spread of influenza, that will prevent the spread of colds... we should start thinking about this as the

right public health path forever irrespective of COVID." ²⁹⁴ This is absurd and beyond arbitrary and capricious. And, while the 9th Amendment is not typically used except in conjunction with other enumerated rights, it was created specifically for instances such as this.

98. This Court must consider that the person who could make a statement like that, who issued a second major lockdown on November 16, perpetuating all the harms to New Mexicans outlined herein, and who ordered 2-week closures of grocery stores around the state, is not thinking or acting rationally, at least, not for protecting people from health risks.

99. The overreach of the governor's COVID-19 orders are being decried throughout the state. A letter signed by mayors of nineteen New Mexico towns and cities was sent to the governor in April 2020, urging her to end the shutdown of "non-essential" businesses.²⁹⁵ In July, the Governor wrote an op-ed in which she threatened that she would try to get those mayors who did not enforce her orders removed from office.²⁹⁶ Eighteen mayors endorsed a response to this threat, saying:

Significant concern was raised by municipal governments about the enforceability of certain components of the governor's public health order. Local communities have repeatedly requested information on the legal authority of municipalities to enforce and even fine and incarcerate citizens for violating such. The governor in her op-ed additionally took the unprecedented approach of threatening to remove local elected officials from office. It is unclear how she would approach this, either by asserting executive authority or using political influence, but regardless, it is inappropriate to say the least. Local nonpartisan elected officials should not be threatened when (leaders are) merely asking questions. ²⁹⁷

²⁹⁴ *Supra* at fn 91

²⁹⁵ "New Mexico mayors sign letter urging state to end shutdown," Associated Press, April 26, 2020, <https://www.lamonitor.com/content/new-mexico-mayors-sign-letter-urging-state-end-shutdown>

²⁹⁶ "Too many local officials ignoring health crisis," Albuquerque Journal, July 8, 2020, <https://www.abqjournal.com/1473575/too-many-local-officials-ignoring-health-crisis.html>

²⁹⁷ "Memo to governor: NM's mayors aren't passing the buck," Albuquerque Journal, July 15, 2020, <https://www.abqjournal.com/1475986/memo-to-governor-nms-mayors-arent-passing-the-buck.html>

M. A Final Summary of Facts

100. The bottom line is this: there is no emergency.

- The Government of New Mexico's EOs and PHOs are blatantly unconstitutional, infringing on the fundamental rights to liberty, equal protection, and representative government.
- COVID-19 is much less deadly than was originally predicted, and this has been true in New Mexico as well as states that did not have restrictive COVID-19 lockdown measures and mask mandates (such as Utah and South Dakota).
- There is no obvious correlation between COVID-19 restrictions and improved outcomes from COVID-19, as evidenced by the recent surge in hospitalizations and deaths in many states regardless of whether they had restrictive lockdowns and mask mandates.
- There is no compelling scientific evidence that people with no symptoms are transmitting any disease to others

101. New Mexico's COVID-19 restrictions are harming New Mexicans in many ways, including:

- Threatening access to food and medication;
- Negative mental and emotional health impacts, including increased depression, anxiety, substance abuse, domestic violence, and suicide;
- Forcing people to accept serious infringements of their Constitutional and God-given rights with little recourse;
- High unemployment rates and economic devastation with hundreds of business failures;

- Discrimination against people who cannot wear masks, which threatens their access to food and medical treatment as well as free exercise of religion in a place of worship; and
- Educational failure for children in public schools.
- Dangers from mask-wearing

102. Across the 9 months of the “pandemic” (a term which has nothing to do with severity, only geography with the added factor of “novel”), New Mexicans have had an overall COVID-19 survival rate of over 98.4%, even based on its own flawed numbers.²⁹⁸ Once the overreporting of COVID-19 deaths and the fallibility of PCR testing are genuinely accounted for, the number of “COVID-related” deaths (meaning deaths *from* COVID not “with” COVID) in New Mexico would be significantly less than the already small number of 1,400, in a population of 2.1 million.²⁹⁹

103. As discussed above, cases are a meaningless measure of the danger of this disease and as demonstrated by the failure to expand the number of hospital beds available, not demonstrative of any true risk. In fact, as of early November, according to NMDOH data, 39% of cases have recovered and it appears that 59% never became symptomatic to begin with.³⁰⁰

104. The testing for cases makes this even worse, given that there is not even a true standard for testing. Instead, we have numerous tests from numerous vendors that may or may not have a similar standard for what it means to “have” COVID-19. The CDC, governor, and NMDOH know this so they have allowed for the classification of cases based on an unreliable positive test.

105. So minimal is this disease that the governor, NMDOH, CDC, and other such organizations had to use psychology, specifically motivational and coercive tactics, to scare

²⁹⁸ NM COVID-19 Update: 177 new cases, totaling 129,993. NMDOH (Dec. 20, 2020) <https://cv.nmhelth.org/2020/12/20/new-mexico-covid-19-update-1077-new-cases-totaling-129973/>

²⁹⁹ This number was correct when this sentence of the Complaint was being drafted, and is being increased daily.

³⁰⁰ “[New Mexico COVID-19 update: 1,237 new cases, totaling 62,006](https://cv.nmhealth.org/2020/11/13/new-mexico-covid-19-update-1237-new-cases-totaling-62006/),” NMDOH, (November 13, 2020), <https://cv.nmhealth.org/2020/11/13/new-mexico-covid-19-update-1237-new-cases-totaling-62006/>

people into action. This is because no rational person would do what the public health industry would ask them to do if the true facts were shared.

106. Ultimately, under the 9th and 14th Amendments, an overwhelming amount of precedent, the spirit and letter of the Constitution, and the plain application of common sense, there is absolutely no legitimate argument for the Governor of New Mexico to use emergency powers to bypass legislative and judicial precedent and act as though our executive branch is akin to a dictatorship. If the Court is willing to allow an emergency declaration, particularly one that is apparently never-ending, and also to allow our fundamental rights to be destroyed under that emergency declaration over this, then our democratic republic is truly lost.

107. COVID-19 is much less severe than was originally predicted and the N.M. Government has severely infringed upon the constitutionally-protected rights of New Mexico's citizens under the guise of emergency when there is no emergency

108. Under 18 U.S.C. 47 Section 1040 criminal fraud in connection with major disaster or emergency benefits is defined as:

1. Whoever, in a circumstance described in subsection (b) of this section, knowingly—
 - a. falsifies, conceals, or covers up by any trick, scheme, or device any material fact; or
 - b. makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or representation in any matter involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191), or in connection with any procurement of property or services related to any emergency or major disaster declaration as a prime contractor with the United States or as a subcontractor or supplier on a contract in which there is a prime contract with the United States, shall be fined under this title, imprisoned not more than 30 years, or both.

109. We believe that this Section is relevant to the current situation. An act of fraud takes any such actions outside the scope of the authority of an official with the State. While the Plaintiffs do not suppose to be in a position to prosecute such fraud criminally, the facts would suggest that many others outside the government who have been involved in testing, death reporting, and the like knew or should have known that this disease is far less dangerous than it has been represented to be and that they knowingly concealed and covered up relevant data. At the very least if this is proven, their actions are *ultra vires* subjecting them to personal liability.

V. LAW

Count 1: Injunctive relief to enjoin the use of PCR tests results as the basis for determining public health responses and restrictions until and unless it is proven by Defendants that this test is reliable and accurate at the cycle thresholds being used in New Mexico.

110. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth, particularly those provisions and references to the testing for the disease, upon which are based onerous and illegal deprivations of Constitutional rights of the plaintiffs and other New Mexican residents and citizens.

Count 2: Declaratory Relief - That the exigencies underlying the declaration for emergency no longer exist if they ever did; and in the absence of a public health emergency, the state lacks any reason to continue to infringe on citizens' rights, thereby nullifying all current executive and public health orders which flowed from the declaration of emergency.

111. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

112. In considering whether to grant the relief requested in all of the counts herein above, the Court should consider that given the prolific and increasingly, tyrannical clamp-downs of Constitutional rights that Defendants have exhibited over the past nine months, with at least weekly orders, it is anticipated that further Public Health Orders and Executive Orders will be enacted which will present new issues, for which we will seek injunctive relief. For example, during the drafting of this Complaint, a Public Health Order enacted on November 30, provided

“Reopening Level Metrics” which require that a county have “an average percent of positive COVID-19 test results over the most recent 14- day period less than or equal to 5%” to move to the “Green” level from one color coded level to the next higher. Given the utter unreliability and high false positive rate of the COVID-19 tests which are primarily PCR tests, and that no distinction is made between symptomatic vs. asymptomatic persons, this is an impossible metric to achieve, meaning that New Mexico businesses and our economy will not re-open ever. Indeed, the recent upsurge in “cases” is due more to a testing epidemic, not true cases that justify the continued restrictions on our freedoms.

113. Under Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934) the Supreme Court stated, “Whether the emergency still exists upon which the continued operation of the law depends is always open to judicial inquiry.” 290 U. S. at 442, citing Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924). It is under this precedent that we challenge the continuation of the emergency declaration in the state of New Mexico.

114. In *Sinclair* the Court stated that “A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change.” P. 264 U. S. 547. Both *Blaisdell* and *Sinclair* provide clear authority that an emergency and the rules promulgated thereunder must end when the facts of the situation no longer support the continuation of the emergency. *Sinclair* focused almost entirely on the concept of a change in circumstance and, in reversing the lower Court’s decision stated, “the facts should be gathered and weighed by the court of first instance and the evidence preserved for consideration by this Court if necessary.” P. 264 U. S. 549

115. This is clearly similar to the situation faced by Plaintiffs here. The State emergency declaration was premised on, at best, incorrect information and misleading information. We have demonstrated on the face of this complaint that the exigencies underlying the declaration for emergency no longer exist and will show at trial the full extent to which this is true. As such we humbly ask the Court to recognize that these exigencies no longer exist.

116. If the exigencies supporting an emergency declaration no longer exist, then the emergency declaration itself must end pursuant to *Blaisdell*. The *Sinclair* Court stated, “a Court

is not at liberty to shut its eyes to an obvious mistake when the validity of the law depends upon the truth of what is declared.” That simply could not be more relevant, nor more controlling than as applied to the case at hand and, as such, Plaintiffs humbly request the Court to declare an end to the public health emergency declared in New Mexico.

117. In considering whether to grant the relief requested in all of the counts herein above, the Court should consider that given the prolific and increasingly, tyrannical clamp-downs of Constitutional rights that Defendants have exhibited over the past nine months, with at least weekly orders, it is anticipated that further Public Health Orders and Executive Orders will be enacted which will present new issues, for which we will seek injunctive relief. For example, during the drafting of this Complaint, a Public Health Order enacted on November 30, provided “Reopening Level Metrics” which require that a county have “an average percent of positive COVID-19 test results over the most recent 14- day period less than or equal to 5%” to move to the “Green” level from one color coded level to the next higher. Given the utter unreliability and high false positive rate of the COVID-19 tests which are primarily PCR tests, and that no distinction is made between symptomatic vs. asymptomatic persons, this is an impossible metric to achieve, meaning that New Mexico businesses and our economy will not re-open ever. Indeed, the recent upsurge in “cases” is due more to a testing epidemic, not true cases that justify the continued restrictions on our freedoms.

Count 3: Declaratory Relief that All actions taken under Public Health Orders issued pursuant to Executive Order 2020-004 and extensions are no longer valid as being based on falsely inflated numbers that do not represent the true character of the disease.

118. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

119. Pursuant to Count 2, and under *Sinclair* Plaintiffs humbly request the Court to declare that all orders issued under the authority of the public health emergency in New Mexico are invalid. Again, under *Sinclair*, these orders were issued under the authority of an emergency declared on false or misleading statements of facts and are thus unlawful.

120. The number of orders that have been issued, redacted, reinstated, changed, and otherwise altered by the State of New Mexico that violate established Constitutional precedent

are far too extensive, and frankly convoluted, to review.³⁰¹ Below is a partial list of public health orders which we believe more than substantiate our point. These orders include, but are not limited to:

- Mandatory mask wearing in public spaces, including places of worship;
- Requiring a two week closure of open businesses when there are four or more positive tests in a two week period;
- Social distancing;
- Restrictions in numbers of patrons in retail businesses, grocery stores, restaurants and bars;
- Prohibition of live music in restaurants and bars;
- Designation of businesses as “non-essential” and closure of these businesses and services;
- Quarantining on their return New Mexicans who leave the state and visitors who come to the state upon their entry.
- Closure of schools.
- Prohibition of gatherings of more than 5 people.

COUNT 4: DECLARATORY RELIEF IN DECLARING THE LOWEST STANDARD OF REVIEW AVAILABLE UNDER AN EMERGENCY DECLARATION IS INTERMEDIATE SCRUTINY THOUGH HIGHER STANDARDS MAY STILL APPLY.

121. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

122. Under *Blaisdell* the Supreme Court noted:

Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency, and they are not altered by emergency.

³⁰¹ See Timeline, Sec. IV A above..

What power was thus granted and what were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system.

123. Plaintiffs believe that this is critical in reviewing actions taken under an emergency declaration. Inherently, an emergency declaration allows an executive branch of the state or federal government to bypass certain legislative checks or balances. Plaintiffs contend that with these additional powers inherently come additional responsibilities in the form of heightened levels of scrutiny as applied to any actions taken under an emergency declaration. Without this extra level of protection, the balance of power will be thrown off.

124. While we do not accept that any order issued under an emergency declaration, without legislative checks and balances, should be reviewed under a rational basis, the State may argue that some do under the League of Independent Fitness, et al. v Gretchen Whitmer, et al., Case No. 20-1581. This case could only be argued as relevant to our case as pertaining to specific executive orders abridging rights based on a rational basis review. Plaintiffs in *Whitmer* apparently conceded that the issue tested in the case was to be reviewed on a rational basis, we disagree with that and intend to contest any right abridged under an emergency order reviewed on the truly toothless standard set for rational basis review under non-emergency orders.

125. Under a rational basis review of an order, law, regulation, etc. the plaintiff bears the burden of demonstrating that no rational basis exists for a state action.³⁰² A state action taken based on fraud and/or false pretenses cannot meet the standard for a rational basis review of the action.³⁰³ We have demonstrated in this complaint, and will further demonstrate at trial that the

³⁰² “We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” Citing City Council of Los Angeles v. Taxpayers for Vincent, 466 U. S. 789 (1984); United States v. Grace, 461 U. S. 171 (1983); Perry Education Assn. v. Perry Local Educators' Assn., 460 U. S. 37, 45-46 (1983); Heffron v. International Society for Krishna Consciousness Inc., 452 U. S. 640, 647-648 (1981); Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U. S. 748, 771 (1976); Consolidated Edison Co. v. Public Service Comm'n of N. Y., 447 U. S. 530, 535 (1980); Clark v. Community for Creative Non-Violence, 464 U.S. 1016, 104 S.Ct. 545, 78 L.Ed.2d 721 (1983), <http://cdn.loc.gov/service/ll/usrep/usrep468/usrep468288/usrep468288.pdf#page=6>

³⁰³ Romer v. Evans, 517 U.S. 620 (1996)

actions of the State of New Mexico are not based on facts. They are based on misleading information,³⁰⁴ nonsensical standards, and an apparent desire to terrify the public into action.³⁰⁵

126. Within the established framework for rational basis review several things become apparent. First, the Courts generally show extreme deference to elected officials and regulatory agencies in questions of social or economic policy. The Supreme Court went so far as to state that, “In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if any reasonably conceivable state of facts could provide a rational basis for the classification.” FCC v. Beach Communications, Inc., 508 U.S. 307 (1993).

127. *Beach* is an entirely different case than what we are filing. The *Beach* decision was based entirely on a question of social/economic policy. There was no emergency declaration, no legislative or judicial checks and balances on the separation of powers were being dealt with, and the issue was based on an [arguably] proper rulemaking. Contrast that to an executive branch that is bypassing democracy by issuing orders under an emergency declaration, without any rulemaking or even sensible process in place, and using that power in ways that are out-of-line with even the most conservative view of Ninth Amendment rights (as demonstrated by issuing rules governing things like how far apart we must sit and stand from each other.)

128. Under no conceivable circumstance could these rules pass the legislatively defined rulemaking process as it stands. If they could, there has been plenty of time to do so given that this emergency has continued for seven months and, according to the Governor, has no end in sight. Essentially the State of New Mexico has used the concept of an emergency to bypass the will of the people and the legislatively defined processes for rulemaking. Given this, we reject, outright, that any orders issued under an emergency declaration should be reviewed on anything less than intermediate scrutiny. Our argument for this stems from the above cited *Blaisdell* and *Sinclair* cases.

³⁰⁴ see Deaths, Section IV.D., Testing, Sec. IV.F, and Cases, Section IV.G. above.

³⁰⁵Breggin, Peter R. “COVID-19 & Public Health Totalitarianism: Untoward Effects on Individuals, Institutions and Society.” August 30, 2020. *breggin.com*, <https://breggin.com/coronavirus/NEW-COVID-19-LEGAL-REPORT.pdf>.

129. In an emergency the rights of citizens are inherently abridged by nature of the action. The Supreme Court has specifically stated that “A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change,” Chastleton Corp. v. Sinclair, 264 U.S. 543 (1924), and also that “It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends.” Home Building & Loan Assn. v. Blaisdell, 290 U.S. 398 (1934). expects the continuation of an emergency declaration to be challengeable on the facts and that, should the facts or knowledge regarding the circumstances under which the emergency was declared were to change then the emergency would necessarily cease.

130. Plaintiffs further argue that the State must bear the burden of proof. Any Executive branch acting under any declared emergency will have far greater access to information about the emergency than its citizens. It will further have resources and experts to demonstrate the need for such actions. The costs of developing a lawsuit including hiring and recruiting experts is well beyond what is affordable for an average person and forcing that burden on citizens when the Executive branch is the one taking the actions would have a very disproportionate impact on people with less economic capacity to fight. It is further impossible to fight such an action without the necessary information to determine the accuracy of the premise, which is whether an emergency truly exists, and which the State of New Mexico is denying to its citizens to this very day.

131. In a typical rational review case based on social or economic issues, Beach is clear in its position that the Court does not want to step into the position of the legislature. We do not believe any aspect of our case should be reviewed under the rational basis standard. In the case of an emergency declaration the idea that facts do not matter is simply a misstatement of the law under *Sinclair* and *Blaisdell* and would allow the executive branch to step into the role of legislature.

132. We finish this piece of the complaint with this: without judicial intervention, this and any other emergency would be able to continue without end and without challenge for no reason beyond the fact that the State Executive branch said so. That is being demonstrated every day in New Mexico. Going back to the very beginning of our judicial system, the Supreme Court

stated that, "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 5 U. S. 163. In this case, the protection of law can only be challenged through the demonstration that the "facts" the State has used as a foundation for their actions are false. Thankfully, the Court, in its wisdom realized this and gave us the precedence set in *Blaisdell* and *Sinclair* to ensure justice could be done.

Impact of Allowing Rational Basis without Review of Facts

133. As discussed, we do not believe that a rational basis review of orders issued without the legal and Constitutional protections afforded by the traditional rulemaking process (i.e. rules made under an emergency declaration) should be evaluated under any less than intermediate scrutiny. While we believe we have submitted sufficient evidence on the face of this complaint to demonstrate the arbitrary and capricious nature of the State's actions, a discussion of the impact of the Court's ruling needs to occur in regard to law this critical.

134. An emergency has been declared and rights curtailed as discussed throughout this document. Actions such as (but not limited to) arbitrarily determining which businesses can remain open and which must close are clear violations of the Fourteenth Amendment. The data provided to the public, courts, and legislature is misleading and we have shown and will continue to show that the impact of this disease is roughly equal to the yearly flu. While we firmly believe that an emergency declaration that allows for the curtailing of any fundamental right would inherently be subject to intermediate or higher scrutiny, these orders are unable to even meet the rational basis test since they were premised on false or misleading information³⁰⁶ and issued under an emergency declaration.

135. The response to COVID-19 has destroyed our economy, likely killed more people than the disease itself, and violated countless rights. This was all done under emergency powers and when a state can continue to take actions without the burden of justifying those actions with

³⁰⁶ see Deaths, Section IV. D. and Testing, Section IV.F, and Cases, Section IV.G. above.

facts and those facts cannot be questioned, we see the absurd results occur that have happened here.

136. If the Courts allow precedence to be set where a State may declare an emergency and it cannot be questioned based on the facts, then the citizens run the risk of state executives ignoring the law and using emergency powers for the entire term of their tenure. No emergency has been declared banning unhealthy food but it is a leading cause of heart disease which kills far more people per year than COVID-19.³⁰⁷ No emergency or state action has been declared banning transportation despite the tremendous number of highway deaths per year. We have not even taken action to lock down our nation despite the apparent dangers posed by the sun and other carcinogenic things in the environment though there are projected to be 606,520 cancer deaths this year.³⁰⁸

137. All these actions would be legal and nearly impossible to challenge in the Courts if not for the wisdom of the Supreme Court in *Sinclair* and *Blaisdell*. If this can be done in reaction to COVID-19 the same could be done for things like highway deaths, STDs, obesity, or any of a number of other “public health issues” that cause far more damage than COVID-19. Frankly, the result is a new America that was in no way ever envisioned by our founding fathers.

COUNT 5: Takings Without Just Compensation

138. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

139. The State’s Orders are unconstitutional under the 5th Amendment of the United States Constitution, taking the Plaintiffs’ private and personal property without just

³⁰⁷ 647,000 Americans die from heart disease each year. [Heart Disease Facts](https://www.cdc.gov/heartdisease/facts.htm), CDC.GOV, (Last visited Aug 27, 2020) <https://www.cdc.gov/heartdisease/facts.htm>

³⁰⁸ [Cancer Statistics Center](https://cancerstatisticscenter.cancer.org/?_ga=2.73444886.564826218.1597868910-1216452062.1597868910#!/), AMERICAN CANCER SOCIETY, (last visited Aug.27, 2020), https://cancerstatisticscenter.cancer.org/?_ga=2.73444886.564826218.1597868910-1216452062.1597868910#!/

compensation.³⁰⁹ As discussed throughout this document there is a lack of any compelling state interest to justify the severe burden imposed on the constitutional property rights.

COUNT 6: Declaratory Relief that the Restrictions on Gatherings at Houses of Worship are Unconstitutional

140. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

141. The practice of religion is not something that can be easily summarized, but it clearly includes being with others in fellowship and group prayer, chanting, and singing. Doing these activities with others in places of worship surely enhances the experience and the value of these activities. Current orders of the Defendants limit the amount of people attending religious services to 25% of the building's capacity. In addition, mask-wearing is required which does not permit singing freely or for shared emotions in worship by seeing your fellow worshippers' faces and being able to embrace them. Churches are required to enforce social distancing, when there is no evidence that social distancing is effective at reducing the spread of this disease.

142. Strict scrutiny is to be applied to infringement of religious freedom and expression.³¹⁰

COUNT 7: Declaratory Relief That the Limitations on Gatherings of People are Unconstitutional

143. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

144. The "right of association" is a right which has been held to be inherent in the right to free speech and to assemble in the First Amendment. NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460–61 (1958); Bates v. City of Little Rock, 361 U.S. 516, 522–23 (1960); United Transportation Union v. State Bar of Michigan, 401 U.S. 576, 578–79 (1971); Healy v. James, 408 U.S. 169, 181 (1972). The right to association can be described as the right to be in the presence of

³⁰⁹ For just compensation for the Plaintiffs for their "temporary total regulatory takings", Lucas vs. South Carolina Coastal Council (1992) 505 US 1003, 112 SCt 2886, 120 L. Ed 2nd 798; For just compensation for the Plaintiffs for their "temporary partial regulatory takings," Penn Central Transportation Co. vs. New York City (1978) 438 US 104, 98 S.Ct. 2646; 57 L. Ed. 2nd 631;

³¹⁰ Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014); RFRA 42 U.S.C. §2000bb-1(c)

and communicate with other human beings and, as such, is as fundamental a right as any specifically articulated in the Bill of Rights. “(S)tate action which may have the effect of curtailing *the freedom to associate is subject to the closest scrutiny.*” NAACP v. Alabama ex rel. Patterson, supra at 460-461. This right is being seriously abridged by the Defendants with the mandate to wear masks and to stay six feet apart from other people. It is being further infringed on by the Defendants’ prohibition against mass gatherings. According to the Defendants’ orders a “mass gathering” is considered anything more than *five* persons !

145. The mass gathering prohibition has had a serious effect on political speech as it interfered with political organizing, rallies and meetings leading up to the recent elections. But the right to associate is much broader than gatherings for political speech. “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. . . . Of course, *it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters....*” (emphasis added) NAACP v. Alabama ex rel. Patterson, supra at 460-461.

We also ask the Court to note unequal application of the law with respect to freedom of assembly as demonstrated in unequal treatment in protests which were allowed in contradistinction to other gatherings, including clubs, churches, family gatherings, and other gatherings which were severely restricted.

COUNT 8: Overview of Constitutional Violations Not Discussed

Elsewhere

146. The paragraphs above are realleged and reincorporated as if set forth fully herein.

147. This is our abridged list and partial discussion of issues not discussed elsewhere in the complaint. Plaintiffs welcome the opportunity to brief the Court more fully on these issues prior to trial or as needed:

1. The Freedom of Movement & Interstate Travel has been ignored -
Fundamental Right to Travel:

The Defendants have issued an “order” requiring persons arriving from out of state to be quarantined for 14 days. This includes New Mexican citizens who return from visiting another state.

- a. Shapiro v Thompson, 394 US 618, 629-631 (1969)
 - i. This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the Passenger Cases, 7 How. 283, 48 U. S. 492 (1849): "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States."
- b. Williams v. Fears, 179 U.S. 270, 274 (1900), quoted in Schactman v. Dulles, 225 F.2d 938, 944 (1955).
 - i. "[u]ndoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily of free transit from or through the territory of any State is a right secured by the 14th amendment and by other provisions of the Constitution."³⁵
- c. Kent v Dulles, 357 U.S. at 125.
 - i. "[t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law."

- d. In 1966 in United States v. Guest, the Court rearticulated that the Constitution did not explicitly mention the right to travel because: a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.... The constitutional right to travel from one State to another ... Occupies a position so fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.
2. Second Amendment, Right to Bear Arms has been interfered with:
 - a. Gun stores being declared as a “non-essential” business were shut down or operation was limited thus infringing upon the right to bear arms.
 - b. District of Columbia v. Heller, 554 U.S. 570 (2008) may be the closest decision related to this issue, but Plaintiffs believe intermediate or strict scrutiny to be the appropriate level of review here.
 - c. During the business shutdown client’s right to bear arms was substantially burdened by the arbitrary and capricious closure of stores dealing in arms.
 3. The Right to Work has been abridged:

The Defendants have issued numerous non-essential business closures and restaurant closures as well as severe restrictions on the operation of such businesses when they are allowed to be open.

 - a. The right to engage in common occupations of life and earn a living has been referenced in many legal opinions. Justice William O. Douglas described “[t]he right to work” as “the most precious liberty that man possesses.”³¹¹

³¹¹ Barsky v. Bd. of Regents of Univ. of N.Y., 347 U.S. 442, 472 Douglas, J., dissenting

- b. Occupational freedom was actually among the first unenumerated rights ever recognized by the U.S. Supreme Court. In Dent v. West Virginia, 129 U.S. 114, 121-22 (1889) the Court said: “It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business, or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex and condition.” The Court extolled the right of occupational freedom again in Truax v. Raich, 239 U.S. 33, 41 (1915) explaining that “the right to work for a living . . . is of the very essence of the personal freedom and opportunity” that the due process clause was designed to secure.

See also, The Right to Earn a Living, Timothy Sandefur, <https://www.chapman.edu/law/files/publications/CLR-6-timothy-sandefur.pdf>; *The Due Process Right to Pursue a Lawful Occupation: A Brighter Future Ahead?* *The Yale Law Journal Forum*, 2016; <https://www.yalelawjournal.org/forum/the-due-process-right-to-pursue-a-lawful-occupation-a-brighter-future-ahead>

- c. In Butler v. Wolf the Court analyzed this issue under several relevant cases and the 14th Amendment and noted that, “There is no question, then, that the Fourteenth Amendment recognizes a liberty interest in citizens – the Business Plaintiffs here – to pursue their chosen occupation. The Court then goes on to analyze the appropriate level of scrutiny to be applied in the instance of a violation of this right ultimately deciding that the State’s actions in designating some businesses as “life-sustaining” while others were not as arbitrary and capricious. While Plaintiffs believe the appropriate standard for generally denying the right to participate in the common occupations of life should be strict scrutiny, the

question may be irrelevant since the Defendant's actions were, without a doubt, arbitrary and capricious. Plaintiffs also cannot help but notice the parallels between the categorizations of businesses as "life-sustaining" and "non-life sustaining" and the New Mexico standards of "essential" and "non-essential".

- d. In discussing the Constitutionality of a legal alien's right to work the Court in Truax v. Raich, 239 U.S. 33 (1915) stated, "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure. Butchers' Union Co. v. Crescent City Co., 111 U. S. 746, 111 U. S. 762; Barbier v. Connolly, 113 U. S. 27, 113 U. S. 31; Yick Wo v. Hopkins, *supra*; Allgeyer v. Louisiana, 165 U. S. 578, 165 U. S. 589, 165 U. S. 590; Coppage v. Kansas, 236 U. S. 1, 236 U. S. 14."
- e. The Defendants' public health orders require Plaintiff Velasquez and all New Mexico business owners to insure that employees and customers who enter their places of business are wearing masks. Such owners are routinely threatened by the Defendants and state agencies which act as agents of the Defendants such as the New Mexico Environmental Department, through phone calls or in-person visits with \$5,000 fines or license revocations for allowing customers to enter without masks. In effect, Defendants are compelling Plaintiff Vasquez and other business-owners to become law enforcement officers for the State in enforcing its public health

orders. In this compulsion the Defendants are infringing on the liberty of citizens under the 5th Amendment's due process clause.

Count 9: Permanent injunction against future public health emergencies for more than an extremely limited period of time without regular reauthorization by the legislative body should be granted

148. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

149. To seek a permanent injunction, the plaintiff must pass the four-step test: (1) that the plaintiff has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for the injury; (3) that the remedy in equity is warranted upon consideration of the balance of hardships between the plaintiff and defendant; and (4) that the permanent injunction being sought would not hurt public interest. See, e.g., Weinberger v. Romero—Barcelo, 456 U.S. 305, 311–313, 102 S.Ct. 1798, 72 L.Ed.2d 91 (1982); Amoco Production Co. v. Gambell, 480 U.S. 531, 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987).

150. The facts demonstrate that this entire emergency declaration and all the orders promulgated from such declaration were done contrary to science and with what appears to be intent to mislead the public, courts, and legislature. These facts must be reviewed under *Blaisdell* and *Sinclair* and those facts provide a clear demonstration for the Constitutional necessity of injunctive relief against future public health emergencies, for more than a very brief period of time, without a check on the action such as repassing authorization at regular intervals in a legislature.

151. This is, to the Plaintiff's knowledge, a case of first impression. Never has the executive branch of a state government attempted to disregard the letter and spirit of the Constitution to this extent, and more so, to do so under a non-existent emergency. What we have seen occur in New Mexico and around our nation is more akin to the behavior of despots than elected officials in a free republic.

152. While we recognize that there may on occasion be a legitimate public health emergency, and that under state police power the states are most equipped to protect their citizenry, allowing for an unending declaration of emergency without a check on such power is completely unconstitutional. An emergency declaration under various state and federal laws allows for the suspension of law,³¹² rights,³¹³ and many other things held dear in our nation and simply cannot ever be allowed to be used, even briefly, as a tool of oppression.

153. As discussed elsewhere in this document, many fundamental rights have been suspended under the COVID-19 “emergency.” The Supreme Court has held that these rights may not be abridged without meeting the strict scrutiny test. That test simply cannot be met here given the facts of the case. It is apparently left to the Court to clarify to the State that the State is barred from misleading the public, legislative branch, and the courts and then ignoring the Constitution on those grounds.

154. While it is no longer discussed by the State, it bears noting that the premise behind the declaration of this emergency was flattening the curve.³¹⁴ Even the CDC has stated that it would never be possible to stop COVID-19 and that we simply needed to flatten the curve so our healthcare system was not overrun.³¹⁵ Given that our Constitutional rights are sacred in this nation and that they should have only been limited in the narrowest possible way to achieve the [arguably] compelling governmental interest of preventing our healthcare system from being overrun, why have we dismantled the temporary emergency hospitals that were reopened, like the closed St. Joseph Hospital in Albuquerque? Why have we not been working frantically to

³¹² “During an outbreak, people typically accept limits on the liberty of those who are infected as necessary to protect the uninfected.” Amy Lauren Fairchild, et al., What does a state of emergency mean in the face of the coronavirus?, OSU.EDU (Apr 3, 2020), <https://news.osu.edu/what-does-a-state-of-emergency-mean-in-the-face-of-the-coronavirus/>

³¹³ “That is important because emergency powers not only allow state governments to ‘provide for’ populations, but also ‘decide for’ individuals in ways that might limit their rights.” *Id* at 28

³¹⁴ Scrase, David; Kunkel, Kathy, “Flattening the Curve, New Mexico Style,” Santa Fe Reporter, <https://www.sfreporter.com/columns/oped/2020/03/15/flattening-the-curve-new-mexico-style/>

³¹⁵ Laura Matrajt, et al., Evaluating the Effectiveness of Social Distancing Interventions to Delay or Flatten the Epidemic Curve of Coronavirus Disease, *eid journal* (Aug. 2020) https://wwwnc.cdc.gov/eid/article/26/8/20-1093_article

expand our infrastructure so that these noble state executives could perform their Constitutional duty to protect, rather than destroy, the rights of New Mexicans and Americans in general? It appears Governor Lujan-Grisham already gave the answer to this when she stated that we all need to become accustomed to the “new normal...”³¹⁶ We assume, based on his actions, this new normal to be a permanent state of emergency where the executive branch of New Mexico simply places itself above the Constitution, the Courts, and the state Legislature.

155. We submit that the Plaintiffs have been and will continue to be injured by the violation of their Constitutional rights, that injunctive relief is an appropriate remedy under the law,³¹⁷ that no hardship would come to the State by granting permanent injunctive relief against further Constitutional violations, and that the public interest is best served by ensuring future actions are limited by the Constitution.

156. We leave to future legislative action the proper legal and Constitutional methods for properly dealing with emergency declarations as it is primarily a legislative question. We do, however, believe those actions must be limited by the Constitution which clearly bars unending emergency declarations unsupported by any semblance of facts.

Count 10: Damages should be granted for Plaintiffs in an amount determined appropriate by the finder of fact pursuant to 42 U.S. Code § 1983.

157. Plaintiffs reallege and incorporate all paragraphs above as if fully set forth.

158. At trial and as discussed throughout this document, Plaintiffs have and will demonstrate numerous violations of various legal and Constitutional rights. Under 42 USC 1983 Plaintiffs will be eligible for damages based on these violations.³¹⁸

³¹⁶ Supra at fn 145, 147

³¹⁷ Ex Parte: Edward T. Young, 209 U.S. 123

³¹⁸ Tanzin v. Tanvir 592 U.S. ____ 2020 allows damages based on violations of fundamental rights.

VI. JACOBSON AND EMERGENCY DECLARATIONS

159. The State has³¹⁹ and most likely will rely on Jacobson v. Massachusetts, 197 U.S. 11 (1905) as controlling case law in this case. We would like to point out several key aspects of *Jacobson* to ensure proper application of the controlling law and to request clarification on aspects of the law not addressed.

160. Before addressing *Jacobson* specifically, it should be stated that no emergency was declared, nor were any fundamental rights abridged under an emergency declaration in that case. The Court in *Jacobson* ruled on a regulation that [arguably] did not infringe on fundamental rights in a majority of an entire state's population (it was a local rule). It is inconceivable to see how any part of the *Jacobson* ruling would constitute justification for a statewide emergency declaration that suspended the rights of individuals at the whim of a state executive branch without any clear end to such action.

161. The first item of note related to *Jacobson* is that it was decided in 1905 and arose from a criminal prosecution. As noted herein, medicine has changed substantially since that time. The *Jacobson* decision was also based on smallpox. Smallpox is a truly dangerous disease that is thought to date back to the 3rd century BC. According to the CDC the historic case fatality rate was approximately 30% and those that survived were left scarred. The smallpox vaccination was initially developed around the year 1800 and had been demonstrated effective for over 100 years at the time of *Jacobson*.³²⁰

³¹⁹Hartman v. Acton, S.D. Ohio No. 2:20-CV-1952, 2020 U.S. Dist. LEXIS 72068 (Apr. 21, 2020)

³²⁰History of Smallpox, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/smallpox/history/history.html>

162. COVID-19, by comparison, is nowhere near as dangerous – as indicated by data provided by WHO, the infection fatality rate is 0.14%³²¹ - and is, according to the CDC, new. While we will not get into a debate as to the novelty of this disease, the application of *Jacobson*, a criminal case based on a properly legislatively passed state law regarding a legitimately dangerous and well-known disease, to the current situation with COVID-19 does not serve as justification for the actions taken by New Mexico’s executive branch.

163. The language of the *Jacobson* ruling indicates that the needs of a small minority should not control the rights of the vast majority. The Court actually states, “We are unwilling to hold it to be an element in the liberty secured by the Constitution of the United States that one person, or a minority of persons, residing in any community and enjoying the benefits of its local government, should have the power thus to dominate the majority when supported in their action by the authority of the State.” The emergency declaration in New Mexico occurred when only three cases were present.³²² Since then it has become a well-established fact that COVID-19 presents nearly no risk to a majority of the population and a substantial risk to only a very few.³²³ The response to COVID-19, however, is impacting everyone which was clearly not the intent of the Court in *Jacobson*.

164. The Court in *Jacobson* also addressed the issue of a vaccine ordinance being a political question. The *Jacobson* Court states, “These offers, in effect, invited the court and jury to go over the whole ground gone over by the legislature when it enacted the statute in question... the defendant did not offer to prove that, by reason of his then condition, he was, in fact, not a fit subject of vaccination...” This case differs substantially in that regard as we have included substantial proof with this filing that the actions taken by the State of New Mexico are not justified by data and will show further evidence validating our position throughout this case.

³²¹ Knightly, Kit. “WHO (Accidentally) Confirms Covid is No More Dangerous Than Flu Head of Health Emergencies Program “best estimates” put IFR at 0.14%,” *Off Guardian*, October 8, 2020, <https://off-guardian.org/2020/10/08/who-accidentally-confirms-covid-is-no-more-dangerous-than-flu/>

³²² see Timeline, Section IV. A. above.

³²³ *Supra*, See Table, Para. 92 above.

165. The *Jacobson* Court spent substantial time in the ruling noting that this ruling was not meant to bar future review of public health issues when Constitutional issues were involved. The last line of the ruling states, “We now decide only that the statute covers the present case, and that nothing clearly appears that would justify this court in holding it to be unconstitutional and inoperative in its application to the plaintiff in error.”

166. At this point we can definitively say that we are not dealing with strong, historic, and widespread scientific support that COVID-19 is anywhere comparable to smallpox. Rather we are dealing with intentionally misleading information being used to invalidate Constitutional rights under the guise of public health. If the court is unwilling to review any action based on public health it is essentially rendering itself invalid. Public health has been viewed as encompassing everything from obesity, to drugs, to racism. Should the court allow a racially discriminatory state law under the theory that it is somehow a remedy to a public health issue? Of course it should not and neither should it use the cover of a political issue to avoid recognizing that a public health emergency declared based on invalid science and false pretense is an acceptable excuse to ignore Constitutional rights as have been ignored here.

167. Finally, the *Jacobson* ruling has been substantially limited since the time of its issuance, though no one seems to have noted this. In *Planned Parenthood v. Casey*, 505 U.S. 833, the Court stated:

Roe, however, may be seen not only as an exemplar of *Griswold* liberty but as a rule (whether or not mistaken) of personal autonomy and bodily integrity, with doctrinal affinity to cases recognizing limits on governmental power to mandate medical treatment or to bar its rejection. If so, our cases since *Roe* accord with *Roe's* view that a State's interest in the protection of life falls short of justifying any plenary override of individual liberty claims. [*Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 278, 111 L. Ed. 2d 224, 110 S. Ct. 2841 \(1990\)](#); cf., e. g., [*Riggins v. Nevada*, 504 U.S. 127, 135, 118 L. Ed. 2d 479, 112 S. Ct. 1810 \(1992\)](#); [*Washington v. Harper*, 494 U.S. 210, 108 L. Ed. 2d 178,](#)

110 S. Ct. 1028 (1990); see also, *e. g.*, *Rochin v. California*, 342 U.S. 165, 96 L. Ed. 183, 72 S. Ct. 205 (1952); *Jacobson v. Massachusetts*, 197 U.S. 11, 24-30, 49 L. Ed. 643, 25 S. Ct. 358 (1905).

To reiterate – “a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims.” It must be noted that the Court actually cites *Jacobson* in its justification for this quote.

168. If a State’s interest in the protection of life falls so short of being able to override individual liberties that it may not be used to prevent the killing of a fetus, how then can the state possibly argue that it may forgo individual liberties in an attempt to force ineffective and unproven methods of preventing and/or treating a disease that has a 99.875% overall recovery rate? ³²⁴

169. The bottom line is that instead of citing *Jacobson* as precedent supporting the State’s position, an unbiased reading of *Jacobson* supports the premise that the Court must invalidate this entire emergency declaration and all rules promulgated thereby.

VII. CONCLUSION

190. The emergency declaration and subsequent actions taken by the State of New Mexico are not and have never had even a rational basis. The State has a duty to protect the rights of its citizens. When those rights must be abridged, they may only be abridged after meeting the proper level of review for any given right. Broad actions that wipe away all that it means to be an American can never be permitted and such actions should never be taken again.

³²⁴ Schachtel, Jordan, "Global data: COVID-19 recovery rate approaching 99.9%, with record cases comes a record low death rate," (November 5, 2020), <https://jordanschachtel.substack.com/p/global-data-covid-19-recovery-rate>

and

Jonathan Diener, Attorney
Co-counsel for Plaintiffs
P.O. Box 27
Mule Creek, NM 88051
(575) 388-1754
jonmdiener@gmail.com

and

Thomas Renz (Ohio Bar ID: 98645)
Co-counsel for Plaintiffs
1907 W State St. #162
Fremont, OH 43420
Phone: 419-351-4248
(pending *pro hac vice* approval)