

LYNETTE LABINGER

ATTORNEY AT LAW

April 9, 2020

VIA EMAIL

Claire Richards
Executive Counsel
Office of the Governor
State House
Providence, RI 02903

The Hon. Peter Neronha
Attorney General
150 South Main Street
Providence, RI 02903

Dear Ms. Richards and Attorney General Neronha:

I write as cooperating counsel for the American Civil Liberties Union Foundation of Rhode Island (“ACLU”) on behalf of Jane Doe (“JD”)¹ and her husband, long-time residents of New York, NY (outer borough) and the Town of South Kingstown, Rhode Island. This letter concerns the legality and applicability of the restriction on travel and movement of persons identified as “non-residents” of the State of Rhode Island imposed by Executive Order of the Governor and of the Town of South Kingstown, and related law enforcement activities of the Rhode Island National Guard, State Police and local police.

The Governor’s Executive Orders and official positions seemingly create irrational, differential and discriminatory restrictions upon similarly situated persons based solely on their residency. But even if the Executive Orders also apply to habitual Rhode Island residents who leave the state, the State has not provided notice of any procedure to challenge their applicability or seek exemptions, as required by due process. Nor has the State established an infrastructure to ensure that those under quarantine will have adequate, timely access to the necessities of life, including food.

JD reached out to the ACLU of RI for assistance after she was visited twice by local law enforcement insisting that she and her husband quarantine at home for 14 days.

JD has a primary, single family residence in one of the New York outer boroughs and a second single family home in South Kingstown, RI. She has owned both residences for many

¹ Because of the personal nature of their situation, the couple has requested anonymity for purposes of this letter.

years and travels to South Kingstown year-round for weekend stays, staying at her RI home at least one out of every three weekends.

Last month, JD and her husband returned to RI on Saturday, March 14, 2020, and stayed until Monday, March 23, 2020, at which time they returned to the greater New York area so that her husband could obtain chemotherapy treatment for cancer at a dedicated chemotherapy facility in New Jersey. At all times, JD and her husband use their private vehicle and exercise stringent distancing to avoid contact with others, in view not only of the current pandemic but her husband's compromised health. The protocol for chemotherapy provides that JD's husband spend one day at the New Jersey facility, at which the chemotherapy treatment is started, followed by two days at home in her New York residence while chemotherapy continues to be delivered, with a return to the chemotherapy facility in New Jersey for an injection of Neulasta to promote growth of new white blood cells to reduce the chance of infection. Every part of the therapy is critical for the health of JD's spouse. At the conclusion of the second chemotherapy session in New Jersey on March 25, 2020, JD and her husband returned directly to their home in South Kingstown.

JD's decision to make South Kingstown their primary residence for now – because they have more quiet and less population for outdoor walks and exercise – is supported by her husband's oncologist. Her husband's next scheduled round of chemotherapy starts on April 20, 2020, when JD and her husband will need to leave Rhode Island to start the chemotherapy protocol again, with a return on or about April 22, 2020.

On March 27, 2020, while JD was at home, a South Kingstown police officer approached the home, holding a flyer and inquiring if she were from New York. When she replied in the affirmative, he advised that she needed to remain in quarantine for a two-week period.

On March 30, 2020, two members of the National Guard and a local police officer again appeared at JD's home. They requested contact information for JD and her husband and informed her that she needed to self-quarantine. They left four pages of notices from the Town of South Kingstown, identifying the Town and the Governor's Executive Orders and a list of "Tips for At-Home Quarantine."

In order to comply with the Governor's Executive Order of self-quarantine, JD and her husband are restricted to their home and yard. They are not permitted to leave for any purpose other than, apparently, medical emergency. This includes a ban on obtaining groceries or other necessities, traveling to work (not an issue for them), and getting fresh air or exercise.

Before receiving the notices, JD had already done some local shopping for provisions, but anticipated the need for more. Because of her husband's compromised health, she prepares all of their meals and is not comfortable with ordering delivery of restaurant-prepared food. In the next several days, she struggled to identify a source for grocery delivery. On April 2, 2020, she was able to place an order for delivery with Peapod, but it will not be delivered until April 15, 2020, a full week after the current 14-day quarantine is slated to end. Lengthy grocery delivery delays like this are consistent with public reports. Only two days after the Governor announced the

establishment of a new food delivery service, RIDelivers, she reported that the service was “already overwhelmed, with more than 40,000 requests for meals in a single day. She asked Rhode Islanders who are young and healthy, and not in quarantine, to get their food in person.”²

I. The Governor’s Executive Orders and official positions seemingly create irrational, differential and discriminatory restrictions upon similarly situated persons.

The operative Executive Order, number 20-14, issued March 28, 2020, requires “[a]ll Rhode Island residents [] to stay home unless traveling to work, traveling for medical treatment or obtaining necessities (food, medicine, gas, etc.). Rhode Island residents may still go outside to exercise and get fresh air, however, they must practice social distancing while outside and avoid touching surfaces frequently touched by others.” Thus, persons deemed to be Rhode Island residents have been commanded to “stay at home” but are not in “quarantine,” since they are permitted to leave the house for fresh air or exercise, and to travel for work, medical treatment or necessities. Persons subject to quarantine, according to the Department of Health website,³ are required to stay home completely—no walks or outdoor activity, no grocery shopping. Within the house, individuals are directed to isolate from others as much as possible. If a person under quarantine has a medical appointment, they are instructed to “call the healthcare provider ahead of time and tell them that you have been exposed to COVID-19,” even though that may not be true.

A Rhode Island resident may travel outside the state to shop for groceries or necessities or to attend a medical appointment without fear of interference by police at the border or imposition of a 14-day quarantine upon their return.⁴ A Rhode Island resident appears free to travel to Boston, Connecticut or New York by car for a much-needed medical appointment, without government interference or new restriction, while a non-resident departing from Rhode Island under the same circumstances would not only be stopped at the border (if arriving from the south) upon her return, but also directed to self-quarantine for a 14-day period.

² <https://www.providencejournal.com/news/20200403/2-deaths-54-new-cases-of-coronavirus-in-ri-residents-encouraged-to-wear-face-coverings-when-in-public>, accessed 4/6/2020.

³ <http://www.oha.ri.gov/documents/COVID19-At-Home-Quarantine.pdf>, accessed 4/6/20.

⁴ At a news conference on March 28, 2020, Governor Raimondo acknowledged that the new restrictions were neither intended, nor would they be enforced, to interfere with Rhode Islanders shopping across state borders. “If you live in East Providence and you go to Seekonk for your groceries, fine, go. Go there limited in time; go once a week, don’t spend too much time. Keep your social distance. Not a problem... But there will be no enforcement with license plates for people from other states other than New York.” <https://whatsuprhodeisland.com/2020/03/watch-governor-director-of-health-covid-19-update-march-28th/>, accessed 4/6/20, starting at approximately 49:00 (unofficial transcript).

II. In establishing these restrictions, the Executive Orders do not provide notice of any procedure to challenge their applicability or seek exemptions. The State has also failed to establish an infrastructure to ensure that those under quarantine will have adequate, timely access to necessities.

Due process requires that, at minimum, the state provide those subject to mandatory quarantine with the ability to challenge their restrictions before a neutral decisionmaker. But neither Executive Order 20-14 nor any preexisting order provides a mechanism for a person ordered into quarantine to challenge such restriction (including whether the quarantine has been mistakenly applied), or seek exemptions. The failure to do so means that those individuals, like JD and her husband, who face particular hardship from the Executive Orders or are unable to engage in life-sustaining activities, are left without required recourse.⁵

Once the State has imposed a mandatory quarantine on someone preventing them from leaving their home, it also has an obligation to ensure that they have access to adequate supplies of food, medicine, and other necessities. The State has failed to do so in this case. While the State has implemented RIDelivers and is in the process of identifying other private vendors who may be able to provide groceries, medicines or other necessities to persons under quarantine, the State has not established any infrastructure to ensure that those under quarantine will have adequate, timely access to those necessities.⁶ Urging individuals under quarantine to make their own arrangements or to rely upon the assistance of neighbors or family is no substitute or equivalent, particularly where the local supply chains are stretched thin and overburdened.

As mentioned previously, JD reached out to the ACLU of RI for assistance because of the burdens placed upon her by the mandated quarantine. The ACLU of RI believes that the scope of the current statewide and municipal executive orders, in creating and/or enforcing distinctions between “in-state” and “out-of-state” residents as to who must be subjected to an automatic 14-day quarantine, is both irrational and discriminatory, in violation of, among other things, the right of interstate travel and the privileges and immunities protections granted to all citizens by Article IV of, and the Fourteenth Amendment to, the United States Constitution. *See, e.g., Zobel v. Williams*, 457 U.S. 55, 60, n. 6 (1982); *Toomer v. Witsell*, 334 U.S. 385, 395 (1948); *Paul v. Virginia*, 19 L.Ed. 357 (1869).

We further believe this discriminatory treatment cannot be justified on a public health basis for at least three key reasons. First, COVID-19 is already widely present in Rhode Island and, in fact, had been announced by health officials to be the subject of “community spread” as early as

⁵ We further note that the State provides no opportunity for individuals who have been quarantined solely due to their out-of-state status or travel to be tested for COVID-19 and demonstrate they are not a carrier of the disease.

⁶ At her April 7 COVID-19 news conference, the Governor encouraged residents to visit the private website www.nextdoor.com to see if neighbors had signed up to offer assistance to others who needed help with groceries and other necessities.

March 16th,⁷ and is prevalent to a greater degree than its presence at the location from which many out-of-state travelers are departing. Second, the Governor's public comments have consistently made clear that *local Rhode Island residents* have failed to take seriously the social distancing restrictions that are key to minimizing the spread of the disease.⁸ Finally, the orders do not apply quarantine to identically situated habitual Rhode Island residents departing from the same out-of-state locations and returning to Rhode Island.

We submit that JD and her husband, having remained continuously in RI under quarantine for 14 days without exhibiting COVID-19 symptoms, should be treated no differently than other Rhode Island residents whose primary residence is in Rhode Island or who drive cars with Rhode Island plates, regardless of the state listed on their license plate. For that reason, we further believe that they are entitled to leave their home for a medical appointment—even one in New Jersey and New York—and thereafter return to Rhode Island without being required to commence and complete another 14-day quarantine, during which they would not be able to leave the house to obtain groceries, medicine, or other necessities, or to get fresh air or exercise.

Should the State in fact be imposing such a mandatory quarantine on anyone who leaves the State of Rhode Island for a medical appointment, regardless of their license plates or state of habitual residence, we ask the State to clarify this. We then further ask the State to explain the procedure for individuals to challenge any such mandatory quarantine. Lastly, we ask the State to explain the infrastructure it has established to ensure that the many individuals now subject to mandatory quarantine are in fact able to timely access the necessities of life.

We also urge you, in responding to these requests, to immediately address and correct this situation specifically for JD and her husband, and to make this clarification public. This step is critical so that other individuals like JD who have traveled to the State are not placed in the position of risking the imposition of fines or imprisonment because they need to buy groceries or go to a medical appointment and do not have other recourse despite having no greater risk factors for spreading COVID-19 than other members of the public.

In light of the urgency of this situation, we request that you provide a response to our inquiries by April 14, 2020.

In closing, I want to emphasize that we fully appreciate the exigencies under which the State is operating and the difficult decisions that the State has had to make to address this medical crisis. At the same time, fundamental notions of due process cannot be ignored when the State

⁷ <https://www.providencejournal.com/news/20200316/raimondo-shutting-dine-in-restaurants-bars-for-2-weeks-rsqcommunity-spreadrsquo-of-virus-now-seen-in-ri> , accessed 4/6/20.

⁸ At a March 28, 2020 news conference, the same day the quarantine order against people arriving from out of state was issued, the Governor estimated that about half of all Rhode Island residents were ignoring her social distancing orders. <https://www.providencejournal.com/news/20200328/ri-tightens-restrictions-after-2-virus-deaths>, accessed 4/8/20.

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engages in the substantial deprivation of individual liberty that mandatory quarantine orders entail.

We look forward to your prompt response. Thank you.

Respectfully submitted,

A handwritten signature in blue ink that reads "Lynette Labinger". The signature is written in a cursive style with a large initial "L".

Lynette Labinger

cc: Michael Ursillo, Esq., Town Solicitor, Town of South Kingstown, RI (by email)