No. 20-56357

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HARVEST ROCK CHURCH, INC.; HARVEST INTERNATIONAL MINISTRY, INC., itself and on behalf of its member Churches in California,

Plaintiffs–Appellants

v.

GAVIN NEWSOM,
in his official capacity as Governor of the State of California,

Defendant–Appellee

On Appeal from the United States District Court
for the Central District of California (Los Angeles)
In Case No. 2:20-cv-06414-JCB-KK before the Honorable Jesus G. Bernal

PLAINTIFFS–APPELLANTS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

EMERGENY MOTION UNDER CIRCUIT RULE 27-3
RELIEF NEEDED BY THURSDAY DECEMBER 24, 2020

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CIRCUIT RULE 27-3 CERTIFICATE

I, Daniel J. Schmid, hereby certify the following:

1. **Identification of Plaintiffs–Appellants' Counsel:** Plaintiffs–Appellants are Harvest Rock Church, Inc. and Harvest International Ministry, Inc, itself and on behalf of its member Churches in California. Appellants are represented by Mathew D. Staver (court@LC.org), Horatio G. Mihet (hmihet@LC.org), Roger K. Gannam (rgannam@LC.org), and Daniel J. Schmid (dschmid@LC.org) of Liberty Counsel. Liberty Counsel's address is P.O. Box 540774, Orlando, FL 32854, and its telephone number is (407) 875-1776. Appellants are also represented by Nicolai Cocis (nic@cocislaw.com) of the Law Office of Nicolai Cocis. His address is 25026 Las Brisas Road, Murietta, CA 92562, and his telephone number is (951) 695-1400.

2. **Identification of Defendant–Appellee's Counsel**: Defendant–Appellee is Gavin Newsom, in his official capacity as the Governor of the State of California. Appellee is represented by Todd Grabarsky (todd.grabarsky@doj.ca.gov) and Seth Goldstein (seth.goldstein@doj.ca.gov) of the Office of the Attorney General for California. Counsel's address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244, and their telephone number is (916) 210-6063.

3. **Emergency Relief Requested in Motion:** The relief requested in the emergency motion that accompanies this certificate is an injunction pending appeal ("IPA") restraining and enjoining Governor Newsom, during the pendency of the above-captioned appeal, from enforcing or applying his Covid-19 Executive Orders and directives against Appellants such that:

(a) Governor Newsom, all State officers, agents, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Governor's Orders or any other future order to the extent any such order prohibits Appellants' religious worship services and imposes prohibitions on singing, chanting, and other forms of worship in which such religious services may be conducted, or imposing any other restrictions on in-person worship services at Appellants' churches if Appellants meet the social distancing, enhanced sanitization, and personal hygiene guidelines otherwise acceptable at so-called Critical Infrastructure Sectors or Essential Workforce businesses;

(b) Governor Newsom, all State officers, agents, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined from enforcing, attempting to

enforce, threatening to enforce, or otherwise requiring compliance with the Governor's Orders in any manner that discriminates against religious worship services as compared to other large gatherings, such as protests and demonstrations in California cities and streets; and

(c) Governor Newsom, all State officers, agents, employees, attorneys, and all other persons in active concert or participation with them, are restrained and enjoined from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the Governor's Orders to the extent they impose unconstitutional restrictions on Appellants' constitutional rights of free exercise of religion and free speech.

4. **Facts Justifying Emergency Relief**: Appellants filed a renewed motion for TRO and preliminary injunction following the Supreme Court's order that vacated all previous denials **in this case** and after the Supreme Court instructed this Court and the lower court to reconsider its previous denials of injunctive relief in light of *Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U.S. ___, 2020 WL 6948354 (U.S. Nov. 25, 2020) [hereinafter *Catholic Diocese*]. *See Harvest Rock Church v. Newsom*, No. 20A94, 2020 WL 7061630 (U.S. Dec. 3, 2020). Indeed, the Supreme Court granted Plaintiffs' petition for a writ of certiorari, vacated all of the orders from both this Court and the lower court in the instant matter, and instructed this

Court and the lower to reconsider Plaintiffs' requests for a TRO and preliminary injunction. Specifically, it stated:

> The application for injunctive relief, presented to Justice Kagan and by her referred to the Court, is treated as a petition for a writ of certiorari before judgment, and the petition is granted. The September 2 order of the United States District Court for the Central District of California is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit with instructions to remand to the District Court for further consideration in light of *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 592 U.S. —— (2020).

Id.

5. On December 3, the same day the Supreme Court issued its order, this Court vacated its prior orders denying Appellants the requested injunctive relief and remanded to the district court. *Harvest Rock Church, Inc. v. Newsom*, No. 20-55907, 2020 WL 7075072, *1 (9th Cir. Dec. 3, 2020).

6. On December 4, 2020, Plaintiffs-Appellants filed a renewed Motion for Temporary Restraining Order and Preliminary Injunction in the district court below (dkt. 58), requesting emergency relief from the Governor's discriminatory prohibitions and restrictions on Plaintiffs' religious worship services. Also, on December 4, 2020, Plaintiffs-Appellants filed a notice arguing that no hearing or further briefing was necessary because of the Supreme Court's clear holding in *Catholic Diocese*. (Dkt. 59.)

7. Despite Plaintiffs-Appellants' Motion and notice that no hearing was necessary, the district court held a ten-minute hearing on Plaintiffs-Appellants'

Motion for TRO and Preliminary Injunction, refused to hear arguments on the merits despite the irreparable harm, ordered further briefing, and scheduled a hearing on the merits of Plaintiffs-Appellants' renewed motion for injunctive relief on December 18, 2020.

8. After full briefing and a hearing on the merits of Plaintiffs-Appellants' Motion for TRO and Preliminary Injunction, the district court – yet again – denied Plaintiffs-Appellants' requests for emergency relief in total contradiction to the binding precedent of this Court and *Catholic Diocese*. In its Order (dkt. 77), the district court found – astoundingly – that the binding decision of the Supreme Court in *Catholic Diocese* and this Court's two binding decisions in *Calvary Chapel Dayton Valley v. Sisolak*, No. 20-16169, 2020 WL 7350247, *3 (9th Cir. Dec. 15, 2020) and *Calvary Chapel Lone Mountain v. Sisolak*, No. 20-16274, 2020 WL 7364797 (9th Cir. Dec. 15, 2020), all of which mandate the application of strict scrutiny to restrictions on religious worship services when compared to similar nonreligious indoor activities as is the case with Governor Newsom's orders.

9. In fact, the regime at issue in the instant litigation is far worse than that enjoined in *Catholic Diocese*. There, the restrictions enjoined restricted religious worship services to 10 or 25 individuals depending on the zone. 2020 WL 694835, at *1. A majority of the Court unequivocally held that "the Governor's severe restrictions on applicants' religious services must be enjoined." *Id.* at *4. And,

what's more, even the Chief Justice believed that such restrictions violate the First Amendment. Chief Justice Roberts opined that "[n]umerical capacity limits of 10 and 25 people, depending on the applicable zone, do seem unduly restrictive. And it may well be that such restrictions violate the Free Exercise Clause." *Id.* at *9 (Roberts, C.J., dissenting) (emphasis added). Indeed, the Chief Justice noted that such restrictions – which are less restrictive that the Governor's total prohibition on religious worship services in Tier 1 here – "raise serious concerns under the Constitution." *Id.* (emphasis added). The only reason the Chief Justice did not join the majority was because "the Governor revised the designations" and "[n]one of the houses of worship identified in the applications is now subject to any fixed numerical restrictions." *Id.* That mootness issue was the sole reason the Chief Justice declined to join the majority for the injunction, and even he noted that the churches could immediately return to the Court if the Governor reimposed the restrictions at issue. *Id.* ("If the Governor does reinstate the numerical restrictions the applicants can return to this Court, and we could act quickly on their renewed applications.").

10. Thus, six of the Justices found serious constitutional infirmity in restrictions of 10 and 25 people. This Court, too, found that discriminatorily restricting religious worship services to 50 people violated the First Amendment. *Calvary Chapel Dayton Valley*, 2020 WL 7350247, *3; *Calvary Chapel Lone Mountain*, 2020 WL 7364797, *1. And, here, the restrictions are far worse. Indeed,

the restrictions in Tier 1 here **totally prohibit** indoor religious worship services of any kind and any number. If restricting indoor religious worship services to 10 and 25 individuals "strike at the very heart of the First Amendment," *id.* at *3, and violate strict scrutiny, *id.*, then there is no world in which a total prohibition on religious worship services survives First Amendment condemnation. The Governor's orders are plainly unconstitutional, and a IPA should issue immediately

11. With each day that passes, **which has now been ongoing for 156 days**, Appellants are suffering immediate and irreparable injury to their cherished First Amendment liberties, which is unquestionably irreparable harm. *See Elrod v. Burns*, 427 U.S. 347 (1976). **Appellants have been subject to complete prohibitions and severe restrictions for ten months, have been forced to choose between jail and attending Church of the Holy Day of Easter, the Day of Pentecost, and are now threatened with missing another Holy Season of Christmas due to the district court's refusal to follow the clear dictates of binding precedent**. Appellants are currently prohibited from hosting any in-person worship services, including in-home Bible studies and fellowship with anyone who does not live at the home, regardless of social distancing, enhanced sanitizing, or other precautionary measures that the Governor permits other entities to operate under without restriction. Additionally, as discussed more fully in the Emergency Motion below, **Appellant Harvest Rock Church has received several letters from government officials threatening**

criminal sanctions for the exercise of its constitutionally protected right of free exercise of religion. The Planning and Community Development Department, Code Enforcement Division, of the City of Pasadena has threatened to impose criminal fines and even imprison Harvest Rock Church's pastor for holding religious services. The Criminal Division of the City Attorney/City Prosecutor for the City of Pasadena has likewise threatened Harvest Rock Church with criminal sanctions, stating that each time Harvest Rock Church meets constitutes a separate violation subject to exorbitant monetary penalties and jail time. Yet, at the same time, the Governor and other government officials in California have encouraged, supported, and advocated for the gathering of hundreds of thousands of protesters throughout California with no threat of criminal penalty. As discussed more fully in the Emergency Motion, such disparate treatment is a gross violation of the First Amendment and requires immediate injunctive relief from this Court.

12. **Timeliness**: Appellants could not have filed this motion sooner because IPA relief must first be sought in the district court, Fed. R. App. P. 8(a)(1), and the district court denied Plaintiffs' IPA on December 22. (dkt. 85, Order denying IPA, attached hereto as Exhibit 1.) Under the exigent circumstances of this case, the district court's delayed disposition of the IPA motion is tantamount to denying it,

and further imposes irreparable harm from which Plaintiffs–Appellants now seek relief from this Court.

13. Appellants' diligence in prosecuting this action below, and the district court's delay, justify Appellants' seeking emergency IPA relief from this Court now: Appellants commenced this action and sought a temporary restraining order (TRO) and preliminary injunction (PI) from the district court on July 17, 2020, to protect Appellants' upcoming Sunday worship services on July 19. (Dkts. 1, 4.) The Supreme Court issued its decision in *Catholic Diocese* nearly a month ago and the two binding Ninth Circuit decisions in *Calvary Chapel Lone Mountain* and *Calvary Chapel Dayton Valley* were issued over a week ago. The district court delayed resolution of Plaintiffs' renewed emergency motion for temporary restraining order and preliminary injunction for **two weeks** after it was filed and almost a month after *Catholic Diocese* mandated an injunction for Appellants since Appellants commenced this action.

14. **Conference with Opposing Counsel:** Prior to filing this motion, counsel for Appellants informed counsel for Appellee of the motion, and that upon filing Appellants would serve a true and correct copy on Appellee by electronic mail (in addition to the electronic service effectuated by the Court's ECF system). Counsel for Appellee advised that Appellee opposes the motion.

15. **Notification of Court:** Immediately upon the filing of the Emergency Motion, counsel for Plaintiffs-Appellants notified the Clerk's emergency contact email informing the Court of the filing of the instant motion.

Dated: December 22, 2020

/s/ Daniel J. Schmid

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DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1(a), Plaintiffs–Appellants, Harvest Rock Church, Inc. and Harvest International Ministry, Inc., state they are domestic nonprofit corporations incorporated under the laws of the State of California, neither has a parent corporation, and neither issues stock.

Dated: December 22, 2020

/s/ Daniel J. Schmid

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"The Supreme Court's recent decision in [Catholic Diocese] arguably represents a seismic shift in Free Exercise law, and compels the result in this case."[1]

RELIEF SOUGHT

Plaintiffs–Appellants, HARVEST ROCK CHURCH, INC. and HARVEST INTERNATIONAL MINISTRY, INC., itself and on behalf of its member Churches in California, hereby move the Court for an injunction pending appeal (IPA) from the district court's December 21, 2020 Order Denying Plaintiffs' Motion for TRO and Preliminary Injunction (the "Order," attached as Exhibit 2), which is the subject of Appellant's Notice of Appeal (attached as Exhibit 3), enjoining Governor Newsom, during the pendency of this appeal, from enforcing or applying his Blueprint against Appellants in such a way that infringes upon Appellants' First Amendment liberties by, *inter alia*, (1) banning all in-person worship, including in-home Bible studies with anyone who does not live in the home, in Tier 1 counties (covering over **99.9%** of the state); (2) imposing strict numerical caps while permitting other nonreligious gatherings to operate without numerical limitation or percentage caps or imposing more favorable capacity restrictions without the discriminatorily imposed numerical caps on religious gatherings in Tiers 2-4.

[1] *Calvary Chapel Dayton Valley v. Sisolak*, No. 20-16169, 2020 WL 7350247, *3 (9th Cir. Dec. 15, 2020) [*Calvary Chapel Dayton Valley*] (emphasis added).

JURISDICTION AND TIMING

As detailed in the Rule 27-3 Certificate, *supra*, the district court denied Plaintiffs' motion for TRO and PI on December 21, 2020. (Ex. 2, dkt. 77, Order.) Though the district court styled its Order as merely a denial of Plaintiffs' Motion for TRO (Ex. 2, dkt. 77, Order at 14), it is immediately appealable under this Court's precedent because itl "is tantamount to the denial of a preliminary injunction," *Givens v. Newsom*, No. 20-15949, 2020 WL 7090826, *1 (9th Cir. Dec. 4, 2020), "followed a 'full adversary hearing'" on the merits of Plaintiffs' Motion, *id.* (quoting *Religious Tech. Ctr., Church of Scientology Int'l, Inc. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989)), "effectively decided the merits of the case," *Graham v. Teledyne-Continental Motors*, 805 F.2d 1386, 1388 (9th Cir. 1986), and "effectively forecloses" Plaintiffs from "pursuing further interlocutory relief" because the Order appealed from "makes clear that any request for injunctive relief would be rejected." *Givens*, 2020 WL 7090826, at *1

In compliance with Fed. R. App. P. 8(a)(1)(C), Appellants first filed for an IPA in the district court on December 21, requesting expedited consideration and decision. On December 22, the district court denied Plaintiffs' motion for an IPA. (Exhibit 1.) Thus, this Court has jurisdiction to grant the IPA because the district court has "denied the motion [and] failed to afford the relief requested." Fed. R. App. P. 8(a)(2)(A)(ii).

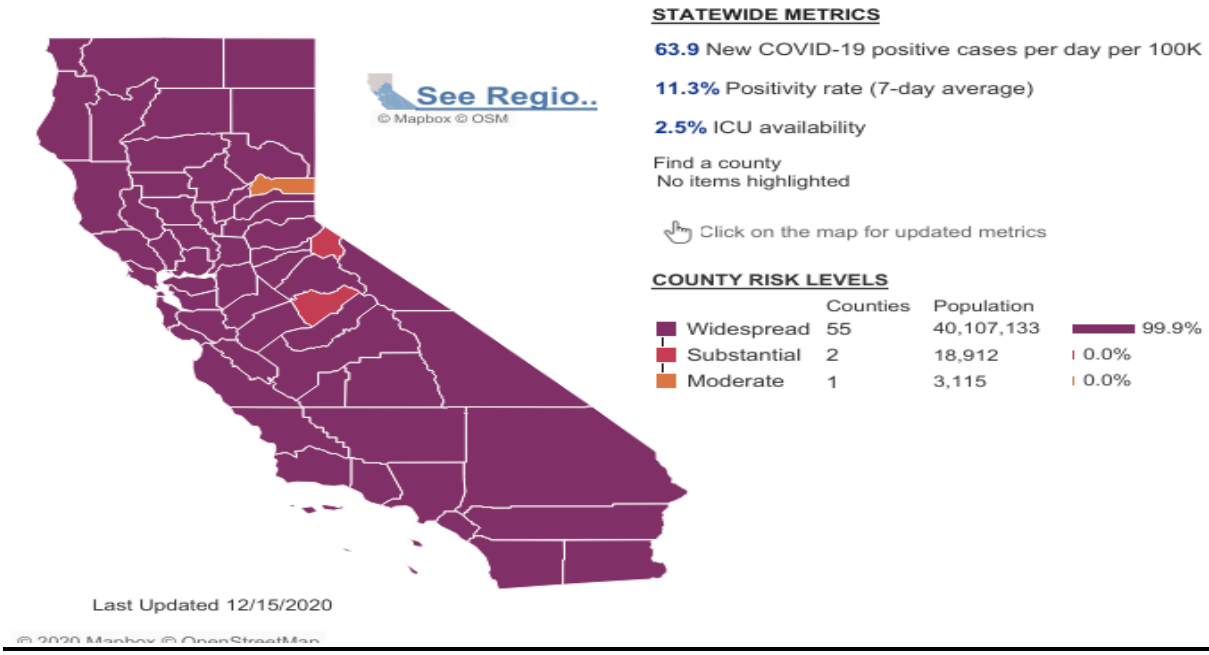
INTRODUCTION

Good cause exists for the IPA, as supported in Appellants' Verified Complaint ("V. Compl.," attached as Exhibit 4), the first Declaration of Che Ahn Supplementing the Record ("First Ahn Decl.," attached as Exhibit 5), the second Declaration of Che Ahn Supplementing the Record ("Second Ahn Decl.," hereto as Exhibit 6), the third Declaration of Che Ahn Supplementing the Record ("Third Ahn Decl.," attached as Exhibit 7), the parties Joint Statement on Appeal (attached as Exhibit 8), and the Addendum chart outlining the discriminatory restrictions in each Blueprint Tier ("Chart," attached as Addendum 1).

As of December 15, 55 Counties in California – representing **99.9% of the population** – are in Tier 1 under the Governor's Blueprint. The below image –from California's official Blueprint website – demonstrates how widespread the Governor's most severe restrictions are in California.[2]

[2] Blueprint for a Safer Economy, *Current tier assignments as of December 15, 2020*, https://covid19.ca.gov/safer-economy/ (last visited Dec. 22, 2020)

Image 1 – Blueprint Map



The consequence of the sea of purple in the above "color-coded executive edict" is that **indoor worship services are completely prohibited for 99.1% of Californians, including the vast majority of Plaintiffs' Churches and congregants**. (Joint Statement, at 1.) Yet, food packing and processing, laundromats, and warehouses have no capacity limits, liquor and grocery stores have a 50% capacity, and big box centers, shopping malls, laundromats, and destination centers have a 25% capacity. (Addendum at 1.) For the 0.1% (2 Counties) of Californians in Tier 2 Counties, the Governor permits limited indoor worship at 25% capacity or 100 individuals, whichever is less. (Joint Statement at 1.) Yet, other similar congregate gatherings have no numerical limit, including museums, gyms, and fitness centers. (Addendum at 2.) And, for the lone County designated Tier 3

(0.01% of the population), religious worship is only permitted at 50% capacity or 200 people, whichever is less. (Joint Statement at 2.) Yet again, in addition to a long list of other similar congregate gatherings, museums, gyms, fitness centers, family entertainment centers, cardrooms, and satellite wagering have no numerical cap. (Addendum at 3.)

For Appellants, this means that the Governor's color-coded regime of religious discrimination **completely prohibits indoor religious worship services, even if it involves 1 person**. And, in Tiers 2 and 3, where religious services have a numerical cap while similar nonreligious gatherings do not, the Governor prohibits religious singing or chanting. (Joint Statement at 4.) No similar restriction is placed on singing "Happy Birthday" in a restaurant or Christmas carols in a mall. Thus, the Governor's has literally banned even "preaching to the choir." *McCullen v. Coakley*, 573 U.S. 464, 476 (2014).

Yet, in these same Counties where indoor religious worship services are completely prohibited or significantly restricted numerically, there are myriad exemptions for similar nonreligious gatherings. (*See* Addendum at 1-3.) Moreover, the Churches can conduct nonreligious meetings in the same buildings where worship is banned, including feeding, sheltering, and other social services and "necessities of life" such as counseling. Irreparable harm is being imposed on Plaintiffs by virtue of the unconstitutional regime of the Governor's edicts, and

injunctive relief is warranted now. Indeed, Harvest Rock Church, the pastors, staff, and parishioners labor every day under the threat of criminal charges, fines, and closure. This immediate threat cannot wait another day to be addressed.

LEGAL ARGUMENT

"The standard for evaluating an injunction pending appeal is similar to that employed by district courts in deciding whether to grant a preliminary injunction." *Feldman v. Az. Sec'y of State's Office*, 843 F.3d 366, 367 (9th Cir. 2016). Thus, to obtain an IPA, Appellants need to demonstrate a likelihood of success on the merits, irreparable injury absent an IPA, that the balance of the equities warrants an IPA, and that the public interest is served by the IPA. *Se. Alaska Cons. Council v. U.S. Army Corps of Eng'rs*, 472 F.3d 1097, 1100 (9th Cir. 2006). Under the binding precedent of *Catholic Diocese* and this Court's two binding injunctions in *Calvary Chapel Dayton Valley* and *Calvary Chapel Lone Mountain*, Appellants easily satisfy these requirements.

I. *CATHOLIC DIOCESE* AND THIS COURT'S TWO BINDING DECISIONS IN *CALVARY CHAPEL LONE MOUNTAIN* AND *CALVARY CHAPEL DAYTON VALLEY* MANDATE THE APPLICATION OF STRICT SCRUTINY TO THE GOVERNOR'S COLOR-CODED TIER RESTRICTIONS.

As the Supreme Court made plain in *Catholic Diocese* – "regulations that single out houses of worship for especially harsh treatment" plainly violates the First Amendment and makes "a strong showing that the challenged restrictions violate

'the minimum requirement of neutrality' to religion." *Catholic Diocese*, 2020 WL 6948354, at *1 (quoting *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533 (1993)). The Governor's color-coded regime of discriminatory treatment towards religion is far more restrictive than that the Supreme Court enjoined in *Catholic Diocese* and violates the Free Exercise Clause "beyond all question." *On Fire Christian Ctr., Inc. v. Fischer*, 453 F. Supp. 3d 901, 910 (W.D. Ky. 2020)

A. The Governor's Complete Prohibition On Indoor Worship Services In Tier 1 Are Far More Severe Than Those At Issue In *Catholic Diocese* And Violate The First Amendment.

The Blueprint completely prohibits indoor religious worship services in 55 Counties representing **99.9%** of the California population. (*See supra* Image 1). In *Catholic Diocese*, this Court held that New York's capacity limitations of more than 10 or 25 people were "far more restrictive than any COVID-related regulations that have previously come before the Court." 2020 WL 6948354, at *2. Yet, the Governor's regulations here – which completely prohibit all indoor religious worship services for 99.9% of Californians – **are far more restrictive than those in *Catholic Diocese***. There can be no more restrictive regulations than a total ban on indoor religious gatherings. In Tier 1, Plaintiffs are prohibited from gathering for any religious service with any number of people. Astoundingly, the same prohibition applies to any religious gathering in the private homes of Plaintiffs' congregants, regardless of the size of that small Bible study.

As the Supreme Court has held: "**Neither a state nor the Federal Government can set up a church . . . Neither can force nor influence a person to go to or remain away from church against his will**." *Everson v. Bd. of Educ. of Ewing Tp.*, 330 U.S. 1, 15 (1947) (emphasis added). The Blueprint does what *Everson* said no state is permitted to do. The First Amendment plainly prohibits banning all religious worship services, regardless of the justification. In fact, the Chief Justice's dissent in *Catholic Diocese* suggests that imposing a total prohibition on religious worship services is unconstitutional. *Catholic Diocese*, 2020 WL 6948354, at *9 (Roberts, C.J., dissenting) ("Numerical capacity limits of 10 and 25 people, depending on the applicable zone, do seem unduly restrictive. **And it may well be that such restrictions violate the Free Exercise Clause**." (emphasis added)); *id.* ("the challenged restrictions raise serious concerns under the Constitution.").

If restrictions on 10 and 25 people "raise serious concerns under the Constitution," *id.*, then – as Justice Gorsuch plainly stated – "**there is no world in which the Constitution tolerates color-coded executive edicts that reopen liquor stores and bike shops but shutter churches, synagogues, and mosques**." *Id.* at *7 (emphasis added). The Governor's total prohibition on Plaintiffs' religious worship services of any number of people is simply unconstitutional and must be enjoined.

B. The Governor's Complete Prohibition On Indoor Worship Services In Tier 1 Are Far More Severe Than Those At Issue In This Court's Two Nevada Injunctions And Violate The First Amendment.

In *Calvary Chapel Dayton Valley*, this Court held that Nevada's COVID-19 restrictions on religious worship services could not survive *Catholic Diocese* and must be enjoined as violative of the First Amendment. 2020 WL 7350247, at *4 ("**The Supreme Court's decision in *Roman Catholic Diocese* compels us to reverse the district court**." (emphasis added)). Indeed,

> Just like the New York restrictions, the Directive treats numerous secular activities and entities significantly better than religious worship services. **Casinos, bowling alleys, retail businesses, restaurants, arcades, and other similar secular entities are limited to 50% of fire-code capacity, yet houses of worship are limited to fifty people regardless of their fire-code capacities.** As a result, the restrictions in the Directive, although not identical to New York's, require attendance limitations that create the same "disparate treatment" of religion. Because "disparate treatment" of religion triggers strict scrutiny review—as it did in *Roman Catholic Diocese*—we will review the restrictions in the Directive under strict scrutiny.

Id. (emphasis added) (citation omitted) (quoting *Catholic Diocese*, 2020 WL 6948354, at *2).

Notably, and fatally for the Governor here, the restriction on religious worship services in *Calvary Chapel* was **less restrictive** than the total prohibition here in Tier 1. *Compare id.* at *4 (noting that the Nevada restriction imposed a 50-person cap), *with* Addendum Chart at 1 (recognizing the Governor's current restriction as a complete prohibition in Tier 1).) Yet, this Court still held that "although less

restrictive in some respects than the New York regulation reviewed in *Roman Catholic Diocese*—**is not narrowly tailored**." *Calvary Chapel*, 2020 WL 7350247, at *4 (emphasis added). Because the Nevada restrictions failed strict scrutiny, the Ninth Circuit reversed the district court's denial of injunctive relief and issued the requested preliminary injunction. *Id*. *See also Calvary Chapel Lone Mountain*, 2020 WL 7364797, at *1 (same).

C. *Catholic Diocese* Prohibits The Governor's Discriminatory Treatment Between Religious Worship Services And Similarly Situated Nonreligious Gatherings.

In *Catholic Diocese*, the Supreme Court held that the applicant churches "clearly established their entitlement to relief" because they "made a strong showing that the challenged restrictions violate 'the minimum requirement of neutrality' to religion." 2020 WL 6948354, at *1 (quoting *Lukumi*, 508 U.S. at 533). Indeed, "**the regulations cannot be viewed as neutral because they single out houses of worship for especially harsh treatment**." *Id.* (emphasis added). In *Catholic Diocese*, in the "red zone" a church could host no more than 10 people, and "orange zone" churches were limited to 25 people. *Id.* at *2. But, in "red zones," "businesses categorized as 'essential' may admit as many people as they wish," and those "essential businesses" included "acupuncture facilities, campgrounds, garages . . . plants manufacturing chemicals and microelectronics and all transportation facilities." *Id.* In the "orange zone," the Court noted that "[t]he disparate treatment

is even more striking" because "[w]hile attendance at a house of worship is limited to 25 persons, even non-essential businesses may decide for themselves how many persons to admit." *Id.*

As the Court held in *Catholic Diocese*, "[b]ecause the challenged restrictions are not 'neutral' and 'of general applicability,' they must satisfy strict scrutiny." 2020 WL 6948354, at *2 (citing *Lukumi*, 508 U.S. at 546). The same is true of the Governor's color-coded Blueprint and its discriminatory treatment of Plaintiffs' religious worship services.

1. The Governor's Discrimination Between Plaintiffs' Churches And Nonreligious Gatherings In Tier 1 Cannot Withstand Strict Scrutiny.

In *Catholic Diocese*, the Supreme Court noted that the treatment afforded to other nonreligious gatherings or so-called "essential" businesses mandated the application of strict scrutiny. The Court explicitly mentioned numerous disparate treatments that are equally present here:

> In a red zone, while a synagogue or church may not admit more than 10 persons, businesses categorized as "essential" may admit as many people as they wish. And the list of "essential" businesses includes things such as acupuncture facilities, camp grounds, garages, as well as many whose services are not limited to those that can be regarded as essential, such as all **plants manufacturing chemicals and microelectronics and all transportation facilities**.

2020 WL 6948354, at *2 (emphasis added). Moreover, "[t]he disparate treatment is even more striking in an orange zone. While attendance at houses of worship is

limited to 25 persons, even non-essential businesses may decide for themselves how many persons to admit." *Id.* In fact, much like here, "a large store in Brooklyn . . . could literally have hundreds of people shopping there on any given day. Yet a nearby church or synagogue would be prohibited from allowing more than 10 or 25 people inside for a worship service." *Id.* (cleaned up).

Justice Gorsuch elaborated further, explaining that while churches were limited to 10 or 25 people,

> the Governor has chosen to impose *no* capacity restrictions on certain businesses he considers "essential." And it turns out the businesses the Governor considers essential include **hardware stores, acupuncturists, and liquor stores. Bicycle repair shops, certain signage companies, accountants, lawyers, and insurance agents are all essential too**. So, at least according to the Governor, it may be unsafe to go to church, but it is always fine to pick up another bottle of wine, shop for a new bike, or spend the afternoon exploring your distal points and meridians.

Id. at *4 (emphasis added) (Gorsuch, J., concurring). Indeed, under New York's COVID-19 restrictions, "People may gather inside for extended periods in bus stations and airports, in laundromats and banks, in hardware stores and liquor shops." *Id.*

Justice Kavanaugh similarly noted New York's disparate treatment, which is equally true here:

> New York's restrictions on houses of worship not only are severe, but also are discriminatory. In red and orange zones, houses of worship must adhere to numerical caps of 10 and 25 people, respectively, but those caps do not apply to some secular buildings in the same

> neighborhoods. **In a red zone, for example, a church or synagogue must adhere to a 10-person attendance cap, while a grocery store, pet store, or big-box store down the street does not face the same restriction. In an orange zone, the discrimination against religion is even starker: Essential businesses and many non-essential businesses are subject to no attendance caps at all**.

Id. at *7 (emphasis added) (Kavanaugh, J., concurring).

The Ninth Circuit, too, was faced with many of the identical discriminatory restrictions at issue here, and found them to mandate strict scrutiny. "Casinos, bowling alleys, retail businesses, restaurants, arcades, and other similar secular entities are limited to 50% of fire-code capacity, yet houses of worship are limited to fifty people regardless of their fire-code capacities." *Calvary Chapel Dayton Valley*, 2020 WL 7350247, at *4. *See also Calvary Chapel Lone Mountain*, 2020 WL 7364797, at *1 (same).

If the restrictions at issue in *Catholic Diocese* fail strict scrutiny by limiting religious worship services to 10 or 25 people, then a total prohibition of religious worship services – by definition – cannot be the least restrictive means. Appellants' requested IPA should issue because the Governor's Blueprint and discrimination against religious worship services fails strict scrutiny.

Here, the Blueprint imposes discriminatory prohibitions on Plaintiffs' churches that are not imposed on similar nonreligious businesses, and **many of the exempted businesses are precisely those discussed in *Catholic Diocese* and *Calvary Chapel Dayton Valley***. As in *Catholic Diocese*, while Plaintiffs' Churches

in Tier 1 are totally prohibited from gathering in any number for indoor religious worship, food packaging and processing plants, laundromats, and warehouses are permitted to operate **with no numerical or capacity restrictions**. *Compare* (Addendum at 1), *with Catholic Diocese*, 2020 WL 6948354, at *4 (Gorsuch, J., concurring). Further, as was equally true in *Catholic Diocese*, Grocery Stores and liquor stores are allowed to operate at 50% capacity with no numerical cap, other "essential retail" at 25% capacity with no numerical cap, "Malls, Destination Centers, and Swap Meets" at 25% capacity with no numerical cap, and laundromats with no percentage or numerical cap, **yet Plaintiffs' churches are still prohibited from gathering with any number of individuals**. *Compare* Mem. 9 *with Catholic Diocese*, 2020 WL 6948354, at *4 (Gorsuch, J., concurring), and *id.* at *7 (Kavanaugh, J., concurring).

As Justice Gorsuch noted, "[i]n recent months, certain other Governors have issued similar edicts. At the flick of a pen, they have asserted the right to privilege restaurants, marijuana dispensaries, and casinos over churches, mosques, and temples." *Id.* at *4 (Gorsuch, J., concurring). Justice Kavanaugh opined that caps on places of worship "do not apply to some secular buildings in the same neighborhoods." *Id.* at *7 (Kavanaugh, J., concurring). These include grocery stores, pet stores, or big box stores down the street. *Id.*

The Supreme Court thus endorsed Judge O'Scannlain's observation:

> [I]indoor worship services are completely prohibited. [But] in these same counties, the State still allows people to go indoors to: spend a day shopping in the mall, have their hair styled, get a manicure or pedicure, attend college classes, produce a television show or movie, participate in professional sports, wash their clothes at a laundromat, and even work in a meatpacking plant.

Harvest Rock Church, Inc. v. Newsom, 977 F.3d 728, 731 (9th Cir. 2020) (O'Scannlain, J., dissenting).

In Tier 1, just as in *Catholic Diocese*, food packaging and processing, laundromats, warehouses, grocery stores, liquor stores, big-box retail stores, malls, destination centers, transportation facilities, and many other so-called "essential" or "critical infrastructure" sectors are exempt from any numerical restriction or capacity limitation whatsoever, and others are subject to more favorable treatment than Plaintiffs' constitutionally protected religious services. (*See* Addendum at 1.) The district court's contention (Ex. 2, dkt. 77, Order at 6) that the Governor's Blueprint is not subject to strict scrutiny under *Catholic Diocese* is plainly absurd. In his efforts to evade the binding precedent of *Catholic Diocese* and this Court's two binding injunctions in *Calvary Chapel Lone Mountain* and *Calvary Chapel Dayton Valley*, the district court opines that religious worship services are treated "like or more favorably than similar secular institutions." (Ex. 2, dkt. 77, Order at 7). In fact, New York presented the district court's same contention to the Supreme Court in *Catholic Diocese*, **and it was squarely rejected**:

> The State argues that it has not impermissibly discriminated against religion because some secular businesses such as movie theatres must remain closed and are thus treated less favorably than houses of worship. **But, under this Court's precedents, it does not suffice for a State to point out that, as compared to houses of worship, *some* secular businesses are subject to similarly severe or even more severe restrictions. . . . Rather, once the state creates a favored class of businesses, as New York has done in this case, the State must justify why houses of worship are excluded from that favored class**.

Catholic Diocese, 2020 WL 6948354, at *8 (Kavanaugh, J., concurring) (emphasis added). This Court should follow the binding precedent of *Catholic Diocese*, not the district court's fundamental misunderstanding of binding precedent, and immediately issue the IPA.

This is all the more true given that the Blueprint *internally* discriminates between Churches' nonreligious and religious activities – allowing the former and banning the latter in the Blueprint Tier 1, and discriminate between nonreligious and religious activities in Tiers 2-4 "Indeed, even non-worship activities conducted by or within a place of worship are not subject to the attendance parameters" otherwise applicable to places of worship. *Harvest Rock Church, Inc. v. Newsom*, 977 F.3d 728, 734 (9th Cir. 2020) (O'Scannlain, J., dissenting).

2. The Governor's Discrimination Between Plaintiffs' Churches And Nonreligious Gatherings In Tier 2 Cannot Withstand Strict Scrutiny.

Similarly, in Tier 2, the discrimination present in *Catholic Diocese* is equally present here—**only worse**. Plaintiffs' churches may operate at 25% capacity or 100

individuals, whichever is fewer, but other gatherings are not subject to such restrictions or specific numerical limitation. (Addendum at 2.) Food packaging and processing, laundromats, and warehouses may continue to operate without capacity limitations or numerical caps. (*Id.*) Grocery Stores, "Essential Retail" (*e.g.*, Walmart, Lowe's, Home Depot, and other "big box" stores), liquors stores, Shopping Malls, Destination Centers, and Swap Meets may operate at 50% capacity but with no explicit numerical cap. (*Id.*) Museums may operate at 25% capacity but without an express numerical limit, and gyms may operate at 10% capacity with no numerical cap. (*Id.*) Ten percent of the capacity of Harvest Rock Church's 1,250-seat Pasadena campus is 125, and 25% is 312. (V. Compl. ¶ 120.)

Such discriminatory treatment warranted strict scrutiny and an injunction in *Catholic Diocese*, yet the Governor asserts it is inapplicable here. Such is not the law. *Compare* (Addendum at 2), *with Catholic Diocese*, 2020 WL 6948354, at *2 (majority opinion); *id.* at *7 (Kavanaugh, J., concurring) (noting the discrimination between religious services and "grocery store[s], pet store[s], or big-box store[s] down the street"). *See also Calvary Chapel*, 2020 WL 7350247, at *3–4.

The district court contended that houses of worship in Tier 2 are treated identically to museums, movie theatres, and restaurants because all such gatherings are subject to "25% capacity or 100 persons." (Ex. 2, dkt. 77, Order at 7.) But, **this is simply false**. Houses of worship, such as Plaintiffs' churches can operate at 25%

capacity or 100 people, **whichever is fewer**. (Addendum at 2.) However, the strict numerical cap is only imposed on Plaintiffs' religious worship services and does not apply other sectors. Food packaging, laundromats, and warehouses have no capacity or numerical limitation in Tier 2, grocery stores, big-box retail stores, shopping malls, destination centers, and swap meets can operate at 50% capacity with no strict numerical cap, and museums can operate at 25% capacity with no strict numerical cap. (*Id.*) So, despite the district court's erroneous understanding, **Plaintiffs' churches are the only category in Tier 2 that has a numerical cap**. *Catholic Diocese* firmly holds that such disparate treatment requires the Governor to satisfy strict scrutiny, which he cannot. *Catholic Diocese*, 2020 WL 6948354, at *2. *See also Calvary Chapel Dayton Valley*, 2020 2020 WL 7350247, at *3–4 (same).

3. The Governor's Discrimination Between Plaintiffs' Churches And Nonreligious Gatherings In Tier 3 Cannot Withstand Strict Scrutiny.

Tier 3 is no different, and its especially harsh treatment of religious worship services must be equally subject to strict scrutiny and immediately enjoined. In Tier 3, Plaintiffs may operate at 50% capacity or 200 people, whichever is fewer. (Addendum.) Food packaging and processing, laundromats, warehouses, grocery stores, "big box" stores, malls, destination centers, and swap meets may all operate with any capacity or numerical restriction of any kind. (Addendum at 3.) Museums are permitted 50% capacity but with no numerical limitation. (*Id.*) Gyms, fitness

centers, family entertainment centers, and cardrooms and satellite wagering centers may all operate at 25% capacity but with no numerical limitation. (*Id.*)

Yet again, such discriminatory treatment warranted strict scrutiny and an injunction in *Catholic Diocese*, as it does here. *Compare* (Addendum at 3), *with Catholic Diocese*, 2020 WL 6948354, *2 (majority opinion); *id.* at *7 (Kavanaugh, J., concurring) (noting the discrimination between religious services and "grocery store[s], pet store[s], or big-box store[s] down the street"). The district court's contention that his Blueprint does not impose especially harsh treatment on Plaintiffs' churches is simply wrong. And, this Court's binding decisions in *Calvary Chapel Dayton Valley* and *Calvary Chapel Lone Mountain*, not to mention *Catholic Diocese*, mandates the application of strict scrutiny and the issuance of an IPA against the Governor's similarly discriminatory restrictions in Tier 3. *See Calvary Chapel Dayton Valley*, 2020 WL 7350247, at *3–4.

D. The Binding Precedent Of The Supreme Court And This Court Demand A Finding That Discriminatory Restrictions On Religious Worship Not Imposed On Favored Businesses Are Not The Least Restrictive Means.

Catholic Diocese unequivocally held that restrictions on religious worship services of 10 or 25 people are not narrowly tailored or the least restrictive means. *See* 2020 WL 6948354, at *2 ("it is hard to see how the challenged regulations can be regarded as 'narrowly tailored'" (emphasis added)). In fact, it held that restrictions on religious worship services of 10 or 25 people "are **far more**

restrictive than any COVID–related regulations that have previously come before the Court, **much tighter** than those adopted by many other jurisdictions hard-hit by the pandemic, and **far more severe** than has been shown to be required to prevent the spread of the virus at the applicants' services." *Id.* (emphasis added).

Here, the Tier 1 restrictions—which impose a total prohibition on all religious worship services for 99.1% of the California population and the vast majority of all of Plaintiffs' churches—are even more restrictive, much tighter, and more severe than those found not narrowly tailored in *Catholic Diocese*. If restrictions of 10 and 25 people are not narrowly tailored, then an absolute prohibition on any religious gatherings plainly fails the test. The same is true of Tier 2 where only houses of worship are subject to a strict numerical cap of the fewer of 25% or 100 while food packaging, laundromats, and warehouses have no capacity or numerical limit, grocery stores, liquor stores, big-box retail stores, shopping malls, and others are subject only to a 50% capacity limit with no numerical limit, and museums have a 25% capacity limit but no numerical limit. (Addendum at 2.) The same is true of Tier 3 where only houses of worship are subject to a strict numerical cap of the fewer of 50% or 200 while food packaging, laundromats, warehouses grocery stores, liquor stores, big-box retail stores, shopping malls, lawyers, accountants, destination centers, swap meets and others have no numerical and capacity limitations no numerical limit, museums have a 50% capacity limit but no numerical limit, and

gyms, fitness centers, family entertainment centers, and cardrooms all have a 25% capacity restriction but numerical cap. (Addendum at 3). As this Court held in *Calvary Chapel Dayton Valley*, 2020 WL 7350247, at *4 and *Calvary Chapel Lone Mountain*, 2020 WL 7364797 at *1, when the government imposes strict numerical caps on religious worship services that are not imposed on secular businesses, the restrictions cannot be considered narrowly tailored.

II. APPELLANTS ARE SUFFERING IRREPARABLE HARM.

Catholic Diocese and the two binding injunctions from this Court in *Calvary Chapel Lone Mountain* and *Calvary Chapel Dayton Valley* compel a finding that the Governor's discriminatory prohibitions and numerical caps on Plaintiffs' religious worship services impose irreparable harm. Astonishingly, the district court held that there was no irreparable harm because Plaintiffs could simply go outside to worship. (Ex. 2, dkt. 77, Order at 13.) The First Amendment demands more, and so, too, does *Catholic Diocese*. "There can be no question that the challenged restrictions, if enforced, will cause irreparable harm." *Catholic Diocese*, 2020 WL 6948354, at *3. Indeed, "'[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Id.* (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). *See also Calvary Chapel Dayton Valley*, 2020 WL 7350247, at *4 (same); *Calvary Chapel Lone Mountain*, 2020 WL 7364797 at *1 (same). These binding decisions require a finding of irreparable harm.

> If only 10 people are admitted to each service, the great majority of those who wish to attend Mass on Sunday or services in a synagogue on Shabbat will be barred. And while those who are shut out may in some instances be able to watch services on television, such remote viewing is not the same as personal attendance. Catholics who watch a Mass at home cannot receive communion, and there are important religious traditions in the Orthodox Jewish faith that require personal attendance.

Catholic Diocese, 2020 WL 6948354, at *3.

Yet, here, the irreparable harm is even more pronounced for multiple reasons: (1) all of Plaintiffs' Churches in Tier 1 are completely prohibited from hosting any religious worship services, regardless of the number in attendance, and (2) Plaintiffs' Churches, pastors, staff, and parishioners face threats of ***daily criminal charges*** (each up to one year in prison), ***fines, and closure***. (*See* Ex. 6 at 7 ("Any violations in the future will subject your Church, owners, administrators, operators, staff, and parishioners to the above-mentioned criminal penalties as well as the closure of your Church.").)

No pastor, church, or parishioner in America should have to choose between worship and prison. As Justice Kavanaugh recognized,

> **There is also no good reason to delay issuance of the injunctions** . . . issuing the injunctions now rather than a few days from now will not only ensure that the applicants' constitutional rights are protected, but also will provide some needed clarity for the State and religious organizations.

Id. at *9 (Kavanaugh, J., concurring) (emphasis added)

Catholic Diocese found irreparable harm inherent where "[t]hirteen days have gone by since the Diocese filed its application, and Agudath Israel's application was filed over a week ago." 2020 WL 6948354, at *3. "It has taken weeks for the plaintiffs to work their way through the judicial system and bring their case to us. During all this time, they were subject to unconstitutional restrictions." *Id.* at *6 (Gorsuch, J., concurring). That delay—**which for Plaintiffs' churches has been since July 18**—was found to be itself irreparable injury. If 13 days and 7 days of delay while unconstitutional restrictions are placed on religious worship is enough for irreparable harm, then there is no question that it is present here where Plaintiffs have been fighting for months to get relief.

III. *CATHOLIC DIOCESE* AND THIS COURT'S TWO BINDING DECISIONS MANDATE A FINDING THAT THE PUBLIC INTEREST FAVORS INJUNCTIVE RELIEF.

In *Catholic Diocese*, the Court unequivocally held that "it has not been shown that granting the applications will harm the public." *Catholic Diocese*, 2020 WL 6948354, at *3. The reason for that was two-fold: (1) "the State has not claimed that attendance at the applicants' services has resulted in the spread of the disease," *id.*, and (2) "the State has not shown that public health would be imperiled if less restrictive measures were imposed." *Id.* Both scenarios are equally true of Plaintiffs' Churches. Plaintiffs Churches have not been the source of any alleged outbreaks,

and the uncontroverted record below demonstrates that Plaintiffs' Churches comply with social distancing and enhance hygiene protocols.

Catholic Diocese found it relevant that the diocese "had been constantly ahead of the curve, enforcing stricter safety protocols than the State required," and that the synagogue "rigorously implemented and adhered to all health protocols." 2020 WL 6948354, at *2. The uncontroverted sworn testimony below establishes that Plaintiffs' Churches are likewise adhering to social distancing, engaging in enhanced sanitization, and implementing other mechanisms to protect their congregants. Indeed, Harvest Rock Church, at all of its campuses, "has been allowing for worship services only the number of people that allows for effective social distancing," "requires everyone to wear a mask into the building," "takes the temperature of everyone entering the building," and "spaces its attendees to achieve proper social distancing." (V. Compl. ¶¶ 120–123; Third Ahn Decl. ¶ 5.) Moreover, Harvest Rock Church, at all of its campuses, "has its building and restrooms professionally sanitized after hosting each worship service." (V. Compl. ¶¶ 120–123; Third Ahn Decl. ¶ 5.) Plaintiff Harvest International Ministry's member churches in California take the same precautions. (V. Compl. ¶ 124; Third Ahn Decl. ¶ 6.) And, Plaintiffs Churches have not been the source of any outbreak or spread of the virus, just as in *Catholic Diocese*. (Third Ahn Decl. ¶8.)

The binding precedent from this Court also holds that issuing an injunction preventing discriminatory restrictions on religious worship services serves the public interest. *Calvary Chapel Dayton Valley*, 2020 WL 7350247, at *4; *Calvary Chapel Lone Mountain*, 2020 WL 7364797 at *1.

CONCLUSION

For the foregoing reasons, this Court should issue the IPA.

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing was filed via the Court's ECF filing system and therefore service will be effectuated by the Court's electronic notification system upon all counsel or parties of record. In addition, and in accordance with Counsel's Rule 27 Certification, counsel for Defendant–Appellee has also been served with a true and correct copy of the foregoing via electronic mail.

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TABLE OF BLUEPRINT TIERS AND SELECTED SECTOR RESTRICTIONS

TIER 1 **Widespread**	**SECTOR/ACTIVITY**	**RESTRICTIONS**
	Places of Worship: religious services in building	**No indoor gathering; outdoor only**
	Places of Worship: nonreligious social services in building	**No building capacity or numerical limitation**
	Food packing and processing (Critical Infrastructure)	No building capacity or numerical limitation
	Laundromats (Limited Services)	No building capacity or numerical limitation
	Warehouses (Logistics and Warehousing Facilities)	No building capacity or numerical limitation
	Grocery Stores (Retail)	50% capacity with no maximum
	Other Essential Retail ('big box' stores)	25% capacity with no maximum
	Shopping Centers (Malls, Destination Centers, Swap Meets)	25% capacity with no maximum
	Museums	Outdoor only
	Gyms and Fitness Centers	Outdoor only
	Family Entertainment Centers	Outdoor only
	Cardrooms, Satellite Wagering	Outdoor only

TIER 2 Substantial	SECTOR/ACTIVITY	RESTRICTIONS
	Places of Worship: religious services in building	**25% capacity or 100 people, whichever is fewer**
	Places of Worship: nonreligious social services in building	**No building capacity or numerical limitation**
	Food packing and processing (Critical Infrastructure)	No building capacity or numerical limitation
	Laundromats (Limited Services)	No building capacity or numerical limitation
	Warehouses (Logistics and Warehousing Facilities)	No building capacity or numerical limitation
	Grocery Stores (Retail)	50% capacity with no maximum
	Other Essential Retail ('big box' stores)	50% capacity with no maximum
	Shopping Centers (Malls, Destination Centers, Swap Meets)	50% capacity with no maximum
	Museums	25% capacity with no maximum
	Gyms and Fitness Centers	10% capacity with no maximum
	Family Entertainment Centers	Outdoor only
	Cardrooms, Satellite Wagering	Outdoor only

TIER 3 Moderate	SECTOR/ACTIVITY	RESTRICTIONS
	Places of Worship: religious services in building	**50% capacity or 200 people, whichever is fewer**
	Places of Worship: nonreligious social services in building	**No building capacity or numerical limitation**
	Food packing and processing (Critical Infrastructure)	No building capacity or numerical limitation
	Laundromats (Limited Services)	No building capacity or numerical limitation
	Warehouses (Logistics and Warehousing Facilities)	No building capacity or numerical limitation
	Grocery Stores (Retail)	No building capacity or numerical limitation
	Other Essential Retail ('big box' stores)	No building capacity or numerical limitation
	Shopping Centers (Malls, Destination Centers, Swap Meets)	No building capacity or numerical limitation
	Museums	50% capacity with no maximum
	Gyms and Fitness Centers	25% capacity with no maximum
	Family Entertainment Centers	25% capacity with no maximum
	Cardrooms, Satellite Wagering	25% capacity with no maximum

TIER 4 Minimal	SECTOR/ACTIVITY	RESTRICTIONS
	Places of Worship: religious services in building	**50% capacity with no maximum**
	Places of Worship: nonreligious social services in building	**No building capacity or numerical limitation**
	Food packing and processing (Critical Infrastructure)	No building capacity or numerical limitation
	Laundromats (Limited Services)	No building capacity or numerical limitation
	Warehouses (Logistics and Warehousing Facilities)	No building capacity or numerical limitation
	Grocery Stores (Retail)	No building capacity or numerical limitation
	Other Essential Retail ('big box' stores)	No building capacity or numerical limitation
	Shopping Centers (Malls, Destination Centers, Swap Meets)	No building capacity or numerical limitation
	Museums	No building capacity or numerical limitation
	Gyms and Fitness Centers	50% capacity with no maximum
	Family Entertainment Centers	50% capacity with no maximum
	Cardrooms, Satellite Wagering	50% capacity with no maximum