IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MICHELLE LUJAN GRISHAM,
Governor of New Mexico; and
KATHYLEEN KUNKEL, Secretary of the
New Mexico Department of Health,

Petitioners,

v. **S. Ct. No. S-1-SC-38396**

THE HONORABLE RAYMOND L. ROMERO,

Respondent,

and

OUTLAW MEATS, LLC,
a New Mexico Limited Liability Company,
F-2 ENTERPRISES, INC. d/b/a TEXAS CLUB
GRILL & BAR, a New Mexico Corporation,
K-BOBS OF RATON, INC., a New Mexico Corporation,
K-BOBS OF LAS VEGAS, INC., a New Mexico Corporation,
B.M.B. FINANCIAL, LLC, d/b/a TRINITY HOTEL,
a New Mexico Limited Liability Company,
RED RIVER BREWING COMPANY, LLC,
a New Mexico Limited Liability Company,
NEW MEXICO RESTAURANT ASSOCIATION,

Real Parties in Interest.

OMNIBUS REPLY IN SUPPORT OF EMERGENCY VERIFIED PETITION FOR SUPERINTENDING CONTROL AND REQUEST FOR STAY OF TEMPORARY RESTRAINING ORDER AGAINST ENFORCEMENT OF DIRECTIVES CONTAINED WITHIN THE PUBLIC HEALTH ORDER

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New Mexico Governor Michelle Lujan Grisham and Secretary of Health Kathyleen Kunkel ("Petitioners"), pursuant to Rule 12-504(C)(1) NMRA, [1] respectfully submit this omnibus reply to the Response to Emergency Verified Petition for Superintending Control and Request for Stay of Temporary Restraining Order Against Enforcement of Directives Contained Within the Public Health Order filed by Respondent on July 27, 2020 (hereafter, "Respondent's Response" or "Res. Resp.") and the Response of Real Parties in Interest ("RPI") in Opposition to Emergency Verified Petition for Superintending Control and Request for Stay of Temporary Restraining Order Against Enforcement of Directives Contained Within the Public Health Order filed by RPI on July 27, 2020 ("RPI Response" or "RPI Resp.").

INTRODUCTION

This matter addresses Petitioners' authority to enforce public health restrictions on restaurants and other businesses during a once-in-a-lifetime pandemic. The scope of Petitioners' authority in responding to this health crisis has resulted in numerous lawsuits from parties, like RPI, who refuse to comply with Public Health Orders or who disagree with policy choices made by our State's elected officials. New Mexicans require this Court's assistance to ensure that the

[1] This Court's July 20, 2020 Order directed that a reply to the response "shall" be filed on or before Thursday, July 30, 2020. Petitioners interpret that command in the Order to grant them leave to file this reply under Rule 12-504(C)(1).

legal directives memorialized in the Public Health Act are upheld and public health is protected. Accordingly, this Court should act and provide controlling guidance and grant the Petitioner's Emergency Verified Petition for Superintending Control ("Petition" or "Pet."). In doing so, this Court can dispense of RPI's unfounded legal theories as a matter of law and direct Respondent to recuse from any future proceedings on this matter.

DISCUSSION

A. This Court should exercise superintending control.

Petitioners ask this Court to grant a writ of superintending control to expeditiously resolve two novel legal issues implicating core public safety. This request comports with this Court's prior precedent, and neither the Respondent—who is the district court judge in this matter—nor the RPI provide any legal basis for holding otherwise.

Respondent and RPI support their arguments with various cases stating the unremarkable proposition that a writ of superintending control should not be used as a substitute for appeal. Res. Resp. at 5-8; RPI Resp. at 1. However, none of the cases cited in support of RPI's position are germane to the exercise of superintending control under the circumstances of this case. In Chappell v. Cosgrove, 1996-NMSC-020, ¶ 6, 121 N.M. 636, 916 P.2d 836, this Court concluded that while a writ of superintending control was not meant to be a substitute for direct or interlocutory

appeal, its exercise was appropriate there because the Court was "faced with an issue of first impression" that was "without clear answers under New Mexico law" and judicial economy favored resolving that question at an earlier stage in the case. In State ex rel. Torrez v. Whitaker, 2018-NMSC-005, ¶ 31, 410 P.3d 201, this Court again repeated the general rule that superintending control is not meant as a substitute for direct or interlocutory appeal, but nonetheless exercised superintending control because the matter raised legal issues of first impression with "serious public safety implications." In State Game Comm'n v. Tackett, 1962-NMSC-154, ¶¶ 14-19, 71 N.M. 400, 379 P.2d 54, the Court concluded that superintending control was not appropriate because the district court lacked jurisdiction due to the absence of an indispensable party and it issued a writ of prohibition instead. State ex rel. Anaya v. Scarborough, 1966-NMSC-009, ¶¶ 6-8, 75 N.M. 702, 410 P.2d 732 noted that superintending control should be invoked sparingly, such as in situations when a normal appeals process would cause "irreparable mischief," among other things. Finally, State ex rel. Harvey v. Medler, 1914-NMSC-055, ¶¶ 23-24, 19 N.M. 252, 142 P. 376, repeats this general rule while noted that superintending control should "be granted or withheld according to the circumstances of each particular case" and "used with great caution." None of these authorities counsel against the exercise of superintending control in this matter, which presents novel legal issues (and factual predicates) of great public importance

that carry significant public safety implications calling out for swift and definitive resolution from this Court.

Further, it is well established that the Court may exercise power of superintending control "even when there is a remedy by appeal, where it is deemed to be in the public interest to settle the question involved at the earliest moment." State Racing Comm'n v. McManus, 1970-NMSC-134, ¶ 9, 82 N.M. 108, 476 P.2d 767. And "it is not absolutely essential that the inferior court have an opportunity to pass upon the question involved." State ex rel. Townsend v. Court of Appeals, 1967-NMSC-128, ¶ 11, 78 N.M. 71, 428 P.2d 473. The existence of novel legal questions directly addressing paramount matters of public safety, such as those presented here, provide sufficient grounds for issuance of a writ. State ex rel. Torrez v. Whitaker, 2018-NMSC-005, ¶ 31, 410 P.3d 201 ("Because this case presents an issue of first impression without clear answers under New Mexico law, and because it involves new constitutional provisions with serious public safety implications, we agree that this is an appropriate case in which to exercise our superintending control authority.") (internal quotation marks and citations omitted).

This Court is also not required to decline superintending control because of RPI's and Respondent's insistence that an evidentiary hearing is required in this case. RPI Resp. at 2-3; Res. Resp. at 8-11. As discussed in greater detail below, this Court can decide both of RPI's claims as a matter of law based on the evidence

presented by RPI and in the Petition. Alternatively, the Court could exercise superintending control to discuss the appropriateness of the temporary restraining order issued by the district court and to clarify the standard of review applicable to challenges to classifications made by the Public Health Orders.

B. Petitioners are not required to follow statutory quarantine procedures to close or restrict business activities to protect public health.

As the Petition explains, Section 24-1-3(E) of the Public Health Act explicitly permits the Department of Health to "close any public place and forbid gatherings of people when necessary for the protection of public health." Pet. at 16-19. That provision expressly authorizes the Secretary of Health to close or restrict businesses and other public events in response to a statewide public health emergency or any another condition that may adversely affect public health. Id. In the face of this unambiguous statutory language, RPI assert that every business closed pursuant to a Public Health Order is effectively the subject of a "quarantine" under Section 24-1-15 of the Public Health Act.[2] RPI Resp. at 4-12. RPI are wrong.

Section 24-1-15, which is titled "Isolation; quarantine; protocol" addresses the situation where "the secretary or a representative of the department has knowledge

[2] RPI do not even cite the correct quarantine provision. Because a state of public health emergency has been declared under the Public Health Emergency Response Act, NMSA 1978, §§ 10-10A-1 to -19 (2003, as amended through 2012), the quarantine procedures set forth in Section 12-10A-7 to -11 apply to COVID-related quarantine orders.

that a person is infected with or reasonably believes that a person is infected with or exposed to a threatening communicable disease and the person has refused voluntary treatment, testing, evaluation, detention or observation". Under those circumstances, the Secretary is directed to petition "the court for an order to isolate or quarantine the person until the person is no longer a threat to the public health or until the person voluntarily complies with treatment and contagion precautions." NMSA 1978, § 24-1-15(A) (2017).

Although these quarantine provisions are plainly targeted at isolating individuals, RPI argue (erroneously) that every business closed pursuant to a Public Health Order is effectively the subject of a "quarantine" under Section 24-1-15 of the Public Health Act.[3] RPI Resp. at 4-12. In support of this curious claim, they first cite to Section 24-1-15(P)(5)," RPI Resp. at 4-5, which defines "quarantine" as:

> the precautionary physical separation of a **person** who has or may have been exposed to a threatening communicable disease or a potentially threatening communicable disease and **who does not show a sign or symptom** of a threatening communicable disease from **persons** who are not quarantined to protect against the transmission of the disease to **persons** who are not quarantined.

[3] RPI do not cite the correct quarantine provision. Because a state of public health emergency has been declared under the Public Health Emergency Response Act, NMSA 1978, §§ 10-10A-1 to -19 (2003, as amended through 2012), the quarantine procedures set forth in Section 12-10A-7 to -11 apply to COVID-related quarantine orders.

NMSA 1978, § 24-1-15(P)(5) (2017) (emphasis added). This provision is clearly intended to apply only to natural persons, because only individuals can become infected with a disease, show symptoms of a disease, or transmit a disease to others.

Equally unavailing is RPI's attempt to connect the definition of "area of isolation and quarantine" with restaurant space. RPI argues that "an area of isolation or quarantine", which is defined as a designated physical environment to which access has been restricted "as required to prevent transmission of a threatening communicable disease," § 24-1-15(P)(1), is applicable to "restaurant owners, their employees, and their customers" because indoor dining services are not permitted. RPI Resp. at 5.[4] However, those individuals have not been involuntarily physically separated from the general public by virtue of the restriction of restaurant operations and they are not confined to a certain physical environment or prevented from moving about freely or interacting with others. NMSA 1978, § 24-1-15(P)(5) (2017).

RPI then detail various quarantine provisions under the Public Health Act and point out that Petitioners have not used these provisions—clearly meant to apply to

[4] Curiously, RPI's interpretation of this provision to mean that restaurant employees have been "quarantined" would make it unlawful for them or any other restaurant owners in New Mexico to lay off an employee as a result of COVID-related closure or restrictions. See § 24-1-15(N) ("During the period of isolation or quarantine, an employer shall not discharge from employment a person who is placed in isolation or quarantine pursuant to this section.").

the quarantine or isolation of individual natural persons—to restrict or close businesses to protect public health.[5] RPI Resp. at 5-8. RPI's take is accurate but irrelevant. The Public Health Act's quarantine provisions address the circumstances in which a person being detained or held, and those directives makes sense when a natural person is required to remain in physical isolation from others but have no clear application to regulations on businesses. See § 24-1-15(D)(2) (requiring notice of a person's right to "re-petition for termination of a court order that **removes and detains** the affected person") (emphasis added); § 24-1-15(E), (F), & (G) (making repeated references to the "person held" or the "person being held"); see also § 24-1-15(J) (providing certain rights to quarantined persons, such as confinement in their private home, regular monitoring of their health status, and the provision of adequate shelter, food, and clothing).

Nevertheless, RPI contend that it "makes no sense for the Legislature to have taken the time and effort to provide comprehensive statutes governing the Secretary's power to quarantine" and then not to apply those provisions to health-related business closures or restrictions. RPI Resp. at 11. That position strains

[5] Again, the provisions of the Public Health Emergency Response Act, not the Public Health Act, apply during a state of public health emergency like the one that exists now. However, for the Court's purposes here that distinction does not make a significant difference.

credulity. That the Legislature would provide a strict set of due process protections[6] for individuals who are effectively subject to an open-ended involuntary detention from the State while not affording those same protections to businesses whose operations are regulated by health laws is plainly reasonable. There is simply no sound basis for applying statutes addressing the quarantining of individuals to the regulation of indoor dining at restaurants.

C. RPI cannot establish that the July 13 Order is arbitrary and capricious.

RPI's Response, RPI Resp. at 12-21, does nothing to bolster their claim that re-imposing restrictions on dine-in services in restaurants was arbitrary and capricious or to undermine the bases for these restrictions described in the Petition. See Old Abe Co. v. N.M. Mining Comm'n, 1995-NMCA-134, ¶ 10, 121 N.M. 83, 908 P.2d 776 ("A party challenging a rule adopted by an administrative agency has the burden of showing the invalidity of the rule or regulation. . . . Where there is room for two opinions, [the] action is not arbitrary and capricious . . . .") (alteration in original, internal quotation marks and citation omitted). Unable to support the claims made in their initial filing in district court, RPI argue that "it would be inappropriate for this Court to render a decision on whether the [Public Health] Order is arbitrary and capricious without a full evidentiary record before it." RPI Resp. at

[6] Indeed, the quarantine provisions applicable during a state of public health emergency provide even more stringent protections of the rights of those who are isolated or quarantined by the State. Compare § 24-1-15 with §§ 12-10A-7 to -11.

3.[7] Apparently, RPI believe they can nullify and overcome the evidence provided with the Petition by cross-examining a government official or "testing" scientific studies in a hearing. RPI Resp. at 3. That assertion is baseless.[8] That RPI may later provide contrasting views as to the best means for addressing the COVID-19 pandemic is immaterial to the question at hand. Petitioners need only show that indoor dining restrictions are reasonably related to protecting public health. State ex rel. Hughes v. Cleveland, 1943-NMSC-029, ¶ 18, 47 N.M. 230, 141 P.2d 192 ("It is the policy of the courts to uphold regulations intended to protect the public health, unless it is plan that they have no real relation to the object for which ostensibly they were enacted, and prima facie they are reasonable.").

The Petition and accompanying exhibits plainly demonstrate that restrictions on indoor dining are connected to our State's efforts to promote public health and

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[7] Relying on Rio Grande Chapter of the Sierra Club v. N.M. Mining Comm'n, 2003-NMSC-005, ¶ 16, 133 N.M. 97, 61 P.3d 806, RPI argue that a "full record" review is required to determine whether the Public Health Orders are arbitrary and capricious. RPI Resp. at 2. However, RPI's insistence on a "full record" review simply does not make sense in the context of emergency Public Health Orders, which are not created through a formal agency adjudication or rulemaking that would create a formal administrative record for a court to review.

[8] Equally unconvincing is RPI's citation to their own Inspection of Public Records Act (IPRA) lawsuit, RPI Resp. at 6 n.1, to argue that the basis for restrictions in Public Health Order "has not been made publicly available." Id. at 6. The claim in that lawsuit relevant to the July 13 Order is that the Department of Health's failure to provide all data relating to infections in restaurants within 4 days of receiving an IPRA request violates IPRA. Although the lawsuit was filed on July 24, 2020 and has not yet been served, it is already subject to a motion to dismiss.

mitigation transmission of COVID-19. Those proffers show that as of July 12, 2020, food industries constituted the section with the highest number of State rapid response efforts and that restaurants alone had accounted for 14% of rapid responses. Pet. at 11-12; id., Ex. 6 at 2-3. Further, Dr. David Scrase, Cabinet Secretary for the New Mexico Human Services Department, identified several scientific studies and public health guidance suggesting that indoor dining and other unmasked indoor activities pose significant health risks. Id. at 15, 8-9, 12-13; id., Ex. 1 at 2-7. This evidence, standing alone, is sufficient to justify the current restrictions on indoor dining.

Notably, like New Mexico, other jurisdictions have banned indoor dining or implemented occupancy restrictions. Appendix A to this reply illustrates that, in addition to the three States that ban indoor dining entirely, four other large cities and counties also maintain this restriction. Moreover, at least a dozen other states and local jurisdictions have increased restrictions on indoor dining since the beginning of June. Id. Federal authorities have also recently advocated for increased indoor dining restrictions to slow the spread of COVID-19. See, e.g., Elizabeth Tyree, "White House expert recommends [Virginia Governor] Northam close bars, limit indoor dining," ABC News 13 (July 28, 2020), available at https://wset.com/news/local/white-house-expert-recommends-northam-close-bars-limit-indoor-dining; Sam Karlin, "Due to coronavirus, White House recommends

Louisiana roll back indoor dining," The Advocate (July 28, 2020), available at https://www.theadvocate.com/baton_rouge/news/coronavirus/article_ 489d09f8-d0e7-11ea-8fc9-5f98fc6222a0.html.

Nevertheless, despite the evidence showing a risk of transmission associated with indoor dining, RPI raise various quibbles with the Public Health Order based on: (1) the statewide scope of its restrictions; (2) its economic impact; (3) its use of outdoor fire code occupancy; (4) its requirements that patrons be seated at a table rather than a bar and that tables are limited to six people; and (5) it permits gyms to operate at 25% capacity. RPI Resp. at 18-21. Again, these are policy choices and supported with reasonable explanations: (1) a rapid COVID-19 outbreak is possible in every county in the state, even those where a positive case has not been identified; (2) the protection of public health requires restricting certain business activities; (3) "outdoor fire code" simply requires the same calculations based on square footage as its indoor equivalent; (4) requiring size-limited groups seated at tables makes it easier to enforce social distancing between groups; and (5) gyms have not been linked to positive COVID cases to the same extent as restaurants. The existence of a different policy choice, even a reasonable one, does not establish that the State's emergency measures should be invalidated by a court. See South Bay v. United Pentecostal Church, 140 S. Ct. 1613, 1614 (2020) (Roberts, J., concurring) ("The precise question of when restrictions on particular social activities should be lifted

during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. When . . . officials undertake to act in areas fraught with medical and scientific uncertainties, their latitude must be especially broad."). None of RPI's assertions prove that restrictions on indoor dining are arbitrary and capricious.

D. If this matter is sent back to the district court, this Court should order Respondent to file a recusal under Rule 1-088.1(G) NMRA.

If any part of this matter is remanded to the district court, Petitioners respectfully request that this Court exercise its superintending control to order Respondent to recuse himself for cause based on his Response. See Anaya, 1966-NMSC-009, ¶¶ 21-26 (exercising the power of superintending control to prohibit a judge from hearing a case in which he should have been recused for cause). A district judge may be recused for cause under Rule 1-088.1(G). That rule prohibits any judge from "sit[ting] in any action in which the judge's impartiality may reasonably be questioned under the provisions of the Constitution of New Mexico or the Code of Judicial Conduct." Id. Under those circumstances, "the judge shall file a recusal." Id. To require a recusal under this rule, "there must be a reasonable factual basis for doubting the judge's impartiality and [a] claim of bias, including a claim of an appearance of bias, cannot be based on mere speculation." N.M. Constr. Indus. Div. & Manufactured Hous. Div. v. Cohen, 2019-NMCA-071, ¶ 26, 453 P.3d 456 (alteration in original, quotation marks and citations omitted). "'Recusal is only required when a judge has become so embroiled in the controversy that he [or she]

cannot fairly and objectively hear the case.'" Id. (quoting State v. Riordan, 2009-NMSC-022, ¶ 14, 146 N.M. 281, 209 P.3d 773). Courts analyze these questions from the perspective of an objective observer. Id.

New Mexico's Code of Judicial Conduct requires judges to avoid the appearance of impropriety in their professional lives. Rules 21-001(B), 21-100, & 21-102 NMRA. In pertinent part, the appearance of impropriety "includes conduct that would create in reasonable minds a perception that the judge violated the Code or engaged in other conduct that reflects adversely on the judge's . . . impartiality." Rule 21-003(B) NMRA. Impartiality is the "absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." Rule 21-003(I). In line with these principles, Rule 21-210(A) NMRA prohibits judges from "mak[ing] any public statement that might reasonable be expected to affect the outcome or impair the fairness of a matter pending or impending in any court." This obligation "continues during any appellate process until final disposition." Rule 21-210, cmt. 1. A judge is free to comment upon proceedings in which the judge is a litigant in a personal capacity, but "[t]he judge must not comment publicly on cases in which the judge is a litigant in an official capacity, such as a writ of mandamus." Id., cmt. 2.

Respondent's active participation this matter and his adverse positions to Petitioners would create an appearance of impropriety and constitute improper

public comment on a proceeding in which Respondent is a participant in his official capacity as a judge. To be clear, Petitioners do not base their request on Respondent's position as a nominal party in this matter or his adverse ruling on the temporary restraining order. The quirks of the writ of superintending control require Petitioners to name the relevant district judge in his official capacity as a nominal respondent and then delineate the real parties in interest who might oppose the writ. Rule 12-504(B)(1)(c) NMRA. However, here Respondent is actively participating in this matter by representing himself and taking positions that are adverse to Petitioners and support the arguments of RPI. To compound this potential appearance of impropriety, Respondent's Response makes various disparaging comments about Petitioners: for example, stating that Petitioners drafted a responsive pleading but choose not to file it because they "never intended to litigate in the District Court of Eddy County," id. at 6-7;[9] observing that "[o]ne only has to watch or read the New Mexico news on a daily basis to see the angst the Secretary's exercise of that authority [under the Public Health Act] has caused," id. at 9; characterizing Petitioners' request for a stay in this matter as "disingenuous," id. at

[9] As Petitioners have already noted in their Response in Opposition to Motion to Lift Stay of Temporary Restraining Order, filed with this Court on July 23, 2020, Respondent never set a briefing deadline, scheduled a hearing, or otherwise communicated any briefing deadline to Petitioners. Id. at 2-3. Indeed, Respondent did not enter the order granting Petitioners' request to exceed page limits in their response until the day after it granted the temporary restraining order. Id. at 3.

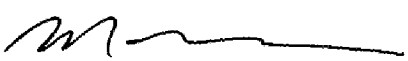
11; and arguing that this Court's issuance of a stay will cause greater harm to RPI than to Petitioners, id. at 11-12.

Respondent is technically a party in this case and Petitioners do not begrudge him his participation if that is what he wishes to do; however, it would create a clear appearance of impropriety and constitute improper public commentary on a case for Respondent to litigate against Petitioners before this Court and then sit as a judge on any matters that are remanded to the district court after this proceeding. That is why Petitioners ask this Court to exercise its power of superintending control and order Respondent to recuse himself if any part of this litigation is remanded back to the district court. See Anaya, 1966-NMSC-009, ¶ 8 (concluding that the preservation of "public confidence in the administration of justice and the judiciary" justified the exercise of superintending control to disqualify a judge from hearing a case).

CONCLUSION

For the reasons stated in the Petition and this reply, Petitioners respectfully ask that this Court exercise superintending control and resolve the legal issues presented in this matter. Moreover, if this Court remands any portion of these proceedings to the district court, it should order Respondent to recuse himself from those subsequent proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2020, I filed the foregoing through the New Mexico Electronic Filing system, which caused all counsel of record to be served by electronic means.

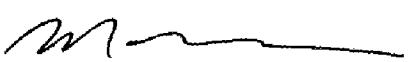
Respectfully submitted,

Matthew L. Garcia

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with type-volume, font size, and word limitations of the New Mexico Rules of Appellate Procedure, specifically Rule 12-318(F)(2)-(3) NMRA. The body of this brief employs 14-point Times New Roman font and contains 4,041 words, counted using Microsoft Office Word.

Respectfully submitted,



Matthew L. Garcia,

APPENDIX A

States, cities, and counties with total bans on indoor dining (as of July 28, 2020)

Baltimore, Maryland See Annie Rose Ramos, "Coronavirus Latest: Baltimore City Puts Ban On Indoor Dining, Face Coverings Required For Residents 2 And Up Starting Friday," CBS Baltimore (July 22, 2020), available at https://baltimore.cbslocal.com/2020/07/22/coronavirus-latest-baltimore-bars-restaurants-no-longer-allowed-indoor-seating-face-coverings-required-for-residents-2-starting-friday/.

California See Dustin Gardiner et al., "Newsom orders all California counties to close indoor restaurants, bars," San Francisco Chronicle (July 13, 2020), available at https://www.sfchronicle.com/politics/article/Newsom-orders-all-California-counties-to-close-15405030.php.

Miami-Dade County, Florida See Laine Doss, "Miami-Dade Orders Indoor Restaurant Dining Rooms to Close, Broward Tightens Restaurant Rules," Miami New Times (July 20, 2020), available at https://www.miaminewtimes.com/restaurants/miami-restaurants-ordered-to-close-after-coronavirus-cases-spike-11663250.

New Jersey See Jaimy Lee, "N.J. to postpone indoor dining plans 'indefinitely,'" MarketWatch (June 29, 2020), available at https://www.marketwatch.com/story/nj-to-postpone-indoor-dining-plans-indefinitely-2020-06-29?mod=article_inline.

New York City, New York See Jesse McKinley and Luis Ferre-Sadurni, "N.Y. Officials Halt Indoor Dining, Alarmed by Virus Rise in Other States," The New York Times (July 1, 2020), available at https://www.nytimes.com/2020/07/01/nyregion/indoor-dining-coronavirus-nyc.html.

Philadelphia, Pennsylvania See David Murrell, "Indoor Dining Still Not Coming Back Yet, Says Farley," Philadelphia (July 24, 2020), available at https://www.phillymag.com/news/2020/07/24/indoor-dining-philly-delay-thomas-farley/.

States, cities, and counties in which additional indoor dining restrictions have been imposed after June 1, 2020

Anchorage, Alaska See Aubrey Wieber, "Citing spike in COVID-19 cases, Anchorage mayor announces new restrictions for bars, restaurants and gatherings," Anchorage Daily News (July 23, 2020), available at https://www.adn.com/alaska-news/anchorage/2020/07/22/citing-spike-in-covid-19-cases-anchorage-mayor-announces-new-restrictions-for-bars-restaurants-and-gatherings/ (reducing indoor dining capacity to 50%).

Arizona See Sam Radwany, "Ducey orders restaurants to limit indoor dining to half capacity," KGUN9 (July 9, 2020), available at https://www.kgun9.com/news/coronavirus/gov-ducey-plans-3-p-m-press-conference-on-coronavirus-in-arizona (reducing indoor dining capacity to 50%).

Hampton Road region, Virginia (including cities of Virginia Beach, Norfolk, Chesapeake, Portsmouth, Suffolk, Hampton, Newport News, Poquoson and Williamsburg, as well as York and James City counties) See Gregory S. Schneider, "Virginia governor adds restrictions in Hampton Roads region after surge in coronavirus cases," The Washington Post (July 28, 2020), available at https://www.washingtonpost.com/local/coronavirus-virginia-hampton-roads-dc-maryland/2020/07/28/3aefc31c-d0d9-11ea-8c55-61e7fa5e82ab_story.html (reducing indoor dining capacity to 50%, prohibiting alcohol service after 10 p.m., and requiring restaurants to close at midnight).

Kentucky See Daniel Desrochers, "Beshear closes Kentucky bars and limits indoor restaurant capacity for two weeks," Lexington Herald Leader (July 27, 2020), available at https://www.kentucky.com/news/coronavirus/article244518507.html (reducing indoor dining capacity to 25%).

St. Louis County, Missouri See Robert Patrick, Erin Heffernan, "St. Louis County announces new event, bar and business restrictions as virus cases rise," St. Louis Post-Dispatch (July 27, 2020), available at https://www.stltoday.com/lifestyles/health-med-fit/coronavirus/st-louis-county-announces-new-event-bar-and-business-restrictions-as-virus-cases-rise/article_5dba4330-dbfc-5c60-b424-8669a9c8ff85.html (reducing indoor capacity for all businesses to 25%).

Nevada See "Governor Sisolak announces additional restrictions to help stem the spread of COVID-19 In Nevada," Nevada Governor Steve Sisolak (July 9, 2020), available at http://gov.nv.gov/News/Press/2020/Governor_Sisolak_announces_additional_restrictions_to_help_stem_the_spread_of_COVID-19_In_Nevada/ (restricting indoor dining to parties of six or smaller, prohibiting bar top service, and "strongly encouraging all food establishments to promote outdoor dining as much as possible").

New York See "Governor Cuomo Announces New Regulations for Bars and Restaurants to Ensure Compliance with State Social Distancing and Face Covering Orders," Governor Andrew M. Cuomo (July 16, 2020), available at https://www.governor.ny.gov/news/governor-cuomo-announces-new-regulations-bars-and-restaurants-ensure-compliance-state-social (requiring alcohol only be served with meals and prohibiting bar top service unless separated by six feet or physical barrier).

Oregon See "Governor Kate Brown Announces New Requirements for Face Coverings and Businesses to Stop Spread of COVID-19," Oregon Governor's Office (July 22, 2020), available at https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=37003 (lowering maximum indoor capacity limit for all indoor venues, including restaurants, to 100 individuals and requiring restaurants to stop serving at 10 p.m.).

Pennsylvania See "Wolf Administration Announces Targeted Mitigation Efforts in Response to Recent COVID Case Increases," Governor Tom Wolf (July 15, 2020), available at https://www.governor.pa.gov/newsroom/wolf-administration-announces-targeted-mitigation-efforts-in-response-to-recent-covid-case-increases/ (reducing indoor dining capacity to 25%, setting maximum occupancy limit of 25 persons per "discrete indoor event or gathering in a restaurant," prohibiting bar top service, and requiring alcohol only be served with meals or to-go).

Puerto Rico See Nicole Acevedo, "Puerto Rico wanted tourists, but with coronavirus spiking, it has changed plans," NBC News (July 22, 2020), available at https://www.nbcnews.com/news/latino/puerto-rico-wanted-tourists-coronavirus-cases-spiking-they-ve-changed-n1234624 (reducing indoor dining capacity to 50%).

Texas See Patrick Svitek, "Gov. Greg Abbott orders Texas bars to close again and restaurants to reduce to 50% occupancy as coronavirus spreads," The Texas Tribune (June 26, 2020), available at https://www.texastribune.org/2020/06/26/texas-bars-restaurants-coronavirus-greg-abbott/ (reducing indoor dining capacity to 50%).

Washington See Joseph O'Sullivan, "Inslee tightens restrictions on bars, restaurants, weddings as Washington COVID cases rise," The Seattle Times (July 23, 2020), available at https://www.seattletimes.com/seattle-news/politics/inslee-puts-tighter-restrictions-on-bars-eateries-weddings-as-washington-covid-cases-rise/ (reducing indoor dining capacity to 50%, prohibiting bar top service, and limiting indoor dining to members of the same household).