

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

KIMBERLY BEEMER, PAUL CAVANAUGH,  
and ROBERT MUISE,  
Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity  
as Governor for the State of Michigan, ALLEN  
TELGENHOF, in his official capacity as  
Charlevoix County Prosecuting Attorney, BRIAN  
L. MACKIE, in his official capacity as  
Washtenaw County Prosecuting Attorney, and  
WILLIAM J. VAILLIENCOURT, JR., in his  
official capacity as Livingston County  
Prosecuting Attorney,  
Defendants.

No. 1:20-cv-00323

Hon. Paul L. Maloney

**EXPEDITED CONSIDERATION  
REQUESTED**

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION**

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*Attorneys for Plaintiffs*

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Kimberly Beemer,  
Paul Cavanaugh, and Robert Muise (collectively referred to as "Plaintiffs"), by and through

undersigned counsel, hereby move this Court for a Temporary Restraining Order (TRO) and preliminary injunction to immediately enjoin the enforcement of the challenged measures of Executive Order 2020-42. Expedited consideration is necessary because the harm to Plaintiffs is occurring now, and it is irreparable. This harm is set forth in greater detail in the accompanying brief and supporting declarations. Accordingly, Plaintiffs request that the Court immediately issue the requested TRO and then set an expedited schedule for briefing on the preliminary injunction, at which time opposing counsel will get an opportunity to respond in full. Time is of the essence.<sup>1</sup>

This lawsuit was filed on April 15, 2020. (*See* Compl. [Doc. No. 1]). That same day, Plaintiffs sent copies of the Complaint and summonses to Defendants via email. Due to the restrictions placed on travel and other restrictions imposed by Defendant Whitmer, personal service is very difficult if not impossible to achieve. Defendant Whitmer's Chief Legal Counsel, Mr. Mark Totten, promptly responded and agreed to accept service for Defendant Whitmer via email. Plaintiffs promptly filed the executed summons (Doc. No. 5 [Summons returned executed]), and counsel for Defendant Whitmer promptly filed notices of appearance with the Court. (*See* Docket Entries).

Plaintiffs have similarly tried, on multiple occasions, to reach out to Defendants Telgenhof (TelgenhofA@charlevoixcounty.org), Vaillencourt (BVaillencourt@livgov.com), and Mackie (prosecutormackie@washtenaw.org). Plaintiffs sent multiple emails and left multiple voices message. Plaintiffs did hear back from Defendant Telgenhof, who told Plaintiffs that he was forwarding their request to his attorney, Mr. Bryan Graham

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<sup>1</sup> Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, Plaintiffs' counsel hereby certifies the above-stated efforts made to give notice to Defendants and why the Court should issue the requested TRO immediately and without further notice to any party.

(bgraham@upnorthlaw.com). Plaintiffs promptly reached out to Mr. Graham. On April 20, 2020, Mr. Graham responded by email, stating, in relevant part, “The county is currently in the process of determining whether there is insurance coverage for the claims against Prosecutor Telgenhof. Once this insurance coverage is determined, we are willing to accept service. I do not know whether I will be handling the matter on behalf of the county, or whether the insurance carrier will assign a defense attorney.” Plaintiffs also heard back from Defendant Vaillencourt, who responded and said he would be forwarding Plaintiffs’ request to his attorney. Plaintiffs have heard nothing further, despite multiple efforts to follow up via email and phone messages. As discussed further below, Plaintiffs finally received a response from Defendant Mackie during the “meet and confer” conference call held at 3 pm on April 20, 2020.

On April 16, 2020, pursuant to the Local Rule “meet and confer” requirement prior to filing any motion with the Court, Attorney Robert Muise (also a plaintiff in this action) sent the following via email to counsel for Defendant Whitmer:

Plaintiffs intend to file a motion for a TRO/Preliminary Injunction, requesting expedited review. We are still working on serving the other defendants (all County Prosecutors who have the authority to enforce criminal violations of the Governor’s executive orders). Pursuant to Local Rule 7.1(d), we must meet and confer to “ascertain whether the motion will be opposed.” Given that it is the Governor’s order, I suspect that the prosecuting attorneys would likely agree with the position of the Governor on the motion. I might be mistaken, but at least we can get a head start on the process. Accordingly, below is the relief we will be seeking in our motion. Please advise as to whether the Governor will oppose the motion. Thank you.

- An order enjoining the enforcement of Executive Order 2020-42’s measures that prohibit individuals from travelling between their own residences and cottages within the State of Michigan, thereby permitting Plaintiff Beemer, along with members of her household, to travel to and from her residence in Saginaw, Michigan and her cottage located in Charlevoix County, Michigan and permitting Plaintiff Cavanaugh, along with members of his household, to travel to and from his residence in Brighton, Michigan and his cottage located in Charlevoix County, Michigan;

- An order enjoining the enforcement of Executive Order 2020-42's measures that prohibit the operation of landscaping businesses within the State of Michigan, thereby permitting Plaintiff Cavanaugh to reopen his landscaping business, Cavanaugh's Lawn Care LLC, so long as he and his employees practice social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the employee's household;
- An order permitting individuals, specifically including Plaintiffs Beemer and Cavanaugh, to engage in outdoor activities that include using boats with motors for fishing and other similar recreational purposes, consistent with remaining at least six feet from people from outside the individual's household;
- An order enjoining the enforcement of Executive Order 2020-42 insofar as it conflicts with the March 28, 2020, U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency guidance on "critical infrastructure," which identifies "Workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges" as "critical infrastructure," thereby permitting gun stores and shooting ranges in Michigan to remain open and operational subject to social distancing measures recommended by the Centers for Disease Control and Prevention and permitting individuals, including Plaintiff Muise, to travel to and from such businesses; and
- An order enjoining the enforcement of Executive Order 2020-42's measures that prohibit private, family gatherings at private residences, thereby permitting Plaintiff Muise to hold private gatherings for meals, fellowship, and prayer with his immediate family at his private residence located in Superior Township, Michigan.

That same day (April 16), counsel for Defendant Whitmer responded, in relevant part, as follows:

Thank you for the email. We are going to need some time to review, consider, and confer regarding the relief you are requesting. I'll get back to you to set up a call when we are able.

The following day (April 17), Attorney Muise sent the following email to Defendant Whitmer's counsel:

Do you have an answer? Can we set up a call for later today (4 pm or later) or Monday late morning/afternoon?

By the way, we are still working on serving the Prosecuting Attorneys. Our paralegal has had email exchanges with two, but no answer yet on attorneys who will be handling the matter for them. As I mentioned in my prior email, it is likely the Governor who will be calling the shots on this since it is her order, so I

would like to proceed with a call regardless of whether the other attorneys are available.

Let me know where we are on this. Thank you.

Counsel for Defendant Whitmer responded that day (April 17) and stated that they were available for the “meet and confer” phone conference on Monday (April 20) at 1 pm. (The call was later moved to 3 pm at the request of Defendant Whitmer’s counsel). The parties scheduled the conference.

On April 18, 2020, Plaintiffs sent an email to the Defendant Prosecuting Attorneys and/or their counsel (Mr. Graham), informing them of the conference call set for April 20, the details of the “meet and confer” (Plaintiffs sent them the same details that were sent to Defendant Whitmer’s counsel regarding the relief requested), and invited them to join the call.

On April 20, 2020, the “meet and confer” phone conference was held. Participating in the conference were Plaintiffs’ counsel (Robert Muise and David Yerushalmi), counsel for Defendant Whitmer (Attorneys John G. Fedynsky and Joseph T. Froehlich), Attorney Bryan Graham on behalf of Defendant Telgenhof, and Attorney Michelle Billard, Corporation Counsel at Washtenaw County, on behalf of Defendant Mackie.<sup>2</sup> No Defendant concurred in the relief sought by this motion.

In the final analysis, Executive Order 2020-42 remains in effect until at least April 30, 2020. Plaintiffs have suffered, and will continue to suffer, “immediate and irreparable injury . . . before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A); *see also Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (“[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a

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<sup>2</sup> Attorneys Graham and Billard stated that they still did not have authority to accept service of the Complaint and summonses on behalf of Defendants Telgenhof and Mackie, respectively, since it has yet to be determined who will be representing these Defendants in this matter.

finding of irreparable injury is mandated.”). Accordingly, it is necessary and appropriate for the Court to issue the requested TRO, to be followed by an expedited briefing schedule on Plaintiffs’ request for a preliminary injunction.

WHEREFORE, Plaintiffs respectfully request that the Court immediately issue the requested TRO, temporarily enjoining enforcement of the challenged measures of Executive Order 2020-42 pending a hearing on whether a preliminary injunction should issue.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muisse

Robert J. Muisse

/s/ David Yerushalmi

David Yerushalmi

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

I further certify that a copy of the foregoing will be sent this day via email to the following parties or counsel who have yet to enter an appearance electronically:

Defendant Telgenhof via email to Attorney Bryan Graham at bgraham@upnorthlaw.com.

Defendant Vaillencourt via email to BVaillencourt@livgov.com

Defendant Mackie via email to Attorney Michelle Billard at billardm@washtenaw.org

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise, Esq.

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**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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*Attorneys for Plaintiffs*

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**ISSUE PRESENTED**

Whether the enactment and enforcement of the challenged measures of Executive Order 2020-42, which criminalize Plaintiffs' peaceful and otherwise lawful activity, violate Plaintiffs' rights guaranteed by the United States and Michigan Constitutions, thereby causing irreparable harm sufficient to warrant the requested injunctive relief.

## INTRODUCTION

*“But a Constitution of Government once changed from Freedom, can never be restored. Liberty once lost is lost forever.”*

John Adams

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs seek a Temporary Restraining Order (TRO) and preliminary injunction to immediately enjoin the use of Executive Order 2020-42 to criminalize the fundamental liberties Plaintiffs enjoy as law-abiding citizens under the United States and Michigan Constitutions. More specifically, Plaintiffs seek the following:

- An order enjoining the enforcement of Executive Order 2020-42’s measures that prohibit individuals from travelling between their own residences and cottages within the State of Michigan, thereby permitting Plaintiff Beemer, along with members of her household, to travel to and from her residence in Saginaw, Michigan and her cottage located in Charlevoix County, Michigan and permitting Plaintiff Cavanaugh, along with members of his household, to travel to and from his residence in Brighton, Michigan and his cottage located in Charlevoix County, Michigan;
- An order enjoining the enforcement of Executive Order 2020-42’s measures that prohibit the operation of landscaping businesses within the State of Michigan, thereby permitting Plaintiff Cavanaugh to reopen his landscaping business, Cavanaugh’s Lawn Care LLC, so long as he and his employees practice social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the employee’s household;
- An order permitting individuals, specifically including Plaintiffs Beemer and Cavanaugh, to engage in outdoor activities that include using boats with motors for fishing and other

similar recreational purposes, consistent with remaining at least six feet from people from outside the individual's household;

- An order enjoining the enforcement of Executive Order 2020-42 insofar as it conflicts with the March 28, 2020, U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency guidance on "critical infrastructure," which identifies "Workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges" as "critical infrastructure," thereby permitting gun stores and shooting ranges in Michigan to remain open and operational subject to social distancing measures recommended by the Centers for Disease Control and Prevention and permitting individuals, including Plaintiff Muise, to travel to and from such businesses; and
- An order enjoining the enforcement of Executive Order 2020-42's measures that prohibit private, family gatherings at private residences, thereby permitting Plaintiff Muise to hold private gatherings for meals, fellowship, and prayer with his immediate family at his private residence located in Superior Township, Michigan.<sup>1</sup>

### **STATEMENT OF FACTS<sup>2</sup>**

Plaintiffs are adult citizens of the United States and residents of Michigan. Plaintiff Beemer resides in Saginaw, Plaintiff Cavanaugh resides in Brighton, and Plaintiff Muise resides in Superior Township. (Beemer Decl. ¶ 1; Cavanaugh Decl. ¶ 1; Muise Decl. ¶ 1).

Plaintiffs Beemer and Cavanaugh own cottages in Charlevoix County, Michigan. And Plaintiff Cavanaugh is the owner of a landscaping business, Cavanaugh's Lawn Care LLC,

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<sup>1</sup> A proposed TRO has been submitted with this brief.

<sup>2</sup> Plaintiff Beemer's declaration is attached to this brief as Exhibit 1. Plaintiff Cavanaugh's declaration is attached to this brief as Exhibit 2. And Plaintiff Muise's declaration is attached to this brief as Exhibit 3.

which is located in Livingston County, Michigan. (Beemer Decl. ¶ 3; Cavanaugh Decl. ¶¶ 2, 6-8).

Defendant Gretchen Whitmer is the Governor of the State of Michigan. Per her authority as Governor, Defendant Whitmer issued Executive Order 2020-42. A “willful violation” of Executive Order 2020-42 is a misdemeanor. (Muise Decl. ¶ 3, Ex. A [Executive Order 2020-42]).

Defendant Telgenhof is the Charlevoix County Prosecuting Attorney. (See [https://www.charlevoixcounty.org/prosecuting\\_attorney/index.php](https://www.charlevoixcounty.org/prosecuting_attorney/index.php)). Defendant Mackie is the Washtenaw County Prosecuting Attorney. (See <https://www.washtenaw.org/1070/Prosecuting-Attorney>). And Defendant Vaillencourt is the Livingston County Prosecuting Attorney. (See <https://www.livgov.com/prosecutor>). The County Prosecuting Attorneys are responsible for criminally prosecuting persons who violate Executive Order 2020-42 in their counties.<sup>3</sup>

On March 24, 2020, Defendant Whitmer issued Executive Order 2020-21, which was described as a “[t]emporary requirement to suspend activities that are not necessary to sustain or protect life.” On April 9, 2020, Defendant Whitmer issued Executive Order 2020-42, which “reaffirm[ed] the measures set forth in Executive 2020-21, clarif[ied] them, and extend[ed] their duration to April 30, 2020.” The executive order took effect “on April 9, 2020 at 11:59 pm.” When Executive Order 2020-42 took effect, it rescinded Executive Order 2020-21. (Muise Decl. ¶¶ 2, 3, Ex. A).

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<sup>3</sup> Defendants Whitmer, Telgenhof, Mackie, and Vaillencourt are sued in their official capacity only. (See Compl. ¶¶ 15, 17, 19, 21 [Doc. No. 1]). A suit against a government official in his or her official capacity is essentially a suit against the government. *Ky. v. Graham*, 473 U.S. 159, 166 (1985). Prospective declaratory and injunctive relief are available in actions against state officials (and County officials enforcing state law) sued in their official capacities based on an allegedly unconstitutional statute or official act. *Ex Parte Young*, 209 U.S. 123, 151-56 (1908). In other words, the Eleventh Amendment is not a bar to this action. *See id.*

By its own terms, Executive Order 2020-42 will remain in effect until April 30, 2020 at 11:59 pm. However, it is more likely than not that Defendant Whitmer will extend the measures challenged here beyond April 30, 2020 via a new executive order. Defendant Whitmer publicly expressed a desire to extend the measures of Executive Order 2020-42 into June 2020. (*See* <https://www.bridgemi.com/michigan-government/michigan-gov-whitmer-asks-legislature-extend-emergency-powers-70-days>). And there are reports that another outbreak of COVID-19 this Fall is possible.

Executive Order 2020-42, states, in relevant part, the following:

2. Subject to the exceptions in section 7, all individuals currently living within the State of Michigan *are ordered to stay at home or at their place of residence*. Subject to the same exceptions, *all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited*.

3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the individual's household to the extent feasible under the circumstances.

\* \* \*

7. Exceptions.

a. Individuals *may leave their home or place of residence, and travel as necessary*:

1. *To engage in outdoor physical activity*, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity *includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity*, as well as any comparable activity for those with limited mobility.

\* \* \*

6. *To obtain necessary services or supplies* for themselves, their family or household members, *their pets*, and their vehicles.

A. Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase *groceries, take-out food, gasoline, needed*

*medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.*

\* \* \*

7. To care for a family member *or a family member's pet* in another household.

\* \* \*

b. Individuals may leave their home or place of residence, and travel as necessary:

1. *To return to a home or place of residence from outside the state.*
2. *To leave this state for a home or residence elsewhere.*
3. *Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.*

\* \* \*

c. *All other travel is prohibited*, including all travel to vacation rentals.

(Muisse Decl. ¶ 3, Ex. A [emphasis added]).

Plaintiff Beemer and members of her household frequently travel to her cottage in Charlevoix County. She would often leave from her residence in Saginaw, Michigan and travel to the cottage on a Thursday, remaining at her cottage over the weekend and returning late on Sunday or early Monday morning. Her cottage is a second home, and it is her private retreat from the daily grind of her law practice. (Beemer Decl. ¶ 4).

Plaintiff Cavanaugh and members of his household frequently travel to his cottage. It was a Cavanaugh family tradition to spend Easter at the cottage. (Cavanaugh Decl. ¶ 3).

Under the measures set forth in Executive Order 2020-42, if Plaintiffs Beemer or Cavanaugh were to travel to their cottages, they would be subject to prosecution for violating the executive order. As a result, Plaintiffs have ceased their travel and have thus been denied the use

and enjoyment of their private property by the government.<sup>4</sup> (Beemer Decl. ¶¶ 5, 6; Cavanaugh Decl. ¶ 4). In fact, as a result of Executive Order 2020-42, Plaintiff Cavanaugh and his family had to cancel their Easter tradition. (Cavanaugh Decl. ¶ 4). Plaintiffs have no recourse for this deprivation of their property rights other than seeking redress in a court of law, which they are doing here. (Beemer Decl. ¶ 6; Cavanaugh Decl. ¶ 4).

There is little to no chance that Plaintiffs Beemer or Cavanaugh would cause the spread of COVID-19 by travelling with members of their households from their residences in Saginaw and Brighton to their cottages in Charlevoix County. In fact, they and members of their households are more isolated at their cottages than when they are at their primary residences. (Beemer Decl. ¶ 7; Cavanaugh Decl. ¶ 5).

Under Executive Order 2020-42, a Wisconsin resident, as just one example, could travel from his State to his cottage in Charlevoix County, Michigan without violating Executive Order 2020-42. Prohibiting individuals from traveling from one place of residence in the State to another place of residence or cottage within the State has no real or substantial relation to promoting the objectives of Executive Order 2020-42, particularly in light of the numerous exceptions permitted under the order. (*See* Muise Decl., ¶ 3, Ex. A [Executive Order 2020-42 at 10/19]).

Following the issuance of Executive Order 2020-21, and reaffirmed in Executive Order 2020-42, Defendant Whitmer permits marijuana businesses to remain open during this pandemic. In fact, pursuant to the Michigan Marijuana Regulatory Agency, because Secretary of State

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<sup>4</sup> Plaintiff Beemer also fears that she could jeopardize her Michigan law practice if she violated the executive order. Defendant Whitmer was quoted in the news on or about April 1, 2020, as follows: “You know, just about every business in the state has some sort of license, from the state of Michigan or not, and so we’ve encouraged them not to play fast and loose with this order because their licenses could be in jeopardy as a result.” (Beemer Decl. ¶ 5).

offices are closed and “individuals may not be able to renew their driver’s licenses or government-issued identification cards while the Executive Order is in effect . . . , licensed provisioning centers and adult-use retailers are temporarily allowed to sell or transfer marijuana to a patient, caregiver, or customer who has an expired driver license or government-issued identification card during home delivery and curbside sales.” (Muise Decl. ¶ 4, Ex. B [MRA Advisory Bulletin]).

For the past ten years, Plaintiff Cavanaugh has worked hard to develop and expand his landscaping business, Cavanaugh’s Lawn Care LLC. As a result of Defendant Whitmer’s executive orders, his company came to an abrupt halt. The early spring brought an early start to the season. Eleven of Plaintiff Cavanaugh’s fulltime employees had returned to work for two weeks before the shutdown. One additional, fulltime employee was returning from a trip abroad. Plaintiff Cavanaugh had high hopes of getting ahead of the workload and having a normal start to the season. As a result of Defendant Whitmer’s shutdown of his business, Plaintiff Cavanaugh was unable to perform his obligations under existing contracts and as a direct result missed out on approximately \$25,000 for spring cleanups, \$12,000 for fertilizing for first round preemergent, \$30,000 for mowing for the month of April, and \$35,000 for landscape installs. In fact, his business has been losing approximately \$5,000 to \$6,000 a day in revenue. The lost revenue is impossible to replace. Eighty percent of Plaintiff Cavanaugh’s business is contract work with existing customers. Consequently, the measures set forth in Defendant Whitmer’s executive order have substantially impaired Plaintiff Cavanaugh’s contract obligations, have no reasonable basis, and are entirely inappropriate for their intended purposes, especially in light of the stated exceptions to the executive order. (Cavanaugh Decl. ¶¶ 6, 7, Ex. A [Sample Contract]; *see also* ¶ 9 [noting that metro parks permit landscaping]).



There is little to no chance that Plaintiff Cavanaugh's landscaping business will spread COVID-19. Plaintiff Cavanaugh's employees practice social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the employee's household. The business is an outdoor business, which can operate without any personal contact with customers and with minimal to no contact between employees. Indeed, there is far less likelihood of Plaintiff Cavanaugh's business spreading COVID-19 than other businesses that Defendant Whitmer permits under her executive orders, specifically including hardware stores, grocery stores, gas stations, marijuana businesses, and pet stores. (Cavanaugh Decl. ¶ 8).

During his free time, which he now has in abundance due to the fact that Defendant Whitmer's executive orders have shut down his business, Plaintiff Cavanaugh enjoys time with his son fishing in his boat on Lake Charlevoix. However, Defendant Whitmer's executive order has now stripped that away from him as well. Under her executive order, Defendant Whitmer permits kayaking or canoeing, but arbitrarily prohibits the use of boats with motors. (Cavanaugh Decl. ¶ 10). Plaintiff Beemer is likewise prohibited from boating with her family members on Lake Charlevoix as a result of the executive order. (Beemer Decl. ¶ 8).

Plaintiff Muise served as an officer on activity duty in the United States Marine Corps for thirteen years. He was an infantry officer, he is a veteran of Operations Desert Shield and Desert Sword, and he trained with 42 Commando, British Royal Marines. Plaintiff Muise resigned his commission as a Major in 2000. (Muise Decl. ¶ 5).

Plaintiff Muise has a valid Michigan Concealed Pistol License. He is professionally trained in the use of firearms, he legally owns firearms, and he is a staunch defender of the Second Amendment, which constitutionally guarantees him the right to bear arms for self-

defense, defense of his family, and for the defense of a free State. He also uses firearms to hunt in Michigan and in other States. (Muisse Decl. ¶ 6).

To support his right to bear arms, which necessarily includes the right to purchase firearms and ammunition, Plaintiff Muise patronizes local gun shops, specifically including a gun shop located in Washtenaw County. (Muisse Decl. ¶ 7).

Executive Order 2020-42 orders all nonessential businesses and activities to cease. Though this order exempts “critical infrastructure,” Defendant Whitmer references an outdated list of such industries (issued March 19, 2020) rather than the most current federal guidance (issued March 28, 2020) that designates firearm and ammunition retailers as critical.<sup>5</sup> This deliberate action effectively makes gun stores and firing ranges in Michigan nonessential. (Muisse Decl. ¶¶ 8-10, Ex. A [Executive Order 2020-42 at 10/19 (citing March 19, 2020 guidance and stating, “This order does *not* adopt any subsequent guidance document released by this same agency.”)]), Ex. C [March 19, 2020 guidance], Ex. D [March 28, 2020 guidance]).

Consequently, Executive Order 2020-42 makes it a crime *to travel* to gun stores or gun ranges. Yet, the order permits individuals to travel to buy food for a pet, marijuana, Lotto tickets, or liquor, among other items. (Muisse Decl. ¶¶ 12, 13).

Due to the panic caused by the pandemic, and the unemployment, loss of income, poverty, and uncertainty caused by Defendant Whitmer’s executive orders, owning and possessing firearms is critically important at this time. (Muisse Decl. ¶ 14).

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<sup>5</sup> Per the March 28, 2020 guidance, “Workers supporting the operation of firearm, or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges” are considered part of the “Essential Critical Infrastructure Workforce.” (Muisse Decl. ¶ 11, Ex. D [March 28, 2020 guidance at 8/19]).

Plaintiff Muise and his wife have been blessed with twelve children and ten grandchildren (with two more grandchildren expected by June). Three of his adult children are married and reside locally in homes they own in Michigan, and two of his adult children reside locally in rental properties in Michigan. His other seven children reside at his home in Superior Township. (Muise Decl. ¶ 15).

On most Sundays and Holy Days, the family would gather at Plaintiff Muise's home for a meal, fellowship, and prayer. (Muise Decl. ¶ 16).

Plaintiff Muise and his family are devout Catholics. Because of COVID-19, there are no public Masses in the Lansing Diocese. However, Jesus Christ taught that where two or more gather in His name, He is present. (Matthew 18:20). Plaintiff Muise would like his family to gather together on Sundays and other Holy Days to associate for a meal, fellowship, and prayer, and thus gather as a family in Christ's name. During these gatherings, Plaintiff Muise's family members would adhere to social distancing measures recommended by the Centers for Disease Control and Prevention. Under the measures set forth in Executive Order 2020-42, it is now a crime in Michigan to engage in such family associations and gatherings. (Muise Decl. ¶ 17).

## **ARGUMENT**

### **I. Plaintiffs Have Standing to Advance this Constitutional Challenge.**

Before addressing the TRO/preliminary injunction factors, we pause here briefly to address the threshold question of standing. In an effort to give meaning to Article III's "case" or "controversy" requirement, the courts have developed several justiciability doctrines, including standing. *See Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014). "The doctrine of standing gives meaning to these constitutional limits by identifying those disputes which are

appropriately resolved through the judicial process.” *Id.* (internal quotations and citation omitted).

“In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Consequently, to invoke the jurisdiction of a federal court, “[a] plaintiff must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *Allen v. Wright*, 468 U.S. 737, 751 (1984). In *National Rifle Association of America v. Magaw*, 132 F.3d 272, 279 (6th Cir. 1997), the court stated that a plaintiff has standing to seek declaratory or injunctive relief if he can “show actual present harm or a significant possibility of future harm.” *See also Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965) (“The threat of sanctions may deter . . . almost as potently as the actual application of sanctions.”); *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1076 (6th Cir. 1994) (recognizing that “a chilling effect on one’s constitutional rights constitutes a present injury in fact”). As stated by the Court in *Steffel v. Thompson*, 415 U.S. 452, 459 (1974), “[I]t is not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights.”

Here, we have an executive order that is currently in effect and being enforced to criminalize and thus restrict fundamental freedoms protected by the United States and Michigan Constitutions. There is nothing hypothetical about Plaintiffs’ challenge. Plaintiffs’ standing to advance this challenge to an executive order that criminalizes constitutionally protected activity is well established.

**II. The Pandemic Does Not Empower the Governor to Infringe Fundamental Rights Nor Does It Deprive this Court of Its Duty and Power to Say So.**

Neither *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905), nor this current pandemic deprives this Court from declaring the challenged measures of Executive Order 2020-42 unlawful and enjoining their enforcement.

In *Jacobson*, amid a smallpox outbreak, a city (acting pursuant to a state statute) mandated the vaccination of all of its citizens. The Court upheld the statute against a Fourteenth Amendment challenge, clarifying that the State’s action was a lawful exercise of its police powers and noting that, “[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Id.* at 27. While the Court in *Jacobson* urges deferential review in times of emergency, it clearly demands that the courts enforce the Constitution. *See id.* at 28. Indeed, the Court explicitly contemplates an important backstop role for the judiciary: “[I]f a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, *it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.*” *Id.* at 30 (emphasis added); *see also Planned Parenthood v. Casey*, 505 U.S. 833, 857 (1992) (citing *Jacobson* for the proposition that “a State’s interest in the protection of life falls short of justifying any plenary override of individual liberty claims”).

Under *Jacobson*, therefore, a State’s emergency response can still be unlawful if it impinges on a fundamental right in a “plain, palpable” way or has “no real or substantial relation” to the public safety concerns at issue. *Jacobson*, 197 U.S. at 31. Accordingly, per *Jacobson*, requiring a vaccination for a disease that is the source of the public emergency is

directly related to the government's public safety concerns. The same is not true of the challenged measures imposed by Executive Order 2020, as we explain in this brief.

### **III. Standard for Issuing a TRO/Preliminary Injunction.**

“The standard for issuing a temporary restraining order is logically the same as for a preliminary injunction with emphasis, however, on irreparable harm given that the purpose of a temporary restraining order is to maintain the status quo.” *Reid v. Hood*, No. 1:10CV2842, 2011 U.S. Dist. LEXIS 7631, at \*4-5 (N.D. Ohio Jan. 26, 2011) (citing *Motor Vehicle Bd. of Cal. v. Orrin W. Fox, et al.*, 434 U.S. 1345, 1347 n. 2 (1977)).

The standard for issuing a preliminary injunction is well established:

In determining whether or not to grant a preliminary injunction, a district court considers four factors: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff could suffer irreparable harm without the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest.

*Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998); *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (same). Plaintiffs satisfy each of the elements.

### **IV. Plaintiffs Satisfy the Standard for Granting the Requested Injunctive Relief.**

#### **A. Plaintiffs' Likelihood of Success on the Merits.**

##### **1. Right to Association.**

“Among the rights protected by the First Amendment is the right of individuals to associate to further their personal beliefs. While the freedom of association is not explicitly set out in the Amendment, it has long been held to be implicit in the freedoms of speech, assembly, and petition.” *Healy v. James*, 408 U.S. 169, 181 (1972) (citations omitted). The Sixth Circuit echoed this fundamental understanding, stating, “Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of freedom of speech.” *Connection*

*Distributing Co.*, 154 F.3d at 295 (citing *NAACP v. Ala.*, 357 U.S. 449, 460 (1958)). “[I]mplicit in the right to engage in activities protected by the First Amendment” is “a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984).

As noted by the Sixth Circuit, “The Constitution protects two distinct types of association: (1) freedom of expressive association, protected by the First Amendment, and (2) freedom of intimate association, a privacy interest derived from the Due Process Clause of the Fourteenth Amendment but also related to the First Amendment.”<sup>6</sup> *Anderson v. City of LaVergne*, 371 F.3d 879, 881 (6th Cir. 2004).

It cannot be gainsaid that the right of family members to associate to further their religious beliefs is fundamental. *See Roberts*, 468 U.S. at 619-20 (“Family relationships, by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctively personal aspects of one’s life. . . . As a general matter, only relationships with these sorts of qualities are likely to reflect the considerations that have led to an understanding of freedom of association as an intrinsic element of personal liberty.”); *see also Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534-35 (1925) (stating that the challenged law “unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control”). And this association should be afforded its greatest protection in one’s private

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<sup>6</sup> Plaintiff Muise advances his right to association under the First and Fourteenth Amendments. (*See Compl.* ¶¶ 58, 76). However, because the family gatherings are principally centered around the sharing of the family’s Catholic faith, Plaintiff advances the claim principally under the First Amendment. *Anderson*, 371 F.3d at 881 (“[T]he Supreme Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion.”) (internal quotations and citation omitted) (emphasis added). Nonetheless, the executive order’s restriction fails under the First and Fourteenth Amendments.

home. *See, e.g., Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (“Our prior decisions have often remarked on the unique nature of the home, the last citadel of the tired, the weary, and the sick, and have recognized that preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value.”) (internal quotations and citations omitted).

The government’s total ban of this right under Executive Order 2020-42 must satisfy the highest level of strict scrutiny. *Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569, 575 (1987) (“We think it obvious that [an absolute ban on activity protected by the First Amendment] cannot be justified even [in] a nonpublic forum because no conceivable governmental interest would justify such an absolute prohibition of speech.”); *see also Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (acknowledging that in a traditional public fora, “the government may not prohibit all communicative activity”); *Anderson*, 371 F.3d at 882 (“A direct and substantial interference with intimate associations is subject to strict scrutiny. . . .”) (internal quotations and citation omitted). Moreover, Executive Order 2020-42 expressly exempts “a place of religious worship, when used for religious worship” (Muise Decl. ¶ 3, Ex. A [Executive Order 2020-42 at ¶ 13]), but it does not exempt a private home from being used by immediate family members to gather and worship as a family. *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994) (“Exemptions from an otherwise legitimate regulation of [First Amendment activity] may be noteworthy for a reason quite apart from the risks of viewpoint and content discrimination: They may diminish the credibility of the government’s rationale for restricting speech in the first place.”).

Here, the government, by operation of the measures set forth in Executive Order 2020-42, makes it a *crime* for Plaintiff Muise to associate with his *immediate* family members *in his own*



*home* to share a meal and their faith. Our Constitution does not permit such an infringement of personal liberty secured by the First and Fourteenth Amendments.

## **2. Second Amendment and Article I, §6.**

Both the United States and Michigan Constitutions grant individuals a right to keep and bear arms for self-defense and to ensure the security of a free State. The Second Amendment to the United States Constitution provides, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const., Am. II. Article 1, § 6 of the 1963 Michigan Constitution, which is Michigan’s equivalent to the Second Amendment, states, “Every person has a right to keep and bear arms for the defense of himself and the state.” The Second Amendment is fully applicable to the states through the Fourteenth Amendment. *See McDonald v. City of Chi.*, 561 U.S. 742, 791 (2010) (holding that the “Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment”); *Meeks v. Larsen*, 611 F. App’x 277, 286 (6th Cir. 2015) (same).

The Second Amendment guarantees the individual right to possess and carry weapons in case of confrontation. “At the core of the Second Amendment is the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *People v. Deroche*, 829 N.W.2d 891, 894 (Mich. Ct. App. 2013) (internal quotations and citations omitted). Moreover, the right to keep and bear arms “implies a corresponding right to obtain the bullets necessary to use them,” *Jackson v. City & Cnty. S.F.*, 746 F. 3d 953, 967 (9th Cir. 2014) (internal quotation marks omitted), and “to acquire and maintain proficiency in their use,” *Ezell v. Chi.*, 651 F. 3d 684, 704 (7th Cir. 2011). *See also D.C. v. Heller*, 554 U.S. 570, 617-18 (2008) (citing T. Cooley, *General Principles of Constitutional Law* 271 (2d ed. 1891) (discussing the implicit right to train with weapons)); *United State v. Miller*, 307 U.S. 174, 180 (1939) (citing 1 H.

Osgood, *The American Colonies in the 17th Century* 499 (1904) (discussing the implicit right to possess ammunition)); *Andrews v. State*, 50 Tenn. 165, 178 (1871) (discussing both rights).

In sum, without protection for these closely related rights (purchasing firearms and ammunition and training with firearms) the Second Amendment would be toothless. See *Ezell*, 651 F.3d at 704 (“The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that make it effective.”).

The Sixth Circuit has adopted a two-step inquiry to determine whether government action violates the Second Amendment. *United States v. Greeno*, 679 F.3d 510, 518 (6th Cir. 2012); *Stimmel v. Sessions*, 879 F.3d 198, 204 (6th Cir. 2018). First, the *burden is on the government* to establish “that the challenged statute regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment—1791 Bill of Rights ratification or 1868 Fourteenth Amendment ratification.” *Stimmel*, 879 F.3d at 204. If the government can meet this burden, then “the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.” *Id.* However, “[i]f the government offers historical evidence that is inconclusive or suggests that the regulated activity is *not* categorically unprotected, [then the court] must inquire into the strength of the government’s justification for restricting or regulating the exercise of Second Amendment rights.” *Id.* (internal alterations omitted). In this second step, the court must “determine and apply the appropriate level of heightened means-end scrutiny, given that the Supreme Court has rejected rational-basis review in this context.” *Id.*

To determine whether to apply intermediate or strict scrutiny, the court must look at “(1) how close the law comes to the core of the Second Amendment right, and (2) the severity of the

law’s burden on the right.” *Tyler v. Hillsdale Cty. Sheriff’s Dep’t*, 837 F.3d 678, 690 (6th Cir. 2016) (internal quotation marks omitted).

Under the first prong, and as demonstrated above, Executive Order 2020-42 regulates activity (purchasing firearms and ammunition and training with them) that falls within the scope of the Second Amendment. In fact, it regulates activity that goes to the “core” right of the Second Amendment—it prohibits law-abiding citizens from purchasing firearms and ammunition for the protection of their “hearth and home.” *See supra; Heller*, 554 U.S. at 634, 635; *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) (“What we know from [*Heller* and *McDonald*] is that Second Amendment guarantees are at their zenith within the home.”). At stake here is a “basic right,” *McDonald*, 561 U.S. at 767, “that the Framers and ratifiers of the Fourteenth Amendment counted . . . among those fundamental rights necessary to our system of ordered liberty,” *id.* at 778. Indeed, “[t]he [Supreme] Court [in *Heller*] went to great lengths to emphasize the special place that the home—an individual’s private property—occupies in our society.” *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1259 (11th Cir. 2012). Here, the challenged executive order substantially burdens this fundamental right. The burden imposed is not merely incidental.

Accordingly, turning to the second prong, “any law that would burden the ‘fundamental,’ core right of self-defense in the home by a law-abiding citizen would be subject to strict scrutiny.” *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011). Defendants cannot satisfy this highest level of scrutiny under the law, particularly in light of the exceptions permitted under the challenged executive order, as noted in the text above and discussed further below. *See Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 547 (1993) (“It is established in our strict scrutiny jurisprudence that a law cannot be regarded as protecting an

interest ‘of the highest order’ . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.”) (internal quotations and citation omitted); *see also Republican Party v. White*, 536 U.S. 765, 780 (2002) (noting that as a means of pursuing its alleged objectives, the government cannot enact regulations that are “so woefully underinclusive as to render belief in [its stated] purpose a challenge to the credulous”). In addition to failing strict scrutiny, the challenged measures of Executive Order 2020-42 cannot satisfy intermediate scrutiny under the Second Amendment.

While the Supreme Court “has not definitively resolved the standard for evaluating Second Amendment claims, . . . the Courts of Appeals generally evaluate Second Amendment claims under intermediate scrutiny.” *Silvester v. Becerra*, 138 S. Ct. 945, 947 (2018) (Thomas, J. dissenting from denial of writ of certiorari); *see also Stimmel*, 879 F.3d at 206, 207 (“We hold that intermediate scrutiny is warranted for our review of [a statute prohibiting domestic violence offenders from having guns]” because the statute “places a substantial burden on [Second Amendment] right, but does not touch the Second Amendment’s core.”); *Tyler*, 837 F.3d at 691 (applying intermediate scrutiny to a Second Amendment challenge by a person who was involuntarily committed).

“Under intermediate scrutiny, the government must state a significant, substantial, or important objective and establish a reasonable fit between the challenged restriction and that objective.” *Stimmel*, 879 F.3d at 206, 207 (internal quotation marks omitted).

While curbing the spread of a virus may well qualify as “a significant, substantial, or important objective” of the government—in fact, the objective may be compelling—that alone does not end the inquiry. The government also has the burden of establishing a “reasonable fit” between the challenged restriction and its objective under intermediate scrutiny, *see Stimmel*, 879

F.3d at 206, 207, or that the burden is narrowly tailored and the least restrict means of accomplishing that objective under strict scrutiny, *see generally Seal v. Morgan*, 229 F.3d 567, 574 (6th Cir. 2000) (“The Due Process Clause provides heightened protection against government interference with certain fundamental rights and liberty interests. Government actions that burden the exercise of those fundamental rights or liberty interests are subject to strict scrutiny, and will be upheld only when they are narrowly tailored to a compelling governmental interest.”) (internal quotations and citations omitted).

It is this latter burden that the government fails to satisfy (under strict or immediate scrutiny). *See, e.g., Ezell*, 651 F.3d at 709 (holding that a ban on gun ranges within a city violated the Second Amendment because “the City produced no empirical evidence whatsoever and rested its entire defense of the range ban on speculation about accidents and theft”).

Here, the Executive Order permits individuals to travel to pet stores to purchase food for their goldfish, to travel to a convenience store to purchase Lotto tickets, to travel to a grocery store to purchase ice cream, to travel to stores to purchase marijuana, among other exceptions, but Plaintiff Muise and other law-abiding Michigan residents are prohibited from traveling to gun stores/gun ranges to purchase firearms and ammunition and to train with them. This is, “beyond all question, a plain, palpable invasion of rights secured by the” Second Amendment to the U.S. Constitution and Article I, §6 of the Michigan Constitution.

### **3. Fourteenth Amendment.**

The Fourteenth Amendment provides, “No State shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const., amend. XIV. In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Court addressed the question of “whether the statute as

construed and applied unreasonably infringes the liberty guaranteed to the plaintiff in error by the Fourteenth Amendment.” *Id.* at 399. As stated by the Court:

While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. . . . *The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect. Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts.*

*Id.* at 399-400 (emphasis added).

**a. Due Process—Vagueness.**

As stated by the Sixth Circuit:

We have recognized that the vagueness doctrine has two primary goals: (1) to ensure fair notice to the citizenry and (2) to provide standards for enforcement by police, judges, and juries. *Columbia Natural Res. v. Tatum*, 58 F.3d 1101, 1104 (6th Cir. 1995). With respect to the first goal, the Supreme Court has stated that “[a] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1925) (cited in *Tatum*, 58 F.3d at 1105). With respect to the second goal, the Supreme Court stated that “if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis.” *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). The Court has also held that “the degree of vagueness that the Constitution tolerates . . . depends in part on the nature of the enactment.” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). A more stringent test applies if the provision interferes with constitutional rights, and a less stringent test applies if the provision concerns civil rather than criminal penalties. *Id.* at 499.

*Ass’n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 551 (6th Cir. 2007).

As set forth in the Complaint and in this brief, the challenged measures of Executive Order 2020-42 “lack any rational basis, are arbitrary, capricious, and vague, have no real or substantial relation to the objectives of the order, and are a palpable invasion of rights secured by fundamental law in violation of the Due Process Clause of the Fourteenth Amendment.” (Compl. ¶ 58). The challenged measures are not simply suggestions—they are mandates that carry with them criminal penalties. There is no rational basis for permitting individuals to travel to purchase pet supplies, Lotto tickets, marijuana, or liquor, but prohibit individuals from travelling to purchase firearms or to visit their own cottages within the state. There is no rational basis for permitting out-of-state residents to travel to their cottages within the State but prohibiting Michigan residents to travel to their cottages within the State. There is no rational basis for designating and thus permitting some businesses as essential or critical infrastructure to operate—businesses such as pet stores, marijuana retailers, and liquor stores—but prohibiting firearms retailers or businesses that can operate safely, such as Plaintiff Cavanaugh’s landscaping business. There is no rational basis for permitting “places of worship” to operate but prohibiting immediate family members to meet at their private homes to pray as a family. Indeed, the below stated exceptions to intrastate travel “impermissibly delegate[] basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis”:

1. *To engage in outdoor physical activity*, consistent with remaining at least six feet from people from outside the individual’s household. Outdoor physical activity *includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity*, as well as any comparable activity for those with limited mobility.

\* \* \*

6. *To obtain necessary services or supplies* for themselves, their family or household members, *their pets*, and their vehicles.

In the final analysis, the challenged measures of Executive Order 2020-42 violate the fundamental right to due process.

**b. Due Process—Right to Travel.**

“[T]he Due Process Clause of the Fourteenth Amendment protects the ‘right to travel locally through public spaces and roadways.’” *Cole v. City of Memphis*, 839 F.3d 530, 535 (6th Cir. 2016) (quoting *Johnson v. City of Cincinnati*, 310 F.3d 484, 495 (6th Cir. 2002)). “To avoid [] disorder, state and local governments should be afforded some degree of flexibility to regulate access to, and use of, the publicly held instrumentalities of travel.” *Id.* at 536 (internal quotation marks and alterations omitted). To determine what degree of scrutiny to apply, the court looks to the severity of the restriction, *comparable to First Amendment free speech tests*. If a travel restriction regulates the time or manner of access to a place, it is subject to intermediate scrutiny. *Id.* at 537. If it broadly limits access, *as in this case*, it is subject to strict scrutiny. *Id.*

In *Cole v. City of Memphis*, a statute cleared the streets in a two-block radius for two hours on weekend mornings and after special events. *Id.* at 538. The court determined that this is a narrow place restriction subject to intermediate scrutiny. *Id.* Because the city failed to show any conditions or potential conditions for the sweep during the specified times, the ordinance failed intermediate scrutiny. *Id.* at 539.

In contrast, in *Johnson v. City of Cincinnati*, an ordinance prohibited individuals from entering certain drug-exclusion zones for up to 90 days if an individual was arrested or taken into custody in one of the zones for a drug related offense. *Johnson*, 310 F.3d at 487. Because the ordinance broadly prohibited individuals’ access to entire neighborhoods, the court applied strict scrutiny. *Id.* at 502. The court determined that the ordinance failed strict scrutiny because it



broadly prohibited access to a large metropolitan district regardless of the reason for travel (it excluded innocent travel and travel to obtain drugs). *Id.* at 503.

Here, the executive order's overly broad travel restriction cannot survive strict scrutiny, the highest scrutiny under the law, particularly in light of the exceptions permitted. *See City of Hialeah*, 508 U.S. at 547.

Regardless, the restriction fails intermediate scrutiny as well. The Sixth Circuit's ruling in *Saieg v. City of Dearborn*, 641 F.3d 727 (6th Cir. 2011), further demonstrates this point. In *Saieg*, the court struck down a content-neutral restriction on leafletting, applying intermediate scrutiny and concluding as follows:

Even though the leafletting restriction is content neutral and might provide ample alternative means of communication, the policy is not a reasonable time, place, and manner restriction. Within the inner perimeter, *the restriction does not serve a substantial governmental interest, as evidenced by the defendants' willingness to permit sidewalk vendors and ordinary pedestrian traffic on the same sidewalks where they prohibited Saieg from leafletting.*

*Saieg*, 641 F.3d at 740-41 (emphasis added). The same is true here. The challenged measures of Executive Order 2020-42 fail intermediate scrutiny because they do not serve a substantial government interest as evidenced by Defendant Whitmer's willingness to make numerous and irrational exceptions to the restrictions—exceptions which we have recounted repeatedly throughout this brief.

**c. Due Process—Right to Property.**

Plaintiffs own real property in this State—their cottages. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (“The hallmark of property . . . is an individual entitlement grounded in state law.”). Executive Order 2020-42 deprives Plaintiffs of their cognizable property interest in the quiet use and enjoyment of their real property in violation of the Fourteenth Amendment. *See Arill v. Maiz*, 992 F. Supp. 112, 117 (D.P.R. 1998) (holding that

the complaint fully alleged a due process claim under § 1983 based on the deprivation of a cognizable property interest in the plaintiffs' quiet use and enjoyment of their property).

**d. Equal Protection.**

When the government treats an individual disparately “as compared to similarly situated persons and that such disparate treatment . . . burdens a fundamental right, targets a suspect class, or has no rational basis,” such treatment violates the equal protection guarantee of the Fourteenth Amendment. *Bible Believers v. Wayne Cnty.*, 805 F.3d 228, 256 (6th Cir. 2015) (internal quotations and citation omitted). “In determining whether individuals are ‘similarly situated,’ a court should not demand exact correlation, but should instead seek relevant similarity.” *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 987 (6th Cir. 2012) (internal quotation marks omitted).

As set forth in this brief, the challenged measures of Executive Order 2020-42 burden fundamental rights (First and Second Amendments and Due Process right to travel) in violation of the equal protection guarantee of the Fourteenth Amendment. Similarly, as set forth in this brief, the challenged measures lack any rational basis and harm Plaintiffs' interests in violation of the Equal Protection Clause of the Fourteenth Amendment. *See supra*.

**4. Contract Clause.**

Executive Order 2020-42 has substantially impaired the contracts between Plaintiff Cavanaugh and his clients, in violation of the Contracts Clause of the United States Constitution. This impairment will continue absent declaratory and injunctive relief. In fact, Plaintiff Cavanaugh is suffering irreparable harm because it is not possible for him to recoup his lost business and revenue due to the nature of his business—the early Spring has come and gone.

Under the United States Constitution, a State governor cannot substantially impair a private citizen's contractual obligations, particularly when fulfilling the contracts, as is the case with Plaintiff Cavanaugh's landscaping business, poses no harm to public health and safety. The Contracts Clause of the United States Constitution states, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]" U.S. Const. Art. I, § 10. "It long has been established that the Contracts Clause limits the power of the States to modify their own contracts as well as to regulate those between private parties." *U.S. Trust Co. of N.Y. v. N.J.*, 431 U.S. 1, 17 (1977) (citing *Dartmouth Coll. v. Woodward*, 17 U.S. 518 (1819); *Fletcher v. Peck*, 10 U.S. 87 (1810)).

In its most recent decision addressing the Contracts Clause, the United States Supreme Court reaffirmed its long-standing two-part analysis of state laws that impair private contracts:

To determine when such a law crosses the constitutional line, this Court has long applied a two-step test. The threshold issue is whether the state law has operated as a substantial impairment of a contractual relationship. In answering that question, the Court has considered the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights. If such factors show a substantial impairment, the inquiry turns to the means and ends of the legislation. In particular, the Court has asked whether the state law is drawn in an appropriate and reasonable way to advance a significant and legitimate public purpose.

*Sveen v. Melin*, 138 S. Ct. 1815, 1821-22 (2018) (internal citations and quotation marks omitted).

In the instant case, Defendant Whitmer's executive order goes to the heart of Plaintiff Cavanaugh's contractual bargain with his clients, entirely interferes with the parties' contractual expectations, and, given the nature of the seasonal landscape services lost (\$25,000 for spring cleanups, \$12,000 for fertilizing for first round preemergent, \$30,000 for mowing for the month of April, and \$35,000 for landscape installs), Plaintiff Cavanaugh's business will never be able to recoup these losses. In fact, he is losing approximately \$5,000 to \$6,000 each day this order is in

effect. (Cavanaugh Decl. ¶ 6). Quite simply, as to these current contractual obligations, the impairment is not only substantial, but also permanently so. The harm is irreparable.

While Plaintiff Cavanaugh understands and accepts the state's legitimate exercise of its police power to protect its residents from the current pandemic as a "significant and legitimate public purpose," the executive order challenged here with regard to his landscape business is patently inappropriate and unreasonable given the exceptions granted under the order. *Id.* For example, individuals may walk their dogs and take leisurely walks in public provided they safeguard social distancing measures recommended by the Centers for Disease Control and Prevention. Indeed, under Defendant Whitmer's orders, as explained by her Frequently Asked Covid-19 Questions website, Michiganders may not only walk their dogs in public, they are permitted to train them on state lands. (See <https://www.michigan.gov/coronavirus/0,9753,7-406-98810-523919--,00.html>). Plaintiff Cavanaugh's landscape employees are no less capable of safeguarding social distancing than individuals walking or training their dogs. In addition, metro parks are open and maintained to allow individuals to utilize the space for leisure and exercise. (See <https://www.michigan.gov/coronavirus/0,9753,7-406-98810-523725--,00.html>). Yet, private Michigan homeowners are not permitted to allow Plaintiff Cavanaugh to maintain their lawns for leisure and exercise.

In sum, Plaintiff Cavanaugh is suffering irreparable harm and is entitled to the injunctive relief sought here. See generally *Welch v. Brown*, 551 F. App'x 804 (6th Cir. 2014) (upholding the district court's grant of a preliminary injunction, concluding, in part, that the district court did not abuse its discretion in finding that the workers had demonstrated a likelihood of success on the merits of their Contract Clause claim because the defendants' modifications impaired provisions of their contracts and collective bargaining agreements; that the district court's

finding that the workers would suffer irreparable harm in the absence of a preliminary injunction was not clearly incorrect; and the district court did not abuse its discretion by issuing the preliminary injunction, even though factors of harm to others and public interest were split).

**B. Irreparable Harm to Plaintiffs without the TRO/Preliminary Injunction.**

The loss of a constitutional right, “for even [a] minimal period[ ] of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As stated by the Sixth Circuit, “when reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury *is mandated*.” *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (emphasis added); *see also Newsome v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989) (“The Supreme Court has unequivocally admonished that even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.”) (citing *Elrod*).

Because “a constitutional right is being threatened or impaired” in this case, “a finding of irreparable injury is mandated.”

**C. Whether Granting the TRO/Preliminary Injunction Will Cause Substantial Harm to Others.**

In this case, the likelihood of irreparable harm to Plaintiffs is substantial. In fact, such a finding is “mandated.” *See supra*. Moreover, Plaintiffs are adhering to the social distancing measures recommended by the Centers for Disease Control and Prevention, thereby mitigating the harm to Defendants’ objectives. Indeed, as noted above, it is the government that has the burden of justifying the challenged restrictions on Plaintiffs’ fundamental liberties protected by the United States and Michigan Constitutions.

If Defendants are restrained from enforcing the challenged measures of Executive Order 2020-42, particularly as applied to Plaintiffs, neither Defendants nor the general public will

suffer harm because Plaintiffs' activities create less of a risk of spreading COVID-19 than other similar activities expressly permitted by the order. For example, Executive Order 2020-42 permits Plaintiffs Beemer and Cavanaugh to travel to Charlevoix County to buy groceries, purchase gas, purchase food for their pets, purchase marijuana, purchase Lotto tickets, order curbside takeout from a local restaurant, or walk on the public sidewalks. Yet, if they engage in similar travel to go to their cottages, property which they own, it is a crime. Similarly, Plaintiff Muise could travel to various businesses, including a pet store to buy food for a goldfish, but he couldn't travel to a gun shop to purchase a firearm or ammunition. The executive order permits businesses such as abortion centers, pet stores, and marijuana businesses to remain open, but prohibits Plaintiff Cavanaugh from operating his outdoor landscaping business, causing substantial and irreparable harm and financial loss to him and his employees.

In the final analysis, the irreparable harm to Plaintiffs outweighs the harm to Defendants' objectives.

**D. The Impact of the TRO/Preliminary Injunction on the Public Interest.**

As stated by the Sixth Circuit, “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge, Inc.*, 23 F.3d at 1079; *see also Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (stating that “the public as a whole has a significant interest in ensuring equal protection of the laws . . .”).

As noted previously, Defendants' enforcement of Executive Order 2020-42 criminalizes liberties protected by the United States and Michigan Constitutions. It is in the public interest to issue the TRO/preliminary injunction.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion.

Respectfully submitted,

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq. (P62849)

/s/ David Yerushalmi

David Yerushalmi, Esq.

*Attorneys for Plaintiffs*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULES**

I hereby certify that this brief contains 9,145 words, exclusive of the case caption, cover sheets, any table of contents, any table of authorities, the signature block, attachments, exhibits, and affidavits, and is thus within the word limit allowed under Local Civil Rule 7.2(b)(i). The word count was generated by the word processing software used to create this brief: Word for Microsoft Office 365, Version 1904.

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise, Esq.



**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the court's electronic filing system. Parties may access this filing through the court's system.

I further certify that a copy of the foregoing will be sent this day via email to the following parties or counsel who have yet to enter an appearance electronically:

Defendant Telgenhof via email to Attorney Bryan Graham at bgraham@upnorthlaw.com.

Defendant Vaillencourt via email to BVaillencourt@livgov.com

Defendant Mackie via email to Attorney Michelle Billard at billardm@washtenaw.org

AMERICAN FREEDOM LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise, Esq.

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

KIMBERLY BEEMER, PAUL CAVANAUGH,  
and ROBERT MUISE,  
Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity  
as Governor for the State of Michigan, ALLEN  
TELGENHOF, in his official capacity as  
Charlevoix County Prosecuting Attorney, BRIAN  
L. MACKIE, in his official capacity as Washtenaw  
County Prosecuting Attorney, and WILLIAM J.  
VAILLIENCOURT, JR., in his official capacity as  
Livingston County Prosecuting Attorney,  
Defendants.

No. 1:20-cv-00323

Hon. Paul L. Maloney

**DECLARATION OF PLAINTIFF KIMBERLY BEEMER**

I, Kimberly Beemer, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and upon information and belief where noted.

1. I am an adult citizen of the United States, and I reside in Saginaw, Michigan.
2. I am an attorney licensed to practice law in Michigan.
3. I own a cottage in East Jordan, Michigan, which is in Charlevoix County.
4. I, along with members of my household, frequently travel to my cottage. I would often leave from my primary residence in Saginaw and travel to the cottage on a Thursday, remaining at the cottage over the weekend and returning late on Sunday or early Monday morning. My cottage is a second home, and it is my private retreat from the daily grind of my law practice.
5. Under Executive Order 2020-42, if I were to travel to the cottage, I would be subject to prosecution for violating the executive order. A “willful violation” is a misdemeanor. Not only will this harm me personally, but it will likely harm me professionally in that it could adversely impact my law practice, which I have worked hard to develop. Upon information and belief,

Governor Whitmer was quoted in the news on or about April 1, 2020, as follows: “You know, just about every business in the state has some sort of license, from the state of Michigan or not, and so we’ve encouraged them not to play fast and loose with this order because their licenses could be in jeopardy as a result.” I am licensed by the State Bar of Michigan to practice law.

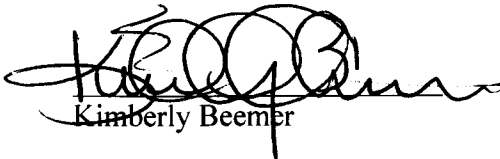
6. As a result of Executive Order 2020-42, my family members and I have ceased travelling to the cottage, thereby denying me the use and enjoyment of my private property. I have no recourse for this deprivation other than seeking relief in this Court.

7. There is little to no chance that I would cause the spread of COVID-19 by travelling with members of my household from my residence in Saginaw to my cottage in Charlevoix County. In fact, my family members and I are more isolated at my cottages than when we are at my primary residence in Saginaw.

8. Additionally, my family and I enjoy boating on Lake Charlevoix. However, the Governor’s executive order has now prohibited this activity. Under Executive Order 2020-42, Governor Whitmer expressly permits kayaking or canoeing, but she arbitrarily prohibits the use of boats with motors.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 20 day of April 2020.

  
Kimberly Beemer

# EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

KIMBERLY BEEMER, PAUL CAVANAUGH,  
and ROBERT MUISE,  
Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity  
as Governor for the State of Michigan, ALLEN  
TELGENHOF, in his official capacity as  
Charlevoix County Prosecuting Attorney, BRIAN  
L. MACKIE, in his official capacity as Washtenaw  
County Prosecuting Attorney, and WILLIAM J.  
VAILLIENCOURT, JR., in his official capacity as  
Livingston County Prosecuting Attorney,  
Defendants.

No. 1:20-cv-00323

Hon. Paul L. Maloney

**DECLARATION OF PLAINTIFF PAUL CAVANAUGH**

I, Paul Cavanaugh, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and upon information and belief where noted.

1. I am adult citizen of the United States, and I reside in Brighton, Michigan.
2. I own a cottage in Charlevoix County, Michigan. I also own and operate a landscaping business, Cavanaugh's Lawn Care LLC, which is located in Livingston County, Michigan.
3. Members of my household and I frequently travel to my cottage. It is a family tradition to spend Easter at the cottage.
4. Under Executive Order 2020-42, if I were to travel to my cottage, I would be subject to prosecution for violating the executive order. A "willful violation" is a misdemeanor. As a result, I have ceased visiting my cottage and have thus been denied the use and enjoyment of my private property by the government. Indeed, as a result of Executive Order 2020-42, my family

and I had to cancel our Easter tradition. I have no recourse for this deprivation of my property rights other than seeking relief in this Court.

5. There is little to no chance that I would cause the spread of COVID-19 by travelling with members of my household from my residence in Brighton to my cottage in Charlevoix County. In fact, we are more isolated at my cottage than when we are at my home in Brighton.

6. For the past ten years, I have worked hard to develop and expand my landscaping business. As a result of Governor Whitmer's executive orders, my company came to an abrupt halt. The early spring brought an early start to the season. Eleven of my fulltime employees had returned to work for two weeks before the shutdown. One additional, fulltime employee was returning from a trip abroad. I had high hopes of getting ahead of the workload and having a normal start to the season. As a result of the Governor's shutdown of my business, I am unable to perform my obligations under existing contracts and as a direct result missed out on approximately \$25,000 for spring cleanups, \$12,000 for fertilizing for first round preemergent, \$30,000 for mowing for the month of April, and \$35,000 for landscape installs. In fact, my business has been losing approximately \$5,000 to \$6,000 a day in revenue. The lost revenue is impossible to replace.

7. Eighty percent of my business is contract work with existing customers. Consequently, Governor Whitmer's executive orders, specifically including Executive Order 2020-42, have substantially impaired my contract obligations. A true and correct copy of my standard contract is attached to this declaration as Exhibit A.

8. There is little to no chance that my landscaping business will spread COVID-19. My employees practice social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the employee's household. The business is an outdoor business, which can operate without any

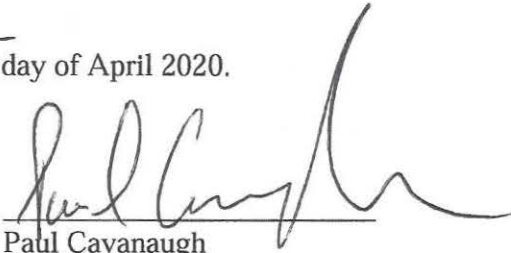
personal contact with customers and with minimal to no contact between employees. Indeed, there is far less likelihood of my business spreading COVID-19 than other businesses that the Governor permits under her executive orders, specifically including hardware stores, grocery stores, gas stations, marijuana businesses, and pet stores.

9. Upon information and belief (I have a close friend who is doing the landscaping work at the park), individuals are permitted to work on the grounds at Kensington Metro Park. These individuals are mowing the grass, cleaning up, spreading mulch, and pruning, among other types of landscaping work.

10. During my free time, which I now have in abundance due to the fact that Governor Whitmer's executive orders have shut down my business, I enjoy time with my son fishing in my boat on Lake Charlevoix. However, the Governor's executive order has now stripped that away from me as well. Under Executive Order 2020-42, Governor Whitmer expressly permits kayaking or canoeing, but she arbitrarily prohibits the use of boats with motors.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 20<sup>th</sup> day of April 2020.

  
Paul Cavanaugh



# EXHIBIT A

# Cavanaugh's Outdoor Services

P.O Box 511 Brighton, MI 48116

(586) 201-9952 [cavanaughlawn@gmail.com](mailto:cavanaughlawn@gmail.com)

## Full Service Landscape Contract

**This contract describes the terms and conditions of the agreements made between the parties known as:**

Cavanaugh's Lawn Care and Outdoor Services  
And

**Please Initial next to each service you would like us to provide (highlighted in yellow below).**

### Mowing Services

During the growing season (running from the third week in April through the end of October) weekly lawn service will include:

1. Mowing of all grass areas.
2. Trimming of all grass areas.
3. Blowing of grass clippings from driveway, sidewalk, porches, and landscape beds
4. Edging done as needed or as otherwise specified by the customer.

**Please be aware that extra charges will apply for double and triple cuts.**

Initial:  Price:

---

### Lawn Fertilization and Weed Control

The number of applications selected is at the client's discretion (Recommended is 5 with Grub Control).

#### **Application 1**

Provided April through early May. A granular fertilizer will be applied with pre-emergent crabgrass and the lawn will be sprayed for post-emergent broadleaf weed control.

Initial:  Price:

---

**Application 2**

Provided middle of May through early June. A granular fertilizer will be applied and the lawn will be sprayed for post-emergent broadleaf weed control.

Initial: [REDACTED] Price:

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**Application 3**

Provided June through early July. A granular fertilizer will be applied and the lawn will be sprayed for post-emergent broadleaf weed control.

Initial: [REDACTED] Price:

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**Application 4**

Provided late July through early August. A granular fertilizer will be applied and the lawn will be sprayed for post-emergent broadleaf weed control.

Initial: [REDACTED] Price:

---

**Application 5**

Provided late August through early September. A granular fertilizer will be applied and the lawn will be sprayed for post-emergent broadleaf weed control.

Initial: [REDACTED] Price:

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**Application 6**

Provided October through November. A granular fertilizer will be applied for winter feeding which promotes root development and faster green appearance in the spring. The lawn will be sprayed for post-emergent broadleaf weed control.

Initial: [REDACTED] Price:

---

**Grub and Insect Control**

This application is separate from the lawn fertilization and weed control program. An application of grub and insect control will be provided throughout the growing season with timing based on the targeted pest.

Initial: [REDACTED] Price:

---

# Landscape Maintenance Services

## Shrub and Hedge Trimming

- 1. Pruning of all specified plant material.
- 2. Removal of clippings from landscape beds by raking or blowing.

Initial: [redacted].

---

## Landscape Bed and Weed Control

- 1. Application of pre-emergence weed killers (as requested).
- 2. Mechanical removal of all weeds and unwanted plant material from bed areas.

Initial: [redacted].

---

## Mulch Installation

- 1. Mulch installed to all existing bed areas with type and color as specified by the client.
- 2. Mulch thickness will be agreed upon prior to installation (2 inches recommended)

Initial: [redacted].

---

## Spring Cleanup

- 1. All leaves, sticks, paper, and other debris will be removed from all landscape beds.
- 2. Lawn will be vacuumed and cut.
- 3. All annuals will be removed from landscape beds.
- 4. Perennials will be cut back to necessary heights.

Initial:

---

## Fall Cleanup

- 1. All leaves, sticks, paper, and other debris will be removed from all landscape beds.
- 2. Lawn will be vacuumed and cut.
- 3. All annuals will be removed from landscape beds.
- 4. Perennials will be cut back to necessary heights.

Initial: [redacted].

---

**Tear Out/Installation of Landscape**

1. The tear out of specified landscape areas will be conducted with proper equipment.
2. Waste materials will be properly hauled from property.
3. Landscapes will be installed, including grading, mulch or rock installation, boulder installation, plant installation, edging, and any other specified services

Initial: [REDACTED].

---

**Turf/Sod Installation and Re-Seeding**

1. Area will be graded properly in preparation for sod, turf, or seed.
2. Seed will be covered with proper materials to ensure success.

Initial: [REDACTED].

---

**Thatching**

1. Completed with power rake.
2. Thatch is vacuumed and removed from property.

Initial: [REDACTED].

---

The following contract is a thorough breakdown of the services we are able to provide for your property based on your requests made, and our evaluation. Please keep in mind that each service is broken down separately, and you have the option to pick and choose the best service options based on your needs. Our goal is to work with our clients and provide our clients with the most presentable property possible within the necessary budget.

Please sign and return via USPS or email by **March 21th**. Please provide an active and reachable email below. All invoices that are mailed via USPS will have an additional \$5 office charge starting in 2020.

**I have read and understand the full contract. I accept the terms and conditions of this agreement.**

**Date of Acceptance:**

---

**Customer Name Printed:**

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**Customer Signature:**

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**Customer Email:**

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**1. Obligations of the Contractor**

The contractor shall provide all labor, equipment, and supplies required to perform the agreed services and properly maintain all equipment so that work is performed timely and in a professional standard. The contractor shall carry insurance and have all valid licenses that may be required by law to perform the services outlined in this contract. If services cannot be carried out by the contractor for given reasons, such services will be rescheduled as soon as possible by mutual agreement.

**2. Obligations of the Client**

The client need not be present during the time the property is serviced and hereby grants permission to the contractor to access the property in order to perform the services on scheduled service days, or otherwise agreed service days. The client shall be responsible for the removal of any objects, toy furniture, pet waste, rubbish, etc. that will hinder the contractor in performing these services. The contractor will not be held responsible for any damages caused to the property due to the client not removing any of above listed items. The client shall keep all pets secured inside a building, or fenced area and shall keep people away from the contractor's area of work for the safety of both parties concerned in this contract. The client shall be responsible for the day-to-day care of the property as recommended by the contractor.

**3. Liability**

The contractor shall not be liable for damage to items on or below the lawn surface which are not clearly visible or marked such as; cables, wires, pipes, or sprinkler components improperly installed less than 6 inches below ground level. The contractor shall not be liable for the poor health or lack of performance of turf or plants beyond the scope of services contracted for, or in any event where the client does not provide appropriate or proper care for turf or plants. The contractor shall not be liable for any injuries or bodily harm to the client or third parties that enter the property prior to the precautionary warnings posted after herbicide or pesticide applications. The client shall not be liable for any damage to the contractor's equipment or injury or illness sustained by the contractor and his/her employees during the performance of the services. The contractor shall be liable for any damage to the lawn or plants due to careless operation of equipment or the incorrect application of pesticides, herbicides, or fertilizers.

**4. Service Agreement**

The contractor will provide lawn service on a weekly basis during the growing season which typically runs from the third week in April through the end of October. Season length may vary due to weather. Fertilization and herbicide applications will be scheduled every 4 to 6 weeks based on the number of applications the client agrees on. The client is to be aware that weather conditions such as rain may cause a delay of service. The client understands that mowing services are automatic regardless of grass length and that a Cavanaugh 's Lawn Tech will make the determination to not perform a service due to the lack of growth.

**5. Payment**

Invoicing is done on a monthly basis and is due within 15 days of the statement date. A late fee of 5% will be charged on all outstanding balances not paid within 30 days of the statement date. Costs associated with collection of any unpaid balances will be the responsibility of the client including reasonable fees associated with the collection of such debt.

**6. Termination**

This agreement is effective on the date signed by the client and may be cancelled by the client or contractor by giving notice at least 48 hours prior to the next scheduled visit.

# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

KIMBERLY BEEMER, PAUL CAVANAUGH,  
and ROBERT MUISE,  
Plaintiffs,

No. 1:20-cv-00323

v.

Hon. Paul L. Maloney

GRETCHEN WHITMER, in her official capacity  
as Governor for the State of Michigan, ALLEN  
TELGENHOF, in his official capacity as  
Charlevoix County Prosecuting Attorney, BRIAN  
L. MACKIE, in his official capacity as Washtenaw  
County Prosecuting Attorney, and WILLIAM J.  
VAILLIENCOURT, JR., in his official capacity as  
Livingston County Prosecuting Attorney,  
Defendants.

**DECLARATION OF PLAINTIFF ROBERT MUISE**

I, Robert Muese, make this declaration pursuant to 28 U.S.C. § 1746 and based on my personal knowledge and upon information and belief where noted.

1. I am an adult citizen of the United States, and I reside in Superior Township, Michigan, which is in Washtenaw County.

2. Upon information and belief, on March 24, 2020, Michigan Governor Gretchen Whitmer issued Executive Order 2020-21, which was described as a “[t]emporary requirement to suspend activities that are not necessary to sustain or protect life.” A true and correct copy of this order can be found at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522626--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html).

3. Upon information and belief, on April 9, 2020, Governor Whitmer issued Executive Order 2020-42, which “reaffirm[ed] the measures set forth in Executive 2020-21, clarif[ied] them, and extend[ed] their duration to April 30, 2020.” The executive order took effect “on April 9, 2020 at 11:59 pm.” When Executive Order 2020-42 took effect, it rescinded Executive Order



2020-21. A true and correct copy of Executive Order 2020-42 is found at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525182--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525182--,00.html) and attached to this declaration as Exhibit A.

4. Upon information and belief, Governor Whitmer permits marijuana businesses to remain open during this pandemic. Pursuant to the Michigan Marijuana Regulatory Agency, because Secretary of State offices are closed and “individuals may not be able to renew their driver’s licenses or government-issued identification cards while the Executive Order is in effect . . . , licensed provisioning centers and adult-use retailers are temporarily allowed to sell or transfer marijuana to a patient, caregiver, or customer who has an expired driver license or government-issued identification card during home delivery and curbside sales.” *See* [https://www.michigan.gov/documents/lara/Verifying\\_ID\\_and\\_Sales\\_of\\_\\_Marijuana\\_in\\_Response\\_to\\_COVID-19\\_684786\\_7.pdf](https://www.michigan.gov/documents/lara/Verifying_ID_and_Sales_of__Marijuana_in_Response_to_COVID-19_684786_7.pdf)., a copy of which is attached to this declaration as Exhibit B.

5. I served as an officer on activity duty in the United States Marine Corps for thirteen years. I was an infantry officer, I am a veteran of Operations Desert Shield and Desert Sword, and I trained with 42 Commando, British Royal Marines. I resigned my commission as a Major in 2000.

6. I possess a valid Michigan Concealed Pistol License. I am professionally trained in the use of firearms, I legally own firearms, and I am a staunch defender of the Second Amendment, which constitutionally guarantees me the right to bear arms for self-defense, defense of my family, and for the defense of a free State. I also use firearms to hunt in Michigan and in other States.

7. To support my right to bear arms, which necessarily includes my right to purchase firearms and ammunition, I patronize local gun shops, including a gun shop located in Washtenaw County.

8. Executive Order 2020-42 orders all nonessential businesses and activities to cease. Though this order exempts “critical infrastructure,” Governor Whitmer references an outdated list of such industries (issued March 19, 2020) rather than the most current federal guidance (issued March 28, 2020) that designates firearm and ammunition retailers as critical. This deliberate action effectively makes gun stores and firing ranges nonessential. (*See* Exhibit A [Executive Order 2020-42 at 10/19 (citing March 19, 2020 guidance and stating, “This order does *not* adopt any subsequent guidance document released by this same agency.”)]).

9. Upon information and belief, a true and accurate copy of the federal guidance on “Essential Critical Infrastructure Workforce” issued by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency on March 19, 2020, is attached to this declaration as Exhibit C and can be found at <https://content.ndia.org/-/media/Sites/Press%20Media/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.ashx?la=en>.

10. Upon information and belief, a true and accurate copy of the federal guidance on “Essential Critical Infrastructure Workforce” issued by the U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency on March 28, 2020, is attached to this declaration as Exhibit D and can be found at [https://www.cisa.gov/sites/default/files/publications/Version\\_3.0\\_CISA\\_Guidance\\_on\\_Essential\\_Critical\\_Infrastructure\\_Workers\\_2.pdf](https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_2.pdf).

11. Per the March 28, 2020 guidelines, “Workers supporting the operation of firearm, or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges” are considered part of the “Essential Critical Infrastructure Workforce.” (*See* Exhibit D at 8/19).

12. Accordingly, Executive Order 2020-42 also bans travel to gun stores or gun ranges since the businesses are not considered essential or “critical.” However, the order permits individuals to travel to buy food for a pet, marijuana, Lotto tickets, or liquor, among other exceptions.

13. As a result of Executive Order 2020-42, it makes it a crime for me to travel to a gun shop to purchase a firearm or ammunition or to travel to a firing range to train with a firearm.

14. Due to the panic caused by the pandemic, and the unemployment, loss of income, poverty, and uncertainty caused by Governor Whitmer’s executive orders, owning and possessing firearms is critically important at this time.

15. My wife and I have been blessed with twelve children and ten grandchildren (with two more grandchildren expected by June). Three of my adult children are married and reside locally in homes they own in Michigan, and two of my adult children reside locally in rental properties in Michigan. My other seven children reside at my home in Superior Township.

16. On most Sundays and Holy Days, my family would gather at my home for a meal, fellowship, and prayer.

17. My family and I are devout Catholics. Because of COVID-19, there are no public Masses in the Lansing Diocese. However, Jesus Christ taught that where two or more gather in His name, He is present. (*See* Matthew 18:20). I would like my family to gather together on Sundays and other Holy Days to associate for a meal, fellowship, and prayer, and thus gather as a family in Christ’s name. During these gatherings, my family members and I would adhere to social

distancing measures recommended by the Centers for Disease Control and Prevention. However, under the measures set forth in Executive Order 2020-42, it is now a crime in Michigan to engage in such family associations and gatherings.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of April 2020.

A handwritten signature in black ink, appearing to be 'R. Muise', written over a horizontal line.

Robert J. Muise

# EXHIBIT A

OFFICIAL WEBSITE OF MICHIGAN.GOV

THE OFFICE OF

**GOVERNOR GRETCHEN  
WHITMER**



WHITMER / NEWS / EXECUTIVE ORDERS

# Executive Order 2020-42 (COVID-19)

EXECUTIVE ORDER 2020-42 FAQs

EXECUTIVE ORDER

No. 2020-42

**Temporary requirement to suspend activities that  
are not necessary to sustain or protect life**

**Rescission of Executive Order 2020-21**



The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401 et seq., and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31 et seq.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. On April 1, 2020, in response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the State of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to “cop[e] with dangers to this state or the people of this state presented by a disaster or emergency,” which the governor may implement through “executive orders, proclamations, and directives having the force and effect of law.” MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, “the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control.” MCL 10.31(1).

To suppress the spread of COVID-19, to prevent the state's health care system from being overwhelmed, to allow time for the production of critical test kits, ventilators, and personal protective equipment, and to avoid needless deaths, it is reasonable and necessary to direct residents to remain at home or in their place of residence to the maximum extent feasible. To that end, on March 23, 2020, I issued Executive Order 2020-21, ordering all people in Michigan to stay home and stay safe. The order limited gatherings and travel, and required workers who are not necessary to sustain or protect life to stay home.

The measures put in place by Executive Order 2020-21 have been effective, but this virus is both aggressive and persistent: on April 8, 2020, Michigan reported 20,346 confirmed cases of COVID-19 and 959 deaths from it. To win this fight, and to protect the health and safety of our state and each other, we must be just as aggressive and persistent. Though we have all made sacrifices, we must be steadfast. Accordingly, with this order, I find it reasonable and necessary to reaffirm the measures set forth in Executive Order 2020-21, clarify them, and extend their duration to April 30, 2020. This order takes effect on April 9, 2020 at 11:59 pm. When this order takes effect, Executive Order 2020-21 is rescinded.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

1. This order must be construed broadly to prohibit in-person work that is not necessary to sustain or protect life.



2. Subject to the exceptions in section 7 of this order, all individuals currently living within the State of Michigan are ordered to stay at home or at their place of residence. Subject to the same exceptions, all public and private gatherings of any number of people occurring among persons not part of a single household are prohibited.
  
3. All individuals who leave their home or place of residence must adhere to social distancing measures recommended by the Centers for Disease Control and Prevention (“CDC”), including remaining at least six feet from people from outside the individual’s household to the extent feasible under the circumstances.
  
4. No person or entity shall operate a business or conduct operations that require workers to leave their homes or places of residence except to the extent that those workers are necessary to sustain or protect life or to conduct minimum basic operations.
  - a. For purposes of this order, workers who are necessary to sustain or protect life are defined as “critical infrastructure workers,” as described in sections 8 and 9 of this order.



- b. For purposes of this order, workers who are necessary to conduct minimum basic operations are those whose in-person presence is strictly necessary to allow the business or operation to maintain the value of inventory and equipment, care for animals, ensure security, process transactions (including payroll and employee benefits), or facilitate the ability of other workers to work remotely.

Businesses and operations must determine which of their workers are necessary to conduct minimum basic operations and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work.

Any in-person work necessary to conduct minimum basic operations must be performed consistently with the social distancing practices and other mitigation measures described in section 10 of this order.

5. Businesses and operations that employ critical infrastructure workers may continue in-person operations, subject to the following conditions:

a. Consistent with sections 8 and 9 of this order, businesses and operations must determine which of their workers are critical infrastructure workers and inform such workers of that designation. Businesses and operations must make such designations in writing, whether by electronic message, public website, or other appropriate means. Workers need not carry copies of their designations when they leave the home or place of residence for work. Businesses and operations need not designate:

1. Workers in health care and public health.

2. Workers who perform necessary government activities, as described in section 6 of this order.
  
3. Workers and volunteers described in section 9(d) of this order.
  
- b. In-person activities that are not necessary to sustain or protect life must be suspended until normal operations resume.
  
- c. Businesses and operations maintaining in-person activities must adopt social distancing practices and other mitigation measures to protect workers and patrons, as described in section 10 of this order. Stores that are open to the public must also adhere to the rules described in section 11 of this order.
  
6. All in-person government activities at whatever level (state, county, or local) that are not necessary to sustain or protect life, or to support those businesses and operations that are necessary to sustain or protect life, are suspended.



- a. For purposes of this order, necessary government activities include activities performed by critical infrastructure workers, including workers in law enforcement, public safety, and first responders.
  
- b. Such activities also include, but are not limited to, public transit, trash pick-up and disposal (including recycling and composting), activities necessary to manage and oversee elections, operations necessary to

enable transactions that support the work of a business's or operation's critical infrastructure workers, and the maintenance of safe and sanitary public parks so as to allow for outdoor activity permitted under this order.

- c. For purposes of this order, necessary government activities include minimum basic operations, as described in section 4(b) of this order. Workers performing such activities need not be designated.
- d. Any in-person government activities must be performed consistently with the social distancing practices and other mitigation measures to protect workers and patrons described in section 10 of this order.

## 7. Exceptions.

a. Individuals may leave their home or place of residence, and travel as necessary:


1. To engage in outdoor physical activity, consistent with remaining at least six feet from people from outside the individual's household. Outdoor physical activity includes walking, hiking, running, cycling, kayaking, canoeing, or other similar physical activity, as well as any comparable activity for those with limited mobility.

2. To perform their jobs as critical infrastructure workers after being so designated by their employers. (Critical infrastructure workers who need not be designated under section 5(a) of this order may leave their home for work without being designated.)

3. To conduct minimum basic operations, as described in section 4(b) of this order, after being designated to perform such work by their employers.
4. To perform necessary government activities, as described in section 6 of this order.
5. To perform tasks that are necessary to their health and safety, or to the health and safety of their family or household members (including pets). Individuals may, for example, leave the home or place of residence to secure medication or to seek medical or dental care that is necessary to address a medical emergency or to preserve the health and safety of a household or family member (including procedures that, in accordance with a duly implemented nonessential procedures postponement plan, have not been postponed).
6. To obtain necessary services or supplies for themselves, their family or household members, their pets, and their vehicles.



- A. Individuals must secure such services or supplies via delivery to the maximum extent possible. As needed, however, individuals may leave the home or place of residence to purchase groceries, take-out food, gasoline, needed medical supplies, and any other products necessary to maintain the safety, sanitation, and basic operation of their residences. Individuals may also leave the home to drop off a vehicle to the extent permitted under section 9(i) of this order.

- B. Individuals should limit, to the maximum extent that is safe and feasible, the number of household members who leave the home for any errands.
7. To care for a family member or a family member's pet in another household.
8. To care for minors, dependents, the elderly, persons with disabilities, or other vulnerable persons.
9. To visit an individual under the care of a health care facility, residential care facility, or congregate care facility, to the extent otherwise permitted.
10. To attend legal proceedings or hearings for essential or emergency purposes as ordered by a court.
11.  To work or volunteer for businesses or operations (including both  religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.

12. To attend a funeral, provided that no more than 10 people are in attendance at the funeral.

b. Individuals may also travel:

1. To return to a home or place of residence from outside this state.
2. To leave this state for a home or residence elsewhere.


3. Between two residences in this state, through April 10, 2020. After that date, travel between two residences is not permitted.

4. As required by law enforcement or a court order, including the transportation of children pursuant to a custody agreement.

c. All other travel is prohibited, including all travel to vacation rentals.

8. For purposes of this order, critical infrastructure workers are those workers described by the Director of the U.S. Cybersecurity and Infrastructure Security Agency in his guidance of March 19, 2020 on the COVID-19 response (available [here](#)). This order does *not* adopt any subsequent guidance document released by this same agency.

Consistent with the March 19, 2020 guidance document, critical infrastructure workers include some workers in each of the following sectors:

- a. Health care and public health.
- b. Law enforcement, public safety, and first responders.
- c. Food and agriculture.
- d. Energy.
- e. Water and wastewater.
- f. Transportation and logistics.
- g. Public works.
- h.  Communications and information technology, including news media 
- i. Other community-based government operations and essential functions.
- j. Critical manufacturing.



k. Hazardous materials.

- Financial services.

m. Chemical supply chains and safety.

- Defense industrial base.

9. For purposes of this order, critical infrastructure workers also include:


- a. Child care workers (including workers at disaster relief child care centers), but only to the extent necessary to serve the children or dependents of workers required to perform in-person work as permitted under this order. This category includes individuals (whether licensed or not) who have arranged to care for the children or dependents of such workers.




- b. Workers at suppliers, distribution centers, or service providers, as described below.

1. Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate another business's or operation's critical infrastructure work may

designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.

2. Any suppliers, distribution centers, or service providers whose continued operation is necessary to enable, support, or facilitate the necessary work of suppliers, distribution centers, or service providers described in subprovision (1) of this subsection may designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
3. Consistent with the scope of work permitted under subprovision (2) of this subsection, any suppliers, distribution centers, or service providers further down the supply chain whose continued operation is necessary to enable, support, or facilitate the necessary work of other suppliers, distribution centers, or service providers may likewise designate their workers as critical infrastructure workers, provided that only those workers whose in-person presence is necessary to enable, support, or facilitate such work may be so designated.
4. ~~Suppliers, distribution centers, and service providers that abuse their designation authority under this subsection shall be subject to sanctions to the fullest extent of the law.~~ 
- c. Workers in the insurance industry, but only to the extent that their work cannot be done by telephone or remotely.

- d. Workers and volunteers for businesses or operations (including both religious and secular nonprofit organizations) that provide food, shelter, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities.
- e. Workers who perform critical labor union functions, including those who administer health and welfare funds and those who monitor the well-being and safety of union members who are critical infrastructure workers, provided that any administration or monitoring should be done by telephone or remotely where possible.
- f. Workers at retail stores who sell groceries, medical supplies, and products necessary to maintain the safety, sanitation, and basic operation of residences, including convenience stores, pet supply stores, auto supplies and repair stores, hardware and home maintenance stores, and home appliance retailers.
- g. Workers at laundromats, coin laundries, and dry cleaners.
- h. Workers at hotels and motels, provided that the hotels or motels do not offer additional in-house amenities such as gyms, pools, spas, dining, entertainment facilities, meeting rooms, or like facilities.
- i. Workers at motor vehicle dealerships who are necessary to facilitate remote and electronic sales or leases, or to deliver motor vehicles to customers, provided that showrooms remain closed to in-person traffic.

10. Businesses, operations, and government agencies that continue in-person work must adhere to sound social distancing practices and measures, which include but are not limited to:
  - a. Developing a COVID-19 preparedness and response plan, consistent with recommendations in Guidance on Preparing Workplaces for COVID-19, developed by the Occupational Health and Safety Administration and available **here**. Such plan must be available at company headquarters or the worksite.
  - b. Restricting the number of workers present on premises to no more than is strictly necessary to perform the business's, operation's, or government agency's critical infrastructure functions or its minimum basic operations.
  - c. Promoting remote work to the fullest extent possible.
  - d. Keeping workers and patrons who are on premises at least six feet from one another to the maximum extent possible. 
  - e. Increasing standards of facility cleaning and disinfection to limit worker and patron exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in the workplace.

f. Adopting policies to prevent workers from entering the premises if they display respiratory symptoms or have had contact with a person with a confirmed diagnosis of COVID-19.

g. Any other social distancing practices and mitigation measures recommended by the CDC.

11. Any store that remains open for in-person sales under section 5 or 9(f) of this order must:


a. Establish lines to regulate entry in accordance with subsections (c) and (d) of this section, with markings for patrons to enable them to stand at least six feet apart from one another while waiting. Stores should also explore alternatives to lines, including by allowing customers to wait in their cars for a text message or phone call, to enable social distancing and to accommodate seniors and those with disabilities.

b. Consider establishing curbside pick-up to reduce in-store traffic and mitigate outdoor lines.



c. For stores of less than 50,000 square feet of customer floor space, limit the number of people in the store (including employees) to 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal.

d. For stores of more than 50,000 square feet:

1. Limit the number of customers in the store at one time (excluding employees) to 4 people per 1,000 square feet of customer floor space. The amount of customer floor space must be calculated to exclude store areas that are closed under subprovision (2) of this subsection.
  
2. Close areas of the store—by cordoning them off, placing signs in aisles, posting prominent signs, removing goods from shelves, or other appropriate means—that are dedicated to the following classes of goods:
  - A. Carpet or flooring.
  
  - B. Furniture.
  
  - C. Garden centers and plant nurseries.
  
  - D.  
  
3. By April 13, 2020, refrain from the advertising or promotion of goods that are not groceries, medical supplies, or items that are necessary to maintain the safety, sanitation, and basic operation of residences.

4. Create at least two hours per week of dedicated shopping time for vulnerable populations, which for purposes of this order are people over 60, pregnant women, and those with chronic conditions like heart disease, diabetes, and lung disease.

e. The director of the Department of Health and Human Services is authorized to issue an emergency order varying the capacity limits described in subsections (c) and (d) of this section as necessary to protect the public health.

12. No one shall advertise or rent a short-term vacation property except as necessary to assist in housing a health care professional or volunteer aiding in the response to the COVID-19 crisis.

13. Nothing in this order should be taken to supersede another executive order or directive that is in effect, except to the extent this order imposes more stringent limitations on in-person work, activities, and interactions. Consistent with prior guidance, a place of religious worship, when used for religious worship, is not subject to penalty under section 17 of this order.



14. Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority.

15. This order takes effect on April 9, 2020 at 11:59 pm and continues through April 30, 2020 at 11:59 pm. When this order takes effect,

Executive Order 2020-21 is rescinded. All references to that order in other executive orders, agency rules, letters of understanding, or other legal authorities shall be taken to refer to this order.

16. I will evaluate the continuing need for this order prior to its expiration. In determining whether to maintain, intensify, or relax its restrictions, I will consider, among other things, (1) data on COVID-19 infections and the disease's rate of spread; (2) whether sufficient medical personnel, hospital beds, and ventilators exist to meet anticipated medical need; (3) the availability of personal protective equipment for the health-care workforce; (4) the state's capacity to test for COVID-19 cases and isolate infected people; and (5) economic conditions in the state.
  
17. Consistent with MCL 10.33 and MCL 30.405(3), a willful violation of this order is a misdemeanor.

Given under my hand and the Great Seal of the State of Michigan.



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# EXHIBIT B



## ADVISORY BULLETIN

April 10, 2020  
Supersedes March 24, 2020

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### **Verifying ID and Marijuana Sales in Response to Governor Whitmer’s “Stay Home, Stay Safe” Executive Order (Updated: April 10, 2020)**

In accordance with Governor Whitmer’s “Stay Home, Stay Safe” Executive Order [2020-21](#), the Marijuana Regulatory Agency (MRA) is taking proactive steps to ensure medical marijuana patients, caregivers, and adult-use customers continue to have access to safety-tested products.

Pursuant to the MMFLA Administrative Rules and MRTMA Emergency Rules, registered qualifying patients, caregivers, and adult-use customers 21 years of age or older are required to present their valid driver’s license or government-issued identification card bearing a photographic image prior to a provisioning center or retailer selling or transferring marijuana to these individuals.

However, due to the Executive Order directing individuals to remain at home or in their place of residence to the maximum extent possible and the closure of all Secretary of State offices, individuals may not be able to renew their driver’s licenses or government-issued identification cards while the Executive Order is in effect.

Effective immediately, licensed provisioning centers and adult-use retailers are temporarily allowed to sell or transfer marijuana to a patient, caregiver, or customer who has an expired driver license or government-issued identification card during home delivery and curbside sales.

The MRA continues to process renewal applications for patient and caregiver registry identification cards, but there may be delays due to MRA staff teleworking in order to comply with the Governor’s Executive Order to mitigate the spread of COVID-19. Patients may also have difficulty obtaining the physician certification required for renewal without compromising their safety.

Therefore, effective immediately, licensed provisioning centers are temporarily allowed to sell or transfer marijuana to a patient or caregiver who presents a registry identification card that expired within the preceding 60 days. Additionally, the MRA has asked law enforcement to exercise discretion when interacting with someone with an expired registry identification card.

**The temporary accommodations specified in this bulletin are effective immediately and will be terminated effective April 30, 2020.**

A complete copy of the Rules can be found [here](#). More information on the MRA can be found at the agency website: [www.michigan.gov/MRA](http://www.michigan.gov/MRA). For current and up-to-date information regarding the Coronavirus visit [www.Michigan.gov/Coronavirus](http://www.Michigan.gov/Coronavirus) or [www.CDC.gov/Coronavirus](http://www.CDC.gov/Coronavirus).

# EXHIBIT C

U.S. Department of Homeland Security  
Cybersecurity & Infrastructure Security Agency  
Office of the Director  
Washington, DC 20528



**CISA**  
CYBER+INFRASTRUCTURE

March 19, 2020

**MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL  
INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs  
Director  
Cybersecurity and Infrastructure Security Agency (CISA)

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As the Nation comes together to slow the spread of COVID-19, on March 16<sup>th</sup>, the President issued updated Coronavirus Guidance for America. This guidance states that:

*“If you work in a critical infrastructure industry, as defined by the Department of Homeland Security, such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule.”*

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security’s responsibilities as assigned under the Homeland Security Act of 2002 to provide strategic guidance, promote a national unity of effort, and coordinate the overall federal effort to ensure the security and resilience of the Nation’s critical infrastructure. CISA uses trusted partnerships with both the public and private sectors to deliver infrastructure resilience assistance and guidance to a broad range of partners.

In accordance with this mandate, and in collaboration with other federal agencies and the private sector, CISA developed an initial list of “Essential Critical Infrastructure Workers” to help State and local officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The list can also inform critical infrastructure community decision-making to determine the sectors, sub-sectors, segments, or critical functions that should continue normal operations, appropriately modified to account for Centers for Disease Control (CDC) workforce and customer protection guidance.

The attached list identifies workers who conduct a range of operations and services that are essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing management functions, among others. The industries they support represent, but are not necessarily limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works.

We recognize that State, local, tribal, and territorial governments are ultimately in charge of implementing and executing response activities in communities under their jurisdiction, while the Federal Government is in a supporting role. As State and local communities consider COVID-19-related restrictions, CISA is offering this list to assist prioritizing activities related to continuity of operations and incident response, including the appropriate movement of critical infrastructure workers within and between jurisdictions.

**Accordingly, this list is advisory in nature. It is not, nor should it be considered to be, a federal directive or standard in and of itself.**

In addition, these identified sectors and workers are not intended to be the authoritative or exhaustive list of critical infrastructure sectors and functions that should continue during the COVID-19 response. Instead, State and local officials should use their own judgment in using their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners will use their own judgment, informed by this list, to ensure continued operations of critical infrastructure services and functions. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

CISA will continue to work with you and our partners in the critical infrastructure community to update this list as the Nation's response to COVID-19 evolves. We also encourage you to submit how you might use this list so that we can develop a repository of use cases for broad sharing across the country.

Should you have questions about this list, please contact CISA at [CISA.CAT@cisa.dhs.gov](mailto:CISA.CAT@cisa.dhs.gov).

**Attachment:** "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response"



**CISA**  
CYBER+INFRASTRUCTURE

DEFEND TODAY, SECURE TOMORROW

# Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response

Version 1.0 (March 19, 2020)

## THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This guidance and accompanying list are intended to support State, Local, and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives guidance to State, local, tribal, and territorial jurisdictions and the private sector on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

## CONSIDERATIONS FOR GOVERNMENT AND BUSINESS

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, State managed, and federally supported
2. Everyone should follow guidance from the CDC, as well as State and local government officials, regarding strategies to limit disease spread.
3. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
4. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.

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5. All organizations should implement their business continuity and pandemic plans, or put plans in place if they do not exist. Delaying implementation is not advised and puts at risk the viability of the business and the health and safety of the employees.
6. In the modern economy, reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to ensure continuity of functions.
7. Government employees, such as emergency managers, and the business community need to establish and maintain lines of communication.
8. When government and businesses engage in discussions about critical infrastructure workers, they need to consider the implications of business operations beyond the jurisdiction where the asset or facility is located. Businesses can have sizeable economic and societal impacts as well as supply chain dependencies that are geographically distributed.
9. Whenever possible, jurisdictions should align access and movement control policies related to critical infrastructure workers to lower the burden of workers crossing jurisdictional boundaries.

## IDENTIFYING ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

The following list of sectors and identified essential critical infrastructure workers are an initial recommended set and are intended to be overly inclusive reflecting the diversity of industries across the United States. CISA will continually solicit and accept feedback on the list (both sectors/sub sectors and identified essential workers) and will evolve the list in response to stakeholder feedback. We will also use our various stakeholder engagement mechanisms to work with partners on how they are using this list and share those lessons learned and best practices broadly. We ask that you share your feedback, both positive and negative on this list so we can provide the most useful guidance to our critical infrastructure partners. **Feedback can be sent to [CISA.CAT@CISA.DHS.GOV](mailto:CISA.CAT@CISA.DHS.GOV).**



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## HEALTHCARE / PUBLIC HEALTH

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response
- Caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists)
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.)
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric Residential, Rural Health Clinics and Federally Qualified Health Centers)
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products
- Public health / community health workers, including those who compile, model, analyze and communicate public health information
- Blood and plasma donors and the employees of the organizations that operate and manage related activities
- Workers that manage health plans, billing, and health information, who cannot practically work remotely
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely
- Workers conducting research critical to COVID-19 response
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters
- Pharmacy employees necessary for filling prescriptions
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident

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## LAW ENFORCEMENT, PUBLIC SAFETY, FIRST RESPONDERS

- Personnel in emergency management, law enforcement, Emergency Management Systems, fire, and corrections, including front line and management
- Emergency Medical Technicians
- 911 call center employees
- Fusion Center employees
- Hazardous material responders from government and the private sector.
- Workers – including contracted vendors – who maintain digital systems infrastructure supporting law enforcement and emergency service operations.

## FOOD AND AGRICULTURE

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and blockchain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

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## ENERGY

### Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

### Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services
- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them

### Natural and propane gas workers:

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers

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- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

## **WATER AND WASTEWATER**

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring
- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

## **TRANSPORTATION AND LOGISTICS**

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

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## **PUBLIC WORKS**

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste

## **COMMUNICATIONS AND INFORMATION TECHNOLOGY**

### **Communications:**

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

### **Information Technology:**

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as

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manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

## **OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS**

- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Customs workers who are critical to facilitating trade in support of the national emergency response supply chain
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions, if operating under rules for social distancing
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures

## **CRITICAL MANUFACTURING**

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

## **HAZARDOUS MATERIALS**

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

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## FINANCIAL SERVICES

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

## CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

## DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

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# EXHIBIT D

U.S. Department of Homeland Security  
Cybersecurity & Infrastructure Security Agency  
Office of the Director  
Washington, DC 20528



**CISA**  
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March 28, 2020

**ADVISORY MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs  
Director  
Cybersecurity and Infrastructure Security Agency (CISA)

A handwritten signature in black ink, appearing to read "Chris Krebs", written over the printed name and title.

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As the Nation comes together to slow the spread of COVID-19, on March 16<sup>th</sup> the President issued updated Coronavirus Guidance for America that highlighted the importance of the critical infrastructure workforce.

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's authorities to secure critical infrastructure. Consistent with these authorities, CISA has developed, in collaboration with other federal agencies, State and local governments, and the private sector, an "Essential Critical Infrastructure Workforce" advisory list. This list is intended to help State, local, tribal and territorial officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. Decisions informed by this list should also take into consideration additional public health considerations based on the specific COVID-19-related concerns of particular jurisdictions.

**This list is advisory in nature. It is not, nor should it be considered, a federal directive or standard. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion.**

The advisory list identifies workers who conduct a range of operations and services that are typically essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing operational functions, among others. It also includes workers who support crucial supply chains and enable functions for critical infrastructure. The industries they support represent, but are not limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement,



and public works.

State, local, tribal, and territorial governments are responsible for implementing and executing response activities, including decisions about access and reentry, in their communities, while the Federal Government is in a supporting role. Officials should use their own judgment in issuing implementation directives and guidance. Similarly, while adhering to relevant public health guidance, critical infrastructure owners and operators are expected to use their own judgement on issues of the prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and services they support. All decisions should appropriately balance public safety, the health and safety of the workforce, and the continued delivery of essential critical infrastructure services and functions. While this advisory list is meant to help public officials and employers identify essential work functions, it allows for the reality that some workers engaged in activity determined to be essential may be unable to perform those functions because of health-related concerns.

CISA will continue to work with our partners in the critical infrastructure community to update this advisory list if necessary as the Nation's response to COVID-19 evolves.

Should you have questions about this list, please contact CISA at [CISA.CAT@cisa.dhs.gov](mailto:CISA.CAT@cisa.dhs.gov).

**Attachment:** "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 3.0"



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DEFEND TODAY, SECURE TOMORROW

# Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response

Version 3.0 (April 17, 2020)

## THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This advisory guidance and accompanying list are intended to support state, local, tribal, territorial and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives advisory guidance on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions. The term “workers” as used in this guidance is intended to apply to both employees and contractors performing the described functions.

CISA will continually solicit and accept feedback on the list and will evolve the list in response to stakeholder feedback. We will also use our various stakeholder engagement mechanisms to work with partners on how they are using this list and share those lessons learned and best practices broadly. Feedback can be sent to [CISA.CAT@CISA.DHS.GOV](mailto:CISA.CAT@CISA.DHS.GOV).

## CONSIDERATIONS FOR GOVERNMENT AND BUSINESS

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, state managed, and federally supported.
2. Everyone should follow guidance from the Centers for Disease Control and Prevention (CDC), as well as state and local government officials, regarding strategies to limit disease spread.
3. Employers must comply with applicable Occupational Safety and Health Administration (OSHA) requirements for protecting critical infrastructure workers who remain on or return to the job during the COVID-19 pandemic. As the nation relies on these workers to protect public health, safety, and community well-being, they must be protected from exposure to and infection with the virus so that they can continue to carry out

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their responsibilities. OSHA has guidance and enforcement information for workplaces at [www.osha.gov/coronavirus](http://www.osha.gov/coronavirus).

4. Businesses and government agencies may continue to implement organization-specific measures, which protect the workforce while meeting mission needs.
5. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
6. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not limited to, physically separating staff, staggering work shift hours or days, and other social distancing measures. While the CDC recommends that everyone wear a cloth face cover to contain respiratory droplets when around others, critical infrastructure employers must consider how best to implement this public health recommendation for source control in the workplace. For example, employers may provide disposable facemasks (e.g., surgical masks) instead of cloth face coverings when workers would need to wear masks for extended periods of time (e.g., the duration of a work shift) or while performing tasks in which the face covering could become contaminated.
7. Consider the impact of workplace sick leave policies that may contribute to an employee decision to delay reporting medical symptoms. Sick employees should not return to the workplace until they meet the criteria to stop home isolation.
8. Critical infrastructure has an obligation to limit to the extent possible the reintegration of in-person workers who have experienced an exposure to COVID-19 but remain asymptomatic in ways that best protect the health of the worker, their co-workers, and the general public. An analysis of core job tasks and workforce availability at worksites can allow the employer to match core activities to other equally skilled and available in-person workers who have not experienced an exposure. CDC guidance on safety practices for critical infrastructure workers is maintained at <https://www.cdc.gov/coronavirus/2019-ncov/community/critical-workers/implementing-safety-practices.html>
9. All organizations should implement their business continuity and pandemic plans or put plans in place if they do not exist. Delaying implementation is not advised and puts at risk the viability of the business and the health and safety of the workers.
10. Reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to ensure continuity of functions. The vast majority of our economy relies on technology and therefore information technology (IT) and operational technology (OT) workers for critical infrastructure operations are essential. This includes workers in many roles, including workers focusing on management systems, control systems, and Supervisory Control and Data Acquisition (SCADA) systems, and data centers; cybersecurity engineering; and cybersecurity risk management.
11. Government workers, such as emergency managers, and the business community need to establish and maintain lines of communication.
12. Essential critical infrastructure workers need continued and unimpeded access to sites, facilities, and equipment within quarantine zones, containment areas, or other areas where access or movement is limited to perform functions for community relief and stability; for public safety, security and health; for maintaining essential supply chains and preserving local, regional, and national economic well-being.
13. Essential critical infrastructure workers need sustained access to designated quarantine, containment, or

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restricted areas; and should be exempted from curfews, shelter-in-place orders, and transportation restrictions or restrictions on movement.

- Whenever possible, local governments should consider adopting specific state guidance on essential workers to reduce potential complications of workers crossing jurisdictional boundaries. When this is not possible, local jurisdictions should consider aligning access and movement control policies with neighboring jurisdictions to reduce the burden of cross-jurisdictional movement of essential critical infrastructure workers.

## IDENTIFYING ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

The following list of identified essential critical infrastructure workers is intended to be overly inclusive reflecting the diversity of industries across the United States.



## HEALTHCARE / PUBLIC HEALTH

- Workers, including laboratory personnel, that perform critical clinical, biomedical and other research, development, and testing needed for COVID-19 or other diseases.
- Healthcare providers including, but not limited to, physicians; dentists; psychologists; mid-level practitioners; nurses; assistants and aids; infection control and quality assurance personnel; pharmacists; physical, respiratory, speech and occupational therapists and assistants; social workers; optometrists; speech pathologists; chiropractors; diagnostic and therapeutic technicians; and radiology technologists.
- Workers required for effective clinical, command, infrastructure, support service, administrative, security, and intelligence operations across the direct patient care and full healthcare and public health spectrum. Personnel examples may include, but are not limited, to accounting, administrative, admitting and discharge, engineering, accrediting, certification, licensing, credentialing, epidemiological, source plasma and blood donation, food service, environmental services, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.
  - Emergency medical services workers.
  - Prehospital workers included but not limited to urgent care workers.
  - Inpatient & hospital workers (e.g. hospitals, critical access hospitals, long-term acute care

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- hospitals, long-term care facilities, inpatient hospice, ambulatory surgical centers, etc.).
- Outpatient care workers (e.g. end-stage-renal disease, Federally Qualified Health Centers, Rural Health Clinics, community mental health clinics, organ transplant/procurement centers, and other ambulatory care settings/providers, comprehensive outpatient rehabilitation facilities, etc.).
- Home care workers (e.g. home health care, at-home hospice, home dialysis, home infusion, etc.).
- Workers at Long-term care facilities, residential and community-based providers (e.g. Programs of All-Inclusive Care for the Elderly (PACE), Intermediate Care Facilities for Individuals with Intellectual Disabilities, Psychiatric Residential Treatment Facilities, Religious Nonmedical Health Care Institutions, etc.).
- Workplace safety workers (i.e., workers who anticipate, recognize, evaluate, and control workplace conditions that may cause workers' illness or injury).
- Workers needed to support transportation to and from healthcare facility and provider appointments.
- Workers needed to provide laundry services, food services, reprocessing of medical equipment, and waste management.
- Workers that manage health plans, billing, and health information and who cannot work remotely.
- Workers performing cybersecurity functions at healthcare and public health facilities and who cannot work remotely.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Childcare, eldercare, and other service providers for essential healthcare personnel.
- Vendors and suppliers (e.g. imaging, pharmacy, oxygen services, durable medical equipment, etc.).
- Workers at manufacturers (including biotechnology companies and those companies that have shifted production to medical supplies), materials and parts suppliers, technicians, logistics and warehouse operators, printers, packagers, distributors of medical products and equipment (including third party logistics providers, and those who test and repair), personal protective equipment (PPE), isolation barriers, medical gases, pharmaceuticals (including materials used in radioactive drugs), dietary supplements, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies (including dispensers), sanitary goods, personal care products, pest control products, and tissue and paper towel products.
- Donors of blood, bone marrow, blood stem cell, or plasma, and the workers of the organizations that operate and manage related activities.
- Pharmacy staff, including workers necessary to maintain uninterrupted prescription, and other workers for pharmacy operations.
- Workers in retail facilities specializing in medical good and supplies.
- Public health and environmental health workers, such as:
  - Workers specializing in environmental health that focus on implementing environmental controls, sanitary and infection control interventions, healthcare facility safety and emergency preparedness planning, engineered work practices, and developing guidance and protocols for appropriate PPE to prevent COVID-19 disease transmission.
  - Public health/ community health workers (including call center workers) who conduct community-based public health functions, conducting epidemiologic surveillance and compiling, analyzing, and communicating public health information, who cannot work remotely.
- Human services providers, especially for at risk populations such as:
  - Home delivered meal providers for older adults, people with disabilities, and others with chronic

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- health conditions.
- Home-maker services for frail, homebound, older adults.
- Personal assistance services providers to support activities of daily living for older adults, people with disabilities, and others with chronic health conditions who live independently in the community with supports and services.
- Home health providers who deliver health care services for older adults, people with disabilities, and others with chronic health conditions who live independently in the community with supports and services.
- Government entities, and contractors that work in support of local, state, and federal public health and medical mission sets, including but not limited to supporting access to healthcare and associated payment functions, conducting public health functions, providing medical care, supporting emergency management, or other services necessary for supporting the COVID-19 response.
- Mortuary service providers, such as:
  - Workers performing mortuary funeral, cremation, burial, cemetery, and related services, including funeral homes, crematoriums, cemetery workers, and coffin makers.
  - Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental and behavioral health services to the family members, responders, and survivors of an incident.

## LAW ENFORCEMENT, PUBLIC SAFETY, AND OTHER FIRST RESPONDERS

- Public, private, and voluntary personnel (front-line and management, civilian and sworn) in emergency management, law enforcement, fire and rescue services, emergency medical services (EMS), and security, public and private hazardous material responders, air medical service providers (pilots and supporting technicians), corrections, and search and rescue personnel.
- Personnel involved in provisioning of access to emergency services, including the provisioning of real-time text, text-to-911, and dialing 911 via relay.
- Personnel that are involved in the emergency alert system (EAS) ((broadcasters, satellite radio and television, cable, and wireline video) and wireless emergency alerts (WEA).
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and technicians to manage the network or operate facilities.
- Workers at emergency communication center, public safety answering points, public safety communications centers, emergency operation centers, and 911 call centers.
- Fusion Center workers.
- Workers, including contracted vendors, who maintain, manufacture, or supply equipment and services supporting law enforcement, fire, EMS, and response operations (to include electronic security and life safety security personnel).
- Workers and contracted vendors who maintain and provide services and supplies to public safety facilities, including emergency communication center, public safety answering points, public safety communications centers, emergency operation centers, fire and emergency medical services stations, police and law enforcement stations and facilities.
- Workers supporting the manufacturing, distribution, and maintenance of necessary safety equipment and uniforms for law enforcement and all public safety personnel.

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- Workers supporting the operation of firearm, or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.
- Public agency workers responding to abuse and neglect of children, spouses, elders, and dependent adults.
- Workers who support weather disaster and natural hazard mitigation and prevention activities.
- Security staff to maintain building access control and physical security measures.

## FOOD AND AGRICULTURE

- Workers supporting groceries, pharmacies, convenience stores, and other retail (including unattended and vending) that sells human food, animal and pet food and pet supply, and beverage products, including retail customer support service and information technology support staff necessary for online orders, pickup, and delivery.
- Restaurant carry-out and quick serve food operations, including dark kitchen and food prep centers, carry-out, and delivery food workers.
- Food manufacturer workers and their supplier workers including those employed at food ingredient production and processing facilities; aquaculture and seafood harvesting facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging.
- Farmers, farm and ranch workers, and agribusiness support services to include those employed in auction and sales; grain and oilseed handling, storage, processing, and distribution; animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; and truck delivery and transport.
- Farmers, farm and ranch workers, and support service and supplier workers producing food supply domestically and for export, to include those engaged in raising, cultivating, harvesting, packing, storing, or delivering to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity for human consumption; agricultural inspection; fuel ethanol facilities; biodiesel and renewable diesel facilities; storage facilities; and other agricultural inputs.
- Workers and firms supporting the distribution of food, feed, and beverage and ingredients used in these products, including warehouse workers, vendor-managed inventory controllers, and blockchain managers.
- Workers supporting the sanitation and pest control of all food manufacturing processes and operations from wholesale to retail.
- Workers supporting the growth and distribution of plants and associated products for home gardens.
- Workers in cafeterias used to feed workers, particularly worker populations sheltered against COVID-19.
- Workers in animal diagnostic and food testing laboratories.
- Government, private, and non-governmental organizations' workers essential for food assistance programs (including school lunch programs) and government payments.
- Workers of companies engaged in the production, storage, transport, and distribution of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including seeds, pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids.
- Animal agriculture workers to include those employed in veterinary health (including those involved in supporting emergency veterinary or livestock services); raising, caring for and management of animals for food; animal production operations; livestock markets; slaughter and packing plants, manufacturers, renderers, and associated regulatory and government workforce.

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- Transportation supporting animal agricultural industries, including movement of animal medical and reproductive supplies and materials, animal vaccines, animal drugs, feed ingredients, feed and bedding, live animals, animal by-products, and deceased animals for disposal.
- Workers who support sawmills and the manufacture and distribution of fiber and forest products, including, but not limited to timber, paper, and other wood and fiber products, as well as manufacture and distribution of products using agricultural commodities.
- Workers engaged in the manufacture and maintenance of equipment and other infrastructure necessary for agricultural production and distribution.

## ENERGY

- Workers supporting the energy sector, regardless of the energy source (including, but not limited to, nuclear, fossil, hydroelectric, or renewable), segment of the system, or infrastructure the worker is involved in, who are needed to construct, manufacture, repair, transport, permit, monitor, operate engineer, and maintain the reliability, safety, security, environmental health, and physical and cyber security of the energy system, including those who support construction, manufacturing, transportation, permitting, and logistics.
- Workers and contractors supporting energy facilities that provide steam, hot water or chilled water from central power plants to connected customers.
- Workers conducting energy/commodity trading/scheduling/marketing functions who can't perform their duties remotely.
- Workers supporting the energy sector through renewable energy infrastructure (including, but not limited to, wind, solar, biomass, hydrogen, ocean, geothermal, and hydroelectric) and microgrids, including those supporting construction, manufacturing, transportation, permitting, operation and maintenance, monitoring, and logistics.
- Workers and security staff involved in nuclear re-fueling operations.
- Workers providing services related to energy sector fuels (including, but not limited to, petroleum (crude oil), natural gas, propane, liquefied natural gas (LNG), compressed natural gas (CNG), natural gas liquids (NGL), other liquid fuels, nuclear, and coal) and supporting the mining, processing, manufacturing, construction, logistics, transportation, permitting, operation, maintenance, security, waste disposal, storage, and monitoring of support for resources.
- Workers providing environmental remediation and monitoring, limited to immediate critical needs technicians.
- Workers involved in the manufacturing and distribution of equipment, supplies, and parts necessary to maintain production, maintenance, restoration, and service at energy sector facilities across all energy sector segments.

### Electricity Industry

- Workers who maintain, ensure, restore, or who are involved in the development, transportation, fuel procurement, expansion, or operation of, the generation, transmission, and distribution of electric power, including call centers, utility workers, engineers, retail electricity, construction, maintenance, utility telecommunications, relaying, and fleet maintenance technicians who cannot perform their duties remotely.
- Workers at coal mines, production facilities, and those involved in manufacturing, transportation,

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permitting, operation, maintenance, and monitoring at coal sites.

- Workers who produce, process, ship, and handle coal used for power generation and manufacturing.
- Workers in the electricity industry including but not limited to those supporting safety, construction, manufacturing, transportation, permitting, operation/maintenance, engineering, physical and cyber security, monitoring, and logistics
- Workers needed for safe and secure operations at nuclear generation including, but not limited to, those critical to the broader nuclear supply chain, the manufacture and delivery of parts needed to maintain nuclear equipment, the operations of fuel manufacturers, and the production and processing of fuel components used in the manufacturing of fuel.
- Workers at fossil fuel (including but not limited to natural gas, refined, distillate, and/or coal), nuclear, and renewable energy infrastructure (including, but not limited to wind, solar, biomass, hydrogen, geothermal, and hydroelectric), and microgrids, including those supporting safety, construction, manufacturing, transportation, permitting, operation, maintenance, monitoring, and logistics.
- Workers at generation, transmission, and electric black start facilities.
- Workers at Reliability Coordinator, Balancing Authority, local distribution control centers, and primary and backup Control Centers, including, but not limited to, independent system operators, regional transmission organizations, and local distribution control centers.
- Workers that are mutual assistance/aid personnel, which may include workers from outside of the state or local jurisdiction.
- Vegetation management and traffic control for supporting those crews.
- Instrumentation, protection, and control technicians.
- Essential support personnel for electricity operations.
- Generator set support workers, such as diesel engineers used in power generation, including those providing fuel.

### **Petroleum Industry**

- Workers who support onshore and offshore petroleum drilling operations; platform and drilling construction and maintenance; transportation (including helicopter operations), maritime transportation, supply, and dredging operations; maritime navigation; well stimulation, intervention, monitoring, automation and control, extraction, production; processing; waste disposal, and maintenance, construction, and operations.
- Workers in the petroleum industry including but not limited to those supporting safety, construction, manufacturing, transportation, permitting, operation/maintenance, engineering, physical and cyber security, monitoring, and logistics.
- Workers for crude oil, petroleum, and petroleum product storage and transportation, including pipeline, marine transport, terminals, rail transport, storage facilities, racks, and road transport for use as end-use fuels such as gasoline, diesel fuel, jet fuel, and heating fuels or feedstocks for chemical manufacturing.
- Petroleum and petroleum product security operations center workers and workers who support maintenance and emergency response services.
- Petroleum and petroleum product operations control rooms, centers, and refinery facilities.
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them.
- Supporting new and existing construction projects, including, but not limited to, pipeline construction.
- Manufacturing and distribution of equipment, supplies, and parts necessary for production, maintenance, restoration, and service of petroleum and petroleum product operations and use, including end-users.

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- Transmission and distribution pipeline workers, including but not limited to pump stations and any other required, operations maintenance, construction, and support for petroleum products.

### **Natural Gas, Natural Gas Liquids (NGL), Propane, and Other Liquid Fuels**

- Workers who support onshore and offshore drilling operations, platform and drilling construction and maintenance; transportation (including helicopter operations); maritime transportation, supply, and dredging operations; maritime navigation; natural gas and natural gas liquid production, processing, extraction, storage and transportation; well intervention, monitoring, automation and control; waste disposal, and maintenance, construction, and operations.
- Workers in the natural gas, NGL, propane, and other liquid fuels industries including but not limited to those supporting safety, construction, manufacturing, transportation, permitting, operation/maintenance, engineering, physical and cyber security, monitoring, and logistics.
- Transmission and distribution pipeline workers, including compressor stations and any other required operations maintenance, construction, and support for natural gas, natural gas liquid, propane, and other liquid fuels.
- Workers at Liquefied Natural Gas (LNG) and Compressed Natural Gas (CNG) facilities.
- Workers at natural gas, propane, natural gas liquids, liquified natural gas, liquid fuel storage facilities, underground facilities, and processing plants and other related facilities, including construction, maintenance, and support operations personnel.
- Natural gas processing plants workers and those who deal with natural gas liquids.
- Workers who staff natural gas, propane, natural gas liquids, and other liquid fuel security operations centers, operations dispatch and control rooms and centers, and emergency response and customer emergencies (including leak calls) operations.
- Workers supporting drilling, production, processing, refining, and transporting natural gas, propane, natural gas liquids, and other liquid fuels for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation.
- Workers supporting propane gas service maintenance and restoration, including call centers.
- Workers supporting propane, natural gas liquids, and other liquid fuel distribution centers.
- Workers supporting propane gas storage, transmission, and distribution centers.
- Workers supporting new and existing construction projects, including, but not limited to, pipeline construction.
- Workers supporting ethanol and biofuel production, refining, and distribution.
- Workers in fuel sectors (including, but not limited to nuclear, coal, and gas types and liquid fuels) supporting the mining, manufacturing, logistics, transportation, permitting, operation, maintenance, and monitoring of support for resources.
- Workers ensuring, monitoring, and engaging in the physical security of assets and locations associated with natural gas, propane, natural gas liquids, and other liquid fuels.
- Workers involved in the manufacturing and distribution of equipment, supplies, and parts necessary to maintain production, maintenance, restoration, and service of natural gas, propane, natural gas liquids, and other liquid fuels operations and use, including end-users.

## **WATER AND WASTEWATER**

Workers needed to operate and maintain drinking water and wastewater and drainage infrastructure, including:

- Operational staff at water authorities.

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- Operational staff at community water systems.
- Operational staff at wastewater treatment facilities.
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring, including field staff.
- Operational staff for water distribution and testing.
- Operational staff at wastewater collection facilities.
- Operational staff and technical support for SCADA Control systems.
- Chemical equipment and personal protection suppliers to water and wastewater system.
- Workers who maintain digital systems infrastructure supporting water and wastewater operations.

## TRANSPORTATION AND LOGISTICS

- Workers supporting or enabling transportation and logistics functions, including truck drivers, bus drivers, dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, driver training and education centers, Department of Motor Vehicle (DMV) workers, enrollment agents for federal transportation worker vetting programs, towing and recovery services, roadside assistance workers, intermodal transportation personnel, and workers that construct, maintain, rehabilitate, and inspect infrastructure, including those that require cross-jurisdiction travel.).
- Workers supporting the distribution of food, fuels, pharmaceuticals and medical material (including materials used in radioactive drugs), and chemicals needed for water or water treatment and energy maintenance.
- Workers supporting operation of essential highway infrastructure, including roads, bridges, and tunnels (e.g., traffic operations centers and moveable bridge operators).
- Workers of firms providing services, supplies, and equipment that enable warehouse and operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use, including cold- and frozen-chain logistics for food and critical biologic products.
- Mass transit workers providing critical transit services and performing critical or routine maintenance to mass transit infrastructure or equipment.
- Workers supporting personal and commercial transportation services including taxis, delivery services, vehicle rental services, bicycle maintenance and car-sharing services, and transportation network providers.
- Workers, including police, responsible for operating and dispatching passenger, commuter, and freight trains and maintaining rail infrastructure and equipment.
- Maritime transportation workers, including port authority and commercial facility personnel, dredgers, port workers, security personnel, mariners, ship crewmembers, ship pilots, tugboat operators, equipment operators (to include maintenance and repair, and maritime-specific medical providers), ship supply workers, chandlers, and repair company workers. Refer to the United States Coast Guard's Marine Safety Information Bulletin "Maintaining Maritime Commerce and Identification of Essential Maritime Critical Infrastructure Workers" for more information.
- Workers, including truck drivers, railroad employees, maintenance crews, and cleaners, supporting transportation of chemicals, hazardous, medical, and waste materials that support critical infrastructure, capabilities, functions, and services, including specialized carriers, crane and rigging industry workers.
- Bus drivers and workers who provide or support intercity, commuter, and charter bus service in support of other essential services or functions.

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- Automotive repair, maintenance, and transportation equipment manufacturing and distribution facilities (including those who repair and maintain electric vehicle charging stations).
- Transportation safety inspectors, including hazardous material inspectors and accident investigator inspectors.
- Manufacturers and distributors (to include service centers and related operations) of lighting and communication systems, specialized signage and structural systems, emergency response equipment and support materials, printers, printed materials, packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations, and other critical infrastructure needs.
- Postal Service, parcel, courier, last-mile delivery, and shipping and related workers, to include private companies, who accept, process, transport, and deliver information and goods.
- Workers who supply equipment and materials for maintenance of transportation equipment.
- Workers who repair and maintain vehicles, aircraft, rail equipment, marine vessels, bicycles, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers.
- Workers who support air transportation for cargo and passengers, including operation distribution, maintenance, and sanitation. This includes air traffic controllers, flight dispatchers, maintenance personnel, ramp workers, fueling agents, flight crews, airport safety inspectors and engineers, airport operations personnel, aviation and aerospace safety workers, security, commercial space personnel, operations personnel, accident investigators, flight instructors, and other on- and off-airport facilities workers.
- Workers supporting transportation via inland waterways, such as barge crew, dredging crew, and river port workers for essential goods.
- Workers critical to the manufacturing, distribution, sales, rental, leasing, repair, and maintenance of vehicles and other transportation equipment (including electric vehicle charging stations) and the supply chains that enable these operations to facilitate continuity of travel-related operations for essential workers.
- Warehouse operators, including vendors and support personnel critical for business continuity (including heating, ventilation, and air conditioning (HVAC) and electrical engineers, security personnel, and janitorial staff), e-commerce or online commerce, and customer service for essential functions.

## PUBLIC WORKS AND INFRASTRUCTURE SUPPORT SERVICES

- Workers who support the construction, maintenance, or rehabilitation of critical infrastructure.
- Workers supporting construction materials production, testing laboratories, material delivery services, and construction inspection.
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.
- Workers such as plumbers, electricians, exterminators, builders (including building and insulation), contractors, HVAC Technicians, landscapers, and other service providers who provide services, including temporary construction, that are necessary to maintaining the safety, sanitation, and essential operation

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of residences, businesses and buildings, such as hospitals and senior living facilities.

- Workers personnel, who support operations that ensure, the availability of and access to needed facilities, transportation, energy, and communications through activities such as road and line clearing.
- Workers who support the effective removal, storage, and disposal of residential, industrial, and commercial solid waste and hazardous waste, including at landfill operations.
- Workers who support the operation, inspection, and maintenance of essential dams, locks, and levees.
- Workers who support the inspection and maintenance of aids to navigation and other government-provided services that ensure continued maritime commerce.

## COMMUNICATIONS AND INFORMATION TECHNOLOGY

### Communications

- Maintenance of communications infrastructure, -- including privately owned and maintained communication systems, -- supported by technicians, operators, call centers, wireline and wireless providers, cable service providers, satellite operations, Internet Exchange Points, Points of Presence, Network Access Points, back haul and front haul facilities, and manufacturers and distributors of communications equipment.
- Government and private sector workers, including government contractors, with work related to undersea cable infrastructure and support facilities, including cable landing sites, beach manhole vaults and covers, submarine cable depots, and submarine cable ship facilities.
- Government and private sector workers, including government contractors, supporting Department of Defense internet and communications facilities.
- Network Operations staff, engineers, and technicians to include IT managers and staff, HVAC and electrical engineers, security personnel, software and hardware engineers, and database administrators that manage the network or operate facilities.
- Workers responsible for infrastructure construction and restoration, including but not limited to engineers, technicians, and contractors for construction and engineering of fiber optic cables, buried conduit, small cells, other wireless facilities, and other communications sector-related infrastructure. This includes permitting, construction of new facilities, and deployment of new technology as required to address congestion or customer usage due to unprecedented use of remote services.
- Installation, maintenance, and repair technicians that establish, support, or repair service as needed.
- Central office personnel to maintain and operate central office, data centers, and other network office facilities, including critical support personnel assisting front line workers.
- Customer service and support staff, including managed and professional services, as well as remote providers of support to transitioning workers to set up and maintain home offices, who interface with customers to manage or support service environments and security issues including payroll, billing, fraud, logistics, and troubleshooting.
- Workers providing electronic security, fire, monitoring, and life safety services, and who ensure physical security, cleanliness, and the safety of facilities and personnel, including those who provide temporary licensing waivers for security personnel to work in other States or Municipalities.
- Dispatchers involved with service repair and restoration.
- Retail customer service personnel at critical service center locations to address customer needs, including new customer processing, distributing and repairing equipment, and addressing customer issues, in order to support individuals' remote emergency communications needs

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- Supply chain and logistics personnel to ensure goods and products are available to provision these front-line workers.
- External Affairs personnel to assist in coordinating with local, state, and federal officials to address communications needs supporting COVID-19 response, public safety, and national security.
- Workers responsible for ensuring that persons with disabilities have access to and the benefits of various communications platforms, including those involved in the provision of telecommunication relay services, closed captioning of broadcast television for the deaf, video relay services for deaf citizens who prefer communication via American Sign Language over text, and audio-description for television programming.

### Information Technology

- Workers who support command centers, including, but not limited to, Network Operations Command Centers, Broadcast Operations Control Centers, and Security Operations Command Centers.
- Data center operators, including system administrators, HVAC and electrical engineers, security personnel, IT managers and purchasers, data transfer solutions engineers, software and hardware engineers, and database administrators for all industries, including financial services.
- Workers who support client service centers, field engineers, and other technicians and workers supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, support services, research and development, information technology equipment (to include microelectronics and semiconductors), HVAC and electrical equipment for critical infrastructure, and test labs and certification agencies that qualify such equipment (to include microelectronics, optoelectronics, and semiconductors) for critical infrastructure, including data centers.
- Workers needed to preempt and respond to cyber incidents involving critical infrastructure, including medical facilities; state, local, tribal, and territorial (SLTT) governments and federal facilities; energy and utilities; banks and financial institutions; securities and other exchanges; other entities that support the functioning of capital markets, public works, critical manufacturing, food, and agricultural production; transportation; and other critical infrastructure categories and personnel, in addition to all cyber defense workers who can't perform their duties remotely.
- Suppliers, designers, transporters, and other workers supporting the manufacture, distribution, provision, and construction of essential global, national, and local infrastructure for computing services (including cloud computing services and telework capabilities), business infrastructure, financial transactions and services, web-based services, and critical manufacturing.
- Workers supporting communications systems, information technology, and work from home solutions used by law enforcement, public safety, medical, energy, public works, critical manufacturing, food and agricultural production, financial services, education, and other critical industries and businesses.
- Workers required in person to support Software as a Service businesses that enable remote working, performance of business operations, distance learning, media services, and digital health offerings, or required for technical support crucial for business continuity and connectivity.

## OTHER COMMUNITY- OR GOVERNMENT-BASED OPERATIONS AND ESSENTIAL FUNCTIONS

- Workers to ensure continuity of building functions, including but not limited to security and environmental controls (e.g., HVAC), the manufacturing and distribution of the products required for these functions, and the permits and inspections for construction supporting essential infrastructure.

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- Elections personnel to include both public and private sector elections support.
- Workers supporting the operations of the judicial system, including judges, lawyers, and others providing legal assistance.
- Workers who support administration and delivery of unemployment insurance programs, income maintenance, employment service, disaster assistance, workers' compensation insurance and benefits programs, and pandemic assistance.
- Federal, State, and Local, Tribal, and Territorial government workers who support Mission Essential Functions and communications networks.
- Trade Officials (FTA negotiators; international data flow administrators).
- Workers who support radio, print, internet and television news and media services, including, but not limited to front line news reporters, studio, and technicians for newsgathering, reporting, and publishing news.
- Workers supporting Census 2020.
- Weather forecasters.
- Clergy for essential support.
- Workers who maintain digital systems infrastructure supporting other critical government operations.
- Workers who support necessary permitting, credentialing, vetting, and licensing for essential critical infrastructure workers and their operations.
- Customs and immigration workers who are critical to facilitating trade in support of the national emergency response supply chain.
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions.
- Workers at testing centers for emergency medical services and other healthcare workers.
- Staff at government offices who perform title search, notary, and recording services in support of mortgage and real estate services and transactions.
- Residential and commercial real estate services, including settlement services.
- Workers supporting essential maintenance, manufacturing, design, operation, inspection, security, and construction for essential products, services, supply chain, and COVID-19 relief efforts.
- Workers performing services to animals in human care, including zoos and aquariums.

## CRITICAL MANUFACTURING

- Workers necessary for the manufacturing of metals (including steel and aluminum), industrial minerals, semiconductors, materials and products needed for medical supply chains and for supply chains associated with transportation, aerospace, energy, communications, information technology, food and agriculture, chemical manufacturing, nuclear facilities, wood products, commodities used as fuel for power generation facilities, the operation of dams, water and wastewater treatment, processing and reprocessing of solid waste, emergency services, and the defense industrial base. Additionally, workers needed to maintain the continuity of these manufacturing functions and associated supply chains, and workers necessary to maintain a manufacturing operation in warm standby.
- Workers necessary for the manufacturing of materials and products needed to manufacture medical equipment and PPE.
- Workers necessary for mining and production of critical minerals, materials and associated essential supply chains, and workers engaged in the manufacture and maintenance of equipment and other

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infrastructure necessary for mining production and distribution.

- Workers who produce or manufacture parts or equipment that supports continued operations for any essential services and increase in remote workforce, including computing and communication devices, semiconductors, and equipment such as security tools for Security Operations Centers (SOCs) or data centers.
- Workers manufacturing or providing parts and equipment that enable the maintenance and continued operation of essential businesses and facilities.

## HAZARDOUS MATERIALS

- Workers who manage hazardous materials associated with any other essential activity, including but not limited to healthcare waste (medical, pharmaceuticals, medical material production, and testing operations from laboratories processing and testing kits) and energy (including nuclear facilities).
- Workers who support hazardous materials response and cleanup.
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations.

## FINANCIAL SERVICES

- Workers who are needed to provide, process, and maintain systems for processing, verification, and recording of financial transactions and services, including payment, clearing, and settlement; wholesale funding; insurance services; consumer and commercial lending; public accounting; and capital markets activities.
- Workers who are needed to maintain orderly market operations to ensure the continuity of financial transactions and services.
- Workers who are needed to provide business, commercial, and consumer access to bank and non-bank financial services and lending services, including ATMs, lending and money transmission, lockbox banking, and to move currency, checks, securities, and payments (e.g., armored cash carriers).
- Workers who support financial operations and those staffing call centers, such as those staffing data and security operations centers, managing physical security, or providing accounting services.
- Workers supporting production and distribution of debit and credit cards.
- Workers providing electronic point of sale support personnel for essential businesses and workers.

## CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, laboratories, distribution facilities, and workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, paintings and coatings, textiles, building materials, plumbing, electrical, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items.
- Workers supporting the production of protective cleaning and medical solutions, PPE, chemical consumer and institutional products, disinfectants, fragrances, and packaging that prevents the contamination of food, water, medicine, among others essential products.

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- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections.
- Workers (including those in glass container manufacturing) who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products.

## DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military, including, but are not limited to, space and aerospace workers, nuclear matters workers, mechanical and software engineers (various disciplines), manufacturing and production workers, IT support, security staff, security personnel, intelligence support, aircraft and weapon system mechanics and maintainers, and sanitary workers who maintain the hygienic viability of necessary facilities.
- Personnel working for companies, and their subcontractors, who perform under contract or sub-contract to the Department of Defense (DoD) and the Department of Energy (DoE) (on nuclear matters), as well as personnel at government-owned/contractor operated facilities, and who provide materials and services to the DoD and DoE (on nuclear matters), including support for weapon systems, software systems and cybersecurity, defense and intelligence communications, surveillance, sale of U.S. defense articles and services for export to foreign allies and partners (as authorized by the U.S. government), and space systems and other activities in support of our military, intelligence, and space forces.

## COMMERCIAL FACILITIES

- Workers who support the supply chain of building materials from production through application and installation, including cabinetry, fixtures, doors, cement, hardware, plumbing (including parts and services), electrical, heating and cooling, refrigeration, appliances, paint and coatings, and workers who provide services that enable repair materials and equipment for essential functions.
- Workers supporting ecommerce through distribution, warehouse, call center facilities, and other essential operational support functions, that accept, store, and process goods, and that facilitate their transportation and delivery.
- Workers in hardware and building materials stores necessary to provide access to essential supplies, consumer electronics, technology and appliances retail, and related merchant wholesalers and distributors.
- Workers distributing, servicing, repairing, installing residential and commercial HVAC systems, boilers, furnaces and other heating, cooling, refrigeration, and ventilation equipment.
- Workers supporting the operations of commercial buildings that are critical to safety, security, and the continuance of essential activities, such as on-site property managers, building engineers, security staff, fire safety directors, janitorial personnel, and service technicians (e.g., mechanical, HVAC, plumbers, electricians, and elevator).
- Management and staff at hotels and other temporary lodging facilities that provide for COVID-19 mitigation, containment, and treatment measures or provide accommodations for essential workers.

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## RESIDENTIAL/SHELTER FACILITIES AND SERVICES

- Workers providing dependent care services, particularly those whose services ensure essential workers can continue to work.
- Workers who support food, shelter, and social services, and other necessities of life for needy groups and individuals, including in-need populations and COVID-19 responders including travelling medical staff.
- Workers in animal shelters.
- Workers responsible for the leasing of residential properties to provide individuals and families with ready access to available housing.
- Workers responsible for handling property management, maintenance, and related service calls who can coordinate the response to emergency “at-home” situations requiring immediate attention, as well as facilitate the reception of deliveries, mail, and other necessary services.
- Workers performing housing and commercial construction related activities, including those supporting government functions related to the building and development process, such as inspections, permitting, and plan review services that can be modified to protect the public health, but fundamentally should continue and enable the continuity of the construction industry (e.g., allow qualified private third-party inspections in case of federal government shutdown).
- Workers performing services in support of the elderly and disabled populations who coordinate a variety of services, including health care appointments and activities of daily living.
- Workers responsible for the movement of household goods.

## HYGIENE PRODUCTS AND SERVICES

- Workers who produce hygiene products.
- Workers in laundromats, laundry services, and dry cleaners.
- Workers providing personal and household goods, repair, and maintenance.
- Workers providing disinfection services for all essential facilities and modes of transportation and who support the sanitation of all food manufacturing processes and operations from wholesale to retail.
- Workers necessary for the installation, maintenance, distribution, and manufacturing of water and space heating equipment and its components.
- Support required for continuity of services, including commercial disinfectant services, janitorial and cleaning personnel, and support personnel functions that need freedom of movement to access facilities in support of front-line workers.
- Workers supporting the production of home cleaning, pest control, and other essential products necessary to clean, disinfect, sanitize, and ensure the cleanliness of residential homes, shelters, and commercial facilities.
- Workers supporting agriculture irrigation infrastructure.
- Workers supporting the production of home cleaning and pest control products.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

KIMBERLY BEEMER, PAUL  
CAVANAUGH, and ROBERT MUISE,  
Plaintiffs,

v.

GRETCHEN WHITMER, in her official  
capacity as Governor for the State of  
Michigan, ALLEN TELGENHOF, in his  
official capacity as Charlevoix County  
Prosecuting Attorney, BRIAN L. MACKIE,  
in his official capacity as Washtenaw County  
Prosecuting Attorney, and WILLIAM J.  
VAILLIENCOURT, JR., in his official  
capacity as Livingston County Prosecuting  
Attorney,  
Defendants.

No. 1:20-cv-00323

Hon. Paul L. Maloney

**TEMPORARY RESTRAINING ORDER**

Upon the motion of Plaintiffs Kimberly Beemer, Paul Cavanaugh, and Robert Muise (collectively referred to as “Plaintiffs”) pursuant to Rule 65 of the Federal Rules of Civil Procedure and for good cause shown;

It is hereby Ordered that Defendants Gretchen Whitmer, Allen Telgenhof, Brian Mackie, and William J. Vaillencourt, Jr., and their officers, agents, and employees (collectively referred to as “Defendants”), are temporarily enjoined from enforcing Executive Order 2020-42 as follows:

(1) Defendants are enjoined from enforcing Executive Order 2020-42’s measures that prohibit individuals from travelling between their own residences and cottages within the State of Michigan, thereby permitting Plaintiff Beemer, along with members of her household, to travel to and from her residence in Saginaw, Michigan and her cottage located in Charlevoix County, Michigan and permitting Plaintiff Cavanaugh, along with members of his household, to travel to and from his residence in Brighton, Michigan and his cottage located in Charlevoix County, Michigan;

(2) Defendants are enjoined from enforcing Executive Order 2020-42's measures that prohibit the operation of landscaping businesses within the State of Michigan, thereby permitting Plaintiff Cavanaugh to reopen his landscaping business, Cavanaugh's Lawn Care LLC, so long as he and his employees practice social distancing measures recommended by the Centers for Disease Control and Prevention, including remaining at least six feet from people from outside the employee's household;

(3) Defendants are enjoined from enforcing Executive Order 2020-42 insofar as it prohibits individuals, specifically including Plaintiffs Beemer and Cavanaugh, to engage in outdoor activities that include using boats with motors for fishing and other similar recreational purposes, consistent with remaining at least six feet from people from outside the individual's household;

(4) Defendants are enjoined from enforcing Executive Order 2020-42 insofar as it conflicts with the March 28, 2020, U.S. Department of Homeland Security's Cybersecurity and Infrastructure Security Agency guidance on "critical infrastructure," which identifies "Workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges" as "critical infrastructure," thereby permitting gun stores and shooting ranges in Michigan to remain open and operational subject to social distancing measures recommended by the Centers for Disease Control and Prevention and permitting individuals, including Plaintiff Muise, to travel to and from such businesses; and

(5) Defendants are enjoined from enforcing Executive Order 2020-42's measures that prohibit private, family gatherings at private residences, thereby permitting Plaintiff Muise to hold private gatherings for meals, fellowship, and prayer with his immediate family at his private residence located in Superior Township, Michigan.

This Order shall remain in effect until the parties can be heard on Plaintiffs' motion for a preliminary injunction or upon further notice, but not to exceed 14 days, unless the Court extends the time for good cause. The hearing on the motion for a preliminary injunction will be held telephonically before this Court on \_\_\_\_\_ at \_\_\_\_\_ am/pm. Defendants are directed to file any written responses on or before \_\_\_\_\_.

So Ordered at \_\_\_\_\_ am/pm, this \_\_\_\_\_ day of April 2020.

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Paul L. Maloney  
United States District Court Judge