

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

TROPICAL CHILL CORP.; ELIZA
LLENZA; YASMIN VEGA; AND RENE
MATOS,

Plaintiffs,

v.

HON. PEDRO R. PIERLUISI URRUTIA, IN
HIS OFFICIAL CAPACITY AS
GOVERNOR OF THE COMMONWEALTH
OF PUERTO RICO, HON. CARLOS R.
MELLADO LÓPEZ, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF HEALTH
OF THE COMMONWEALTH OF PUERTO
RICO,

Defendants.

Civil No. 21-1411 (RAM)

JURY TRIAL DEMANDED

Amended Complaint for Declaratory and Injunctive Relief

The plaintiffs, Tropical Chill Corp., Eliza Llenza, Yasmin Vega, and Rene Matos respectfully submit this amended complaint as matter of course pursuant to Fed. R. Civ. P. 15(a)(1)(B) for declaratory and injunctive relief arising under the Fourteenth Amendment, the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb-§ 3 2000bb, as well as pendent claims against the defendants, Hon. Pedro R. Pierluisi Urrutia, in his official capacity as governor of the Commonwealth of Puerto Rico, and Hon. Carlos R. Mellado López, in his official capacity as Secretary of Health of the Commonwealth of Puerto Rico.

Introduction

1. This § 1983 action challenges the constitutionality of the Commonwealth of Puerto Rico's series of executive orders, particularly the imposition of vaccination-verification duties on the private sector, as described in Executive Orders Nos. 2021-062–064. It also impugns the constitutionality of the Health Secretary's Regulation No. 138-A, Exhibit No. 1, which amends Regulation No. 138 for the Issuance of Health Certificates in Puerto Rico ("Regulation 138-A") to require proof of COVID-19 vaccination.
2. The world is coming to grips with the undeniable reality that COVID-19 is here to stay, an endemic part of our ecosystem like the coronaviruses that cause the common cold. Cf. Jeffrey A. Singer, *Society Will Never Be Free of COVID-19—It's Time to Embrace Harm Reduction*, Cato Inst. Pandemics & Policy, Aug. 25, 2021, <https://bit.ly/3ksoyRx>.
3. The government must prepare for the long-term engagement with COVID as an endemic phenomenon and strengthen the healthcare system in hospitals and in the community to succeed in this task. See *Position Paper - The Science and the Ethics Regarding the Risk Posed by Non-Vaccinated Individuals*, The Israeli Public Emergency Council for the Covid19 Crisis, August 11, 2021, <https://bit.ly/3sRz4FD>.
4. Vaccination should be treated as a primary means for providing protection against severe illness or death, especially for persons at high risk—not to reduce cases. See *id.*
5. There is no scientific evidence whatsoever supporting the claim that non-vaccinated individuals are risking the public's health in any way more than vaccinated people or that their lack of being vaccinated is a factor that facilitates the continuation of the pandemic

or that causes a threat of collapse to the healthcare system. The vaccinated individuals have their own umbrella of protection, which continues to protect them from severe illness regardless of the person who transmitted the virus to them. *See id.*

6. Because COVID is here to stay, an indefinite state of emergency, with extraordinary government—and especially executive powers—that restrict individual liberties is unconstitutional.

7. Coercion and threats do not motivate or foster healthy behaviors; public-health policy is effective only when it is based on education and dialogue.

8. As explained below, contrary to public perception, and partially because of inaccurate or incomplete reporting, Puerto Rico's low rates of COVID infection, hospitalization, and death, combined with its high vaccination rates and low burdening of the health care system—despite low institutional capacity across a variety of sectors—make COVID-vaccination mandates particularly unreasonable in the Commonwealth.

9. The plaintiffs, all private citizens (except Tropical Chill) are all residents of Puerto Rico and are all suffering damages from the challenged government actions.

10. From July 30 to August 19, 2021, the defendant, Governor Pierluisi, enacted a series of executive orders related to COVID and the enforcement of vaccination mandates. These orders have come in waves, rolling in like the Caribbean waters at high tide. The ones challenged here are Executive Order (“EO”) Nos. 2021 062–064 (collectively, the “Rolling EOs”).

11. The Rolling EOs not only violate the plaintiffs' constitutional rights—they are arbitrary and capricious, and their means are not “closely drawn to avoid unnecessary abridgment of” the plaintiffs' rights, *McCutcheon v. Federal Election Commission*, 572 U.S. 185, 197 (2014)—but also encroach on the separation of powers by exercising legislative powers that have either not been delegated or cannot be delegated to the executive under the Puerto Rico constitution, further to the detriment of individual rights and freedoms that the rule of law is meant to protect.

12. COVID statistics further bolster the claim that now, 18 months after the pandemic's onset, the Commonwealth's government cannot continue to have unfettered emergency powers that violate its citizens' individual liberties.

13. Although institutional capacity is lower in Puerto Rico than in any mainland U.S. jurisdiction, the pandemic never came close to jeopardizing the normal operations of our health care system: We never even had to truly worry about “flattening the curve.”

14. Puerto Rico reached over 60% full vaccination by May 31, 2021. And as of October 6, 2021, the Puerto Rico Department of Health reported that 79.3% of eligible recipients have been fully vaccinated and 87.7% of eligible recipients have received at least one dose.

15. Now, as of October 6, 2021, with over 79.3% of the eligible population fully vaccinated, 87.7% of it with at least one dose, and 87.9% of 60 years old or older with at least one dose and 82% fully vaccinated, our healthcare system will not be stressed going forward.

16. Puerto Rico currently ranks 2nd among U.S. states and territories in percentage of total population fully vaccinated. And as the vaccination rate further increases, the percentage

of total cases among the vaccinated will naturally increase—but that, too, will not be alarming because the total rate of cases, hospitalizations, and deaths will go down the higher the vaccination rate goes up.

17. Still, the Rolling EOs justify their strong measures by referencing the “positivity rate,” meaning that a high percentage of COVID tests are coming back positive. But this a classic denominator problem: not that many Puerto Ricans are being tested—50% less than on the mainland—which means that it’s largely those who are hospitalized or otherwise displaying obvious symptoms would be the ones getting tested. In other words, there’s no correlation between the “positivity rate” and the percentage of the population that has COVID.

18. A better—more important leading—indicator is the effective reproductive number (R_t), which gauges epidemic growth. R_t is the average number of people that an individual infected on day t is expected to go on to infect. When R_t is above 1, we expect cases to increase in the near future. When R_t is below one, we expect cases to decrease in the near future. As of October 5, 2021, Puerto Rico’s R_t is 0.77. After dropping below 1 on August 14, it has continued a downward spiral since then. See The covidestim project (Stanford, Yale and Harvard Colb), Effective reproduction number (R_t) (Puerto Rico) (06Oct2021), <https://covidestim.org/>.

19. Be that as it may, the reason for Puerto Rico's low amount of testing is quite simple: too many obstacles and burdens (*e.g.*, medical referral, health insurance plan, \$50–\$100+ cost) and extremely limited to non-existent public testing facilities.

20. But because COVID tests are not as readily available in Puerto Rico as they are on the mainland, the government is using its own lack of institutional capacity to justify imposing severe burdens on individuals.

21. The Rolling EOs and Regulation 138-A suffer from similar but not identical infirmities, including vagueness, overbreadth, and seemingly arbitrary terms both facially and as implemented.

22. The Rolling EOs' so-called religious and medical exemptions themselves are vague: it is unclear whether these so-called exceptions are even real "exemptions," because those who decline vaccination for other reasons have the same alternative (weekly testing) as those with religious objections or medical exemptions—except those with "legitimate" objections must jump additional hoops with medical certificates and clerical affidavits.

23. The Rolling EOs have already been subject to different interpretations by different government agencies, burdening employees, business owners, travelers, and others in seemingly arbitrary ways.

24. The inconsistent and sometimes contradictory way in which the Rolling EOs requirements have been rolled out across agencies and businesses bolsters the arbitrariness of the government action.

25. The above litany of facts demonstrates that the Puerto Rico government is willing to do anything to force the plaintiffs, and other Puerto Ricans, even by deceit, into getting vaccinated, with little if any regard to their fundamental rights to personal autonomy, religious beliefs, and medical choice.

26. And the government is encroaching on private-sector employees' and entrepreneurs' right to earn an honest living, including conditioning health and occupational licenses on vaccination. It's a classic unconstitutional condition.

27. What's more, the government is forcing the private sector to do its dirty work, in effect commandeering businesses large and small to verify vaccination and police testing.

28. All this, when the unvaccinated only threaten themselves and other unvaccinated people. No vaccine confers absolute immunity, but someone who's vaccinated has little to fear from the decreasing minority of fellow citizens who aren't.

29. For the reasons stated above and below, the Rolling EOs and Regulation 138-A violate the economic liberty and property rights protected by the Fourteenth Amendment, which includes the right to earn an honest living, to contract with customers in mutually beneficial voluntary exchange, and to use and enjoy one's property.

30. The Rolling EOs and Regulation 138-A also violate the Fourteenth Amendment rights of personal autonomy and bodily integrity, and the right to reject medical treatment.

31. In requiring proof of vaccination under one of the "tests" for a health certificate, Regulation 138-A is arbitrary and capricious: One could be vaccinated and still get COVID.

Indeed, mandatory regular testing—assuming it’s government-provided and paid for—would have greater justification than mandatory vaccination.

32. And because they contain unlawful threats of criminal prosecution unsupported under Puerto Rico law, the Rolling EOs are null and void.

Jurisdiction and Venue

33. This Court has jurisdiction over all claims under 28 U.S.C. §§ 1331 and 1343(a), and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

34. This Court also has specific personal jurisdiction over the defendant, as the events giving rise to the claims took place in this forum.

35. Venue is proper under 28 U.S.C. § 1391, because all parties reside in this District, and because a substantial part of the events prompting the claims occurred in this District.

The Parties

36. Plaintiff Tropical Chill is a Puerto Rico corporation that operates three ice-cream stores in San Juan, Guaynabo, and Dorado.

37. Plaintiff Eliza Llenza, a resident of San Juan, Puerto Rico, has been unemployed since the first lockdown. She recovered from COVID-19 and thus has natural immunity. Therefore, she doesn’t need to be vaccinated. For Ms. Llenza, it has been extremely difficult to find employment that does not require vaccination. She does, however, volunteer as and collaborate with several organizations she belongs to and as an assistant to Dr. Michael González.

38. Plaintiff Yasmin Vega, resident of Mayaguez, Puerto Rico, is the owner of an Airbnb business named Hillside Cabin.

39. Plaintiff Rene Matos, a resident of San German, Puerto Rico, has been working as a stock clerk for a supermarket for over three years.

40. All the plaintiffs genuinely and strongly believe that vaccination must be voluntary and based on their—or their clients’ or customers’—personal assessment in good conscience of the medical risks/benefits and morality of a particular vaccine.

41. As to the Rolling EOs, the defendant is Hon. Pedro R. Pierluisi Urrutia, in his official capacity as governor of the Commonwealth of Puerto Rico, who, under color of state law, promulgated the Rolling EOs.

42. As to the Health Certificate Regulation, the defendant is Hon. Carlos Mellado, in his official capacity as Secretary of Health Commonwealth of Puerto Rico, who, under color of state law, enacted Regulation 138-A.

Facts Common to All Claims

A. Regulation 138-A, Rolling EOs, and the So-Called Exemptions

43. From July 30 to August 19, 2021, the governor enacted a series of Rolling EOs affecting non-government workers and private businesses.

44. On July 30, the Governor and the Health Secretary announced in pertinent part that that the health-certificate requirements would be amended to require COVID vaccination.

45. On August 5, the Health Secretary enacted Regulation 138-A, which became effective “immediately.” Exhibit No. 1 at 3.

46. Regulation 138-A made it clear that it was “adopted with the purpose of expressly establishing the requirement to present the vaccination card against COVID-19 or the ‘COVID-19 Vaccination Record Card’ as an essential document for a doctor to issue a health certificate.” *Id.* at 2.

47. It defines “COVID-19 Vaccination Record Card” as the “official vaccination card against COVID-19 issued by the CDC, which identifies individuals who have been completely inoculated with the aforementioned virus.” *Id.*

48. Although the COVID-19 Vaccination Record Card is not a “test,” Regulation 138-A nonsensically added the COVID vaccine as part of the “tests” required to issue a health certificate, which, as relevant here, is legally required to work in pharmacies, as well as for many other occupational licenses.

49. Regulation 138-A thus amended Article X as follows: 1. “No doctor may issue health certificates without the following: (1) a medical evaluation, (2) having certified that the person has shown evidence of vaccination against COVID-19 (COVID-19 Vaccination Record Card) with the series of complete vaccine, issued by the CDC, (3) the results of the in vitro tuberculin or tuberculosis test and (4) the serological test for syphilis, with their respective confirmatory tests when applicable.” *Id.*

50. Regulation 138-A contains a health exception, not relevant here. *Id.* at 3.

51. “By way of exception,” Regulation 138-A further provides that the “Health Certificate be issued to people not inoculated for religious reasons, as long as the vaccine goes against the dogmas of the patient’s religion. The doctor must certify that he was shown the sworn

statement required by the Department of Health for these cases, in accordance with the Executive Orders in force.” *Id.*

52. Meanwhile and pertinently, that same day, August 5, 2021, the Governor issued Executive Order No. 2021-062 (EO 062) “to require the COVID-19 vaccine to . . . the health and hospitality sectors.” Exhibit No. 2.

53. Section 2 of EO 062 generally requires that all employees of working in the health sector—which includes pharmacies—, regardless of their position, to have been inoculated with a COVID-19 vaccine that has been granted Emergency Use Authorization by the FDA. *Id.*, § 2, pp. 8-9.

54. Section 4 of EO 062 generally requires that all guests of hotels, hostels, and “Short Term Rentals,” managed independently or through platforms, as relevant here, Airbnb, to have been inoculated with a COVID-19 vaccine that has been granted Emergency Use Authorization by the FDA. *Id.*, § 4, p. 10.

55. Sections 2 and 4 of EO 062 refer to two so-called “exemptions” in section 5.

56. Section 5’s exemptions are for: (1) for persons with compromised immune systems or any other medical contraindication (medical exemptions), in which case they have to submit a medical certificate to that effect; and (2) for persons who refuse to get vaccinated due their religious beliefs (religious exemption), in which case they are required to execute an affidavit attesting to their religious beliefs. The “sworn statement required” by EO 062, in turn mandates that the would-be religious objector obtain an affidavit, under penalty of perjury, attesting that they cannot be inoculated due to their religious beliefs. *Id.*, § 5, p. 11.

57. Sections 5 of EO 062 further dictates that those to whom the so-called exemptions apply, are also required to present a negative COVID-19 test result on a weekly basis from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces. *Id.*

58. A logical reading of sections 2 and 4 of EO 062 suggests that people who are not vaccinated and who do not fall within any of the exemption will not be allowed to work in the health and hospitality sectors, and guests will not be allowed to stay the night in hotels or Airbnb.

59. But section 6 of EO 062 casts serious doubts on whether the so-called medical and religious exemptions included in Section 5 are even real “exemptions.”

60. The reason is that Section 6, titled “DENIAL OF VACCINATION,” states, in pertinent part, that any health sector employee or Airbnb guest “who does not present their immunization certificate (‘COVID-19 Vaccination Record Card’)” or document proving that they have completed or started their vaccination process against COVID-19 and “to whom no exemption is applicable” must present the very same COVID-19 test results, “pursuant to the conditions stated in Section 5 of this order.” *Id.*, § 6, pp. 13-4 (emphasis added).

61. Read literally, the above means that an employee or guest is required to submit an affidavit only if he or she invokes a religious faith or a medical condition. If the employee

doesn't invoke an exception, he or she may "work in person" in the health sector or be a guest in a hotel or Airbnb only by submitting to weekly COVID tests, without any need to submit a medical certificate or affidavit.

62. The above conclusion is buttressed by the Puerto Rico Tourism Company's—the agency in charge of establishing the applicable guidelines and regulations to enforce EO 062, *see id.*, § 7—Guidelines Re: Updated guidance for tourism businesses for the implementation of the Executive Order 2021-062. Exhibit No. 3 (Tourism Guidelines).

63. Curiously, the Tourism Guidelines lack any mention to religious or medical exemptions.

64. The way that OE 062 is drafted together with the governor's expressions to the public make pellucid that the government is purposely deceiving the public into believing that only if they have a medical condition or religious objection may they choose to submit to weekly COVID tests instead of getting vaccinated. *See, e.g.*, Press Release by the Governor's Office, re: EO 2021-062, Exhibit No. 4 at 1 ("the exceptions will be the persons with medical conditions . . . [and] persons who, for religious reasons decided not to get vaccinated . . .".)

65. EO 2021-063 "For the Purposes of Requiring Mandatory COVID-19 Vaccinations and Screening for the Restaurant, Bar, Theater, Cinema, Stadium, And Activity Center Sectors, Among Others," Exhibit No. 5 (OE 063), and EO 2021-064 "To Implement Measures Against the COVI-19 in the Sectors of Gyms, Beauty Salons, Barber Shops, Spa, Childcare, Casinos, Supermarkets, Grocery Stores, Among Others," Exhibit No. 6 (OE 64) suffer from the same infirmities as OE 062.

66. EOs 063 and 064 require, as a rule, that both workers and patrons of the respective economic sectors—except for patrons in supermarkets, grocery stores, and pharmacies—be inoculated with a EUA COVID-19 vaccine. *See* Exhibit 5, §1, p. 8; Exhibit No. 6, §§ 1 & 4, pp. 9-10 & 12.

67. For the workers in the above-mentioned sectors, like Plaintiff Matos, who works in a supermarket, EOs 063 and 064 include the same so-called medical and religious exemptions as in EO 062. *See* Exhibit 5, § 2, p. 9-10; Exhibit 6, § 2, pp. 10-11.

68. As with EO 062, the so-called exemptions for workers in EOs 63 and 64 seem to be worthless. This is because Sections 3 of both EOs, titled “Employees Who Decline Vaccination” (§ 3 of both EOs 063 & 064), allow any employee in the respective sectors, regardless of exemptions, to work in the facilities as long as they present the very same COVID-19 test results weekly that are required for those with religious or medical exemptions.

69. EOs 063 and 064 require that all patrons of restaurants, bars, theaters, beauty salons, gyms, supermarkets, and grocery shops, among others, present proof of vaccination or a negative COVID-19 test result. Otherwise, those establishments are supposed to deny those customers entry into their businesses.

70. As distinct from the employees covered under EOs 063 and 064, who must present their test results on a *weekly basis*, patrons are required to provide a negative test result not older than 72 hours *each time* they visit one of the covered businesses. *See* EO 063, § 4, pp. 11-12; EO 064, § 4, p. 12.

71. The only option for businesses that do not want to require patrons to show proof of vaccination, or negative COVID test results is to operate at 50% capacity. *See* EO 063, § 5, p. 12; EO 064, § 4, p. 13.

72. This is a good place to note that the process for taking a COVID-19 test in Puerto Rico is quite burdensome:

- a. The tests are very expensive for people without health insurance, ranging from \$50 to \$100.
- b. For people with health insurance, the process requires them to obtain a medical referral from a physician before getting tested, which cost between \$10 and \$15, depending on the individual's health insurance plan.
- c. Free public testing facilities are limited throughout the island and usually require test-takers to spend several hours waiting in line.

73. There are serious consequences for those who refuse to comply with the EOs, including the potential for six months of jail time and a \$5,000 fine:

Failure to comply with the provisions of this Executive Order by any person or business shall result in the imposition of the criminal penalties and fines defined under the provisions of Article 5.14 of Act 20-2017, as amended, which sets a penalty of imprisonment not to exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties, at the discretion of the court and/or any applicable law. Furthermore, in accordance with the provisions of Art. 33 of the Department of Health Act, "[a]ny natural or juridical person who violates the provisions of this Act or the regulations issued by the Department of Health thereunder shall incur a misdemeanor, and upon conviction, may be sentenced to imprisonment that shall not exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties in the discretion of the court."

Any person who fails to comply with the provisions of this Order shall be subject to criminal proceedings, which shall be initiated without any delay by the Public Prosecutor, whom, in turn, must request bail to be set in accordance with the Rules of Criminal Procedure.

EOs 062, § 8; 063, § 9; 064, § 9.

B. The Currently Unjustified and Never-ending COVID Emergency in Puerto Rico

74. The government has a responsibility to maintain public health in a way that secures the lives and liberties of all citizens. Indeed, responding to pandemics, like responding to invasions, are one of the quintessential government roles.

75. Pandemics may require the state to perform certain interventions to ensure that demands on the healthcare system never exceed its capacity.

76. The healthcare system capacity to attend to COVID patients includes the availability of medical equipment, hospital beds, hospital ICU beds, and ventilators.

77. The highest levels of adult hospital beds, ICU beds and ventilators during the pandemic in Puerto Rico, prior to vaccine availability, were 657 (9.3%) hospital beds, 111 (16.5%) ICU beds, and 118 (10.3%) ventilators. All one-day highs and all occurred at different points in time (December 10, 2020, November 24, 2020 and December 12, 2020 respectively). At that time, significant restrictions had been put in by executive order. *Data source*, https://covid19datos.salud.gov.pr/#sistemas_salud.

78. The daily average since August 1, 2020 to October 4, 2021, has been 3325 adult hospital beds (4.5%), 85 adult ICU hospital beds (12.7%), and 62 adult ventilators (5.4%). *Id.*

79. The empirical data shows that the “State of Emergency” promulgated nearly 18 months ago is no longer tenable.

80. From the start of the pandemic in January-February 2020—even before the emergency declaration—public health experts used both leading (*e.g.*, infection rates) and lagging (*e.g.*, hospitalization rates) factors without a full understanding of the correlation between them. They implemented measures aimed at the leading indicators that did not affect the lagging indicators.

81. As scientific studies and empirical data showed, however, COVID-19 much more significantly affected certain groups, namely, the elderly (typically defined as people over 60 or 65 years old) and people with predefined autoimmune diseases and other chronic health issues. This led, at the beginning, the correlation between leading factors within a community (total cases) and lagging factors (hospitalizations and deaths) to show a misleading presentation of the pandemic’s development.

82. Over time, a correlation was established between R_0 (how infectious each person with the disease is), “positivity” rate (the rate of infection in society), and the number of positive cases and hospitalizations.

83. Eventually, and sooner than expected, however, the most important exogenous shock possible, a vaccine, was introduced in that correlation function.

84. In early 2021, the Food and Drug Administration authorized three vaccines (Pfizer-BioNtech, Moderna, J&J/Janssen) for emergency use in the United States (including Puerto Rico). On August 23, 2021, the FDA gave the Pfizer vaccine its final approval.

85. The introduction of these vaccines changed the previous relationship between leading and lagging factors. In short, vaccination significantly reduced the spread of COVID.

86. Once vaccines with such effective results were introduced, concerns that our hospitals could be overwhelmed by an excess of COVID cases have been reduced.

87. Moreover, as people gain natural immunization protection, developed after a SARS-CoV-2 infection, they gained from six to 13 times better shield against the Delta variant of the pandemic coronavirus than the two doses of the Pfizer-BioNTech vaccine, up to six months after getting natural immunization.

88. So natural immunized people are much less likely than vaccinated people to get Delta, develop symptoms from it, or become hospitalized with serious COVID-19, "population-based studies demonstrated natural immunity with no signs of waning immunity for at least 7 months" after the event. See MedRxiv, *Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections* (August 25, 2021), <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1>; Science, *Having SARS-CoV-2 once confers much greater immunity than a vaccine—but no infection parties, please* (August 26, 2021), <https://www.sciencemag.org/news/2021/08/having-sars-cov-2-once-confers-much-greater-immunity-vaccine-no-infection-parties>. MedRxiv, *Necessity of COVID-19 vaccination in previously infected individuals*, <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v3>. "Individuals who naturally contracted SARS-CoV-2 are expected to develop a more rapid and sustained response to COVID-19 vaccines than naïve individuals.", *Viruses, Antibody Response to the BNT162b2*

mRNA COVID-19 Vaccine in Subjects with Prior SARS-CoV-2 Infection,
<https://www.mdpi.com/1999-4915/13/3/422>.

89. According to the European Journal of Immunology, the research article title “Persistence of neutralizing antibodies a year after SARS-CoV-2 infection in humans” published September 27, 2021, natural immunity could last at least 13 months, “the proportion of subjects with neutralizing antibodies (NAb) were assessed. We found that NAb against the wild-type virus persisted in 89% and S-IgG in 97% of subjects for at least 13 months after infection. Subjects with severe infection had markedly higher IgG and NAb levels and are expected to remain seropositive for longer.” See European Journal of Immunology, *Persistence of neutralizing antibodies a year after SARS-CoV-2 infection in humans* (September 27, 2021), <https://onlinelibrary.wiley.com/doi/abs/10.1002/eji.202149535>.

90. Although, as reflected below, Puerto Rico’s health system was never strained by COVID, now, with the introduction of vaccines and despite the advent of the Delta variant, it is highly unlikely that it could be placed in jeopardy.

91. From January 21, 2020 to October 4, 2021, Puerto Rico has had 5,690 cases of COVID per 100,000 people, which rate is the 53rd of 58 U.S. states and territories (including New York City and the District of Columbia). See CDC, *Data Table for Case Rate by State/Territory*, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100k.

92. Only Hawaii, Vermont, Northern Mariana Islands, Palau, and Marshall Islands have had fewer cases per 100,000 people than Puerto Rico. We’re not sure what’s going on in

the Green Mountain State, but the rest of these jurisdictions are islands or archipelagos, like Puerto Rico.

93. Even though Puerto Rico has the highest elderly population of any state or territory (20.8%), since January 21, 2020 to October 4, 2021, Puerto Rico is 48th of 58 in death rate (99 deaths per 100,000 people) among states and territories (plus New York City and District of Columbia). See Christine L. Himes and Lillian Kilduff, *Resource Library, Which U.S. States Have the Older Populations?*, PRB, <https://www.prb.org/resources/which-us-states-are-the-oldest/>; United States Census Bureau, *Quick Facts Puerto Rico*, <https://www.census.gov/quickfacts/PR>; CDC, COVID Data Tracker, United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, *Data Table for Death Rate by State/Territory*, https://covid.cdc.gov/covid-data-tracker/#cases_deathsper100k.

94. As of October 4, 2021, Puerto Rico's death rate "related to" COVID per 100,000 (99) happens to be almost 50% lower than the average within the States (185). Being an island (really an archipelago) helps. See *id.*

95. As of October 3, 2021, according to the health department's data, Puerto Rico has 78.9% of the eligible population fully vaccinated and over 87.4% of the eligible population with at least one dose. As of September 28, 2021, there are a total of 773,828 people 60 years of older (360,332 people are 60-69 years old, 272,939 are 70-79 years old and 140,557 are 80+ years old), with at least one dose of a total of 888,836 (87%) that are 60 years or older. See <https://covid19datos.salud.gov.pr/#vacunacion>.

96. The previous statistics are of course encouraging, but Puerto Rico, as of October 4, 2021, is conversely second to last (ahead only of the U.S. Virgin Islands), in total tests performed per 100,000 people among U.S. jurisdictions since testing started. In the last 30 days, Puerto Rico, with 5,930.5 “# tests performed last 30 days per 100K” is sixth to last (ahead only of the U.S. Virgin Islands, Washington, Mississippi, Nebraska and Oklahoma), rank #49 of 55, of U.S. jurisdictions reported. Indeed, Puerto Rico has always tested for COVID—and continues to test—at rates much lower than in the U.S. states. See https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k; https://covid.cdc.gov/covid-data-tracker/#cases_testsper100k30day.

97. Moreover, for the percentage of positivity to properly represent the population, it is imperative that the total number of tests carried out (denominator) be the most representative and constant sample of the population. If not, the testing data can skew towards one side or the other, providing erroneous and misleading conclusions. This is the case in Puerto Rico. The main reason for this statistical slant is the following:

- a. On the mainland, the Department of Health and Human Services (HHS) created the system of “Community-Based Testing Sites.” So COVID-19 tests are available, free of charge, throughout the country in select health centers and pharmacies. See U.S. Department of Health and Human Services, Coronavirus, *Community-Based Testing Sites for COVID-19*, <https://www.hhs.gov/coronavirus/community-based-testing-sites/index.html>.

- b. Indeed, the Family First Coronavirus Response Act ensures that COVID-19 testing is free to anyone in the US, including those without health insurance.
- c. On the mainland, one can take the test, free of charge and without any pre-requisite, at CVS, Rite Aid, Walgreens, Wal-Mart, and independent in-network pharmacies. Moreover, tests are offered daily, at fixed public locations set up by state governments, at no cost and without any prerequisite.
- d. In Puerto Rico, however, the offering of free PCR testing through these stores is extremely limited (less than 5% of the total tests performed). Such free testing is the exception, not the rule.
- e. Test offerings by local or municipal government are even lower, less than 2%. And they are also random, offered only at a particular day, usually a Saturday or Sunday every few months with significant lines and cumbersome processes.
- f. In Puerto Rico, the main source of PCR tests is through private laboratories, which require a medical referral and an insurance plan. Otherwise, test-seekers need to pay between \$50–\$010 or more per test, a significant imposition given the relatively low average incomes of our population. *See* GISCorps COVID-19 Testing Sites Locator. Accessed September 12, 2021. Available: <https://www.arcgis.com/apps/webappviewer/index.html?id=2ec47819f57c40598a4eaf45bf9e0d16>.

98. The disincentive created by the current health care system for residents of Puerto Rico causes only people who have an underlying need to get tested go through the strenuous

process to do so. The people in this category are the people who believe that they have been exposed, people who have symptoms, people who have traveled, or people whose employers require them to do so, among others.

99. The cost and hassle of getting tested creates a natural deterrent for the general population to get tested, which skews Puerto Rico's positivity rate.

100. For the percentage of positivity to properly represent the population, it is imperative that the total number of tests carried out (denominator) be the most representative and constant sample of the population. Otherwise, the testing data can skew towards one side or the other, providing erroneous and misleading conclusions. This is the case in Puerto Rico. See Public Health Madison & Dane County, *Understanding Percent Positivity*, <https://www.publichealthmdc.com/blog/understanding-percent-positivity>.

101. In Puerto Rico, the "positivity rate" thus does not reflect a proper sample representing the population, so it has always been much higher in Puerto Rico than on the mainland—and is completely unreliable and misleading.

102. If tests are predominantly taken by people who feel sick, people who have a reason to be worried about being infected, or people who are already sick in the hospital, there will be more positives from all those people than you would in the general community, so it can be misleading to assume that these inflated positivity rates indicate the level of an infection's spread.

103. The Puerto Rico Government does not perform random testing of people and therefore the test positivity statistic is almost meaningless.

104. The COVID Tracking Project, one of the nation's trusted aggregators and reporters of coronavirus data and trends, does not publish the positivity rate due to its inaccuracy.

See *Intelligencer, The Problem With the Positivity Rate*, <https://nymag.com/intelligencer/2020/12/the-problem-with-the-covid-19-positivity-rate.html>.

105. From June 15, when the Delta variant was confirmed in Puerto Rico, to October 3, 2021, our daily average adult hospital utilization is at 3% (211 beds) and ICU adult hospitalizations is at 8.5% (56 beds). https://covid19datos.salud.gov.pr/#sistemas_salud.

106. Moreover, Puerto Rico hospitals have always had significant number of extra beds throughout the pandemic, averaging from 40.3% for adult beds and 30% for ICU adult beds from Aug. 1, 2020, to October 3, 2021. *Data source*, https://covid19datos.salud.gov.pr/#sistemas_salud.

107. To restate an earlier point, Puerto Rico's death rate is less than 50% lower than the average on the mainland. Puerto Rico has had a total of 3,165 deaths related to COVID since March 17, 2020 up to October 3, 2021. With 99 deaths per 100,000 people—compared to 185 per 100,000 on the mainland—the Commonwealth ranks 48th out of 58 states and territories (and New York City and District of Columbia). See <https://covid19datos.salud.gov.pr/#defunciones>; CDC, COVID Data Tracker, United States COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction, *Data Table for Death Rate by State/Territory*, https://covid.cdc.gov/covid-data-tracker/#cases_deathsper100k.

108. It bears noting that these numbers represent deaths “related to” COVID, so they include (a) confirmed COVID-19 deaths, which are deaths of people with one or more positive molecular tests, and (b) likely COVID-19 deaths, which include deaths of: (1) people who meet clinical criteria and evidence epidemiological as defined by the CSTE, without confirmatory tests for COVID-19; (2) people who test positive for antigens and meet the clinical criteria or epidemiological evidence as defined by the CSTE; (3) deaths that meet the criteria for vital statistics in which no evidence of confirmation for COVID-19; and (4) suspicious deaths from COVID-19, which include deaths of people in whom a specific antibody in serum, plasma, or blood, or a specific antigen is detected by immunocytochemistry in an autopsy specimen, which were not reported as confirmed or probable COVID-19 cases.

109. Over 75% (76.2%) of the COVID-related deaths in Puerto Rico have been from those 60 years and older. See <https://covid19datos.salud.gov.pr/#defunciones>.

110. As of October 3, 2021, 87% of the age group 60 years and older has received at least one dose and 79.7% are fully vaccinated. See <https://covid19datos.salud.gov.pr/#vacunacion>.

111. From June 1 until October 3, 2021, after 60% of eligible people were fully vaccinated, the case fatality rate is 1.5% and the average daily deaths are 5. The case fatality rate is 1.5% and the average daily deaths are 5 after the advent of the Delta variant (June 15, 2021 until October 3, 2021). The average daily deaths were 6 prior to a 60% full vaccination

(March 17, 2020 to May 31, 2021). *Data source*, <https://covid19datos.salud.gov.pr/#casos>, <https://covid19datos.salud.gov.pr/#defunciones>.

112. Since June 15, 2021, when the Delta variant made its first confirmed appearance in Puerto Rico, up to October 3, 2021, the average daily deaths is 5. That is 16% less the average daily deaths now, with Delta variant, that prior to the 60% vaccination. *See* <https://covid19datos.salud.gov.pr/#defunciones>.

113. To showcase how miniscule is the COVID situation in Puerto Rico in comparison to its handling and the balance of other societal needs and liberties, here are the actual numbers as of October 3, 2021:

- a. As of October 3, 2021 (after 19 months), only 149,940 people (4.6%) have tested positive (confirmed) for COVID-19. Of those, 145,620 have recuperated (97.1%), with the smallest amount of these requiring attention by our public health system. Currently, we have approximately 1,155 (0.8%) active cases of COVID and a cumulative total of 3,165 COVID related deaths (2.1%). *Data source*, <https://covid19datos.salud.gov.pr/#casos>, <https://covid19datos.salud.gov.pr/#defunciones>.
- b. In other words, more than 3,135,934 people (95.4% of the population) have not gotten the virus, or more accurately, never tested positive for it. Currently, there are 0.8% active cases, and we have had 0.096% deaths related to COVID in 19 months.

- c. Moreover, Puerto Rico has, as of October 2, 2021, at least 87.4% of its eligible population with one dose. See <https://covid19datos.salud.gov.pr/#vacunacion>.

Statement of Claims

Count No. I: Violation of Economic Liberty and Property Rights under the Fourteenth Amendment (Plaintiffs Tropical Chill, Llenza, Matos, and Vega)

114. Since March 2020, Tropical Chill's San Juan store is operating exclusively as a drive-through location. The shops in Guaynabo and Dorado lack drive-throughs, so they are operating with walk-ins and takeout.

115. The Guaynabo location had to close for six weeks in April–May 2020 because of low traffic and sales volume. All locations have kept thermometers for taking and recording employee and client temperatures as was requested as condition for operation by the Department of Health.

116. As soon as vaccines were available, Tropical Chill Corp. required all its employees to get vaccinated.

117. The philosophy of Tropical Chill's owners is that vaccination is the way to address this virus, but that it's not their job to police and verify customers' private health information.

118. Tropical Chill's main concern with EO No. 63 is that the company would incur additional costs in having an additional employee verify customer vaccine records in each store and would likely upset customers who don't agree with the EO. Tropical Chill's

mission is to make its customers happy—an apt mission when one’s main product is ice cream—and this mandate undermines its mission.

119. Since ice cream shops’ customer base is families, including children who cannot be vaccinated before they turn 12, a vaccine mandate chills Tropical Chill’s business. Even if young children are exempt, there is confusion over whether and how businesses are supposed to verify age thresholds—Take the parents’ word? Ask for a birth certificate? Would a Mickey Mouse Club membership card be enough?—and regardless the Rolling EO regime undermines customer goodwill and brand equity.

120. The alternative put forth by the government’s passing the buck to the private sector to implement vaccine passports is to operate at 50% capacity, which limits sales volume just as small businesses (those that have survived) start rebounding after a challenging 18 months.

121. Instead of incurring in additional costs, upsetting customers, and risk being subject to penalties given EO 63’s lack of clarity on enforcement for minors, Tropical Chill decided to lower its capacity in the Dorado and Guaynabo shops by 50%. As a result, since August 23, Tropical Chill is allowing only six and 10 customers to enter its ice cream shops, instead of 12 and 20, Dorado and Guaynabo shops, respectively.

122. Comparing the sales from Aug. 16 to Aug. 18—when EO 63 was not in effect—with the sales from Aug. 23 to Aug.26, after it became effective, Tropical Chill’s sales have dropped 23% in Dorado and 6% in Guaynabo. This drop in sales will only increase over the weekend, when its ice cream shops are normally the busiest.

123. In short, the Rolling EOs, and specifically EO No. 063, infringe Tropical Chill's right to earn a living and use its property as it sees fit, without sufficient government justification for restricting or infringing on those rights.

124. Plaintiff Eliza Llenza tested positive for COVID on December 27, 2020, and thus has natural immunity.

125. In 2018, she worked as a Contractor Management Inspector for the Puerto Rico FEMA STEP Program "Tu Hogar Renace," as part of the initial efforts for Disaster Recovery of Hurricane Maria on the Island. After this experience, she decided to get training and certifications to combine with her experience as a professional photographer and photojournalist, to widen her career opportunities considering the announcement of the assignment and distribution of local and federal funds to be invested in projects for the Recovery of Puerto Rico after Hurricane María. In March 2019, she was certified by OSHA in Mold Clean-up and Safety after Disaster, and in April 2019, she obtained a certificate EPA Office of Community Revitalization's Strategies for Food Systems, Health and Economic Development, issued by the Center for Creative Land Recycling.

126. Just prior to the Pandemic, in November 2019, she completed a certification for Planning Disaster and Debris Management issued by the National Disaster Preparedness Training Center, FEMA, and Homeland Security. Then, in December 2019, Ms. Llenza was certified as a Professional Food Manager by ANSI.

127. However, because she has decided not to get vaccinated, and despite her natural immunity to COVID-19, the Rolling EOs prevent her from obtaining employment in the

fields that has been training for. This is because to be hired by any government administration, or as a government contractor for services related to the reconstruction, or any other job opportunity, she is required by executive order to be vaccinated. And to work as a Professional Food Manager, she is required to obtain a Health Certificate which regulation 138-A precludes her from obtaining because she is unvaccinated. But her natural immunity is equivalent, or stronger than the protection afforded by any vaccine.

128. Plaintiff Rene Matos has never been infected with COVID-19 and rarely visits medical practitioners or hospitals as he maintains in good health with a healthy diet.

129. He doesn't smoke, drink, or use legal or illegal drugs, and he is rarely sick. Mr. Matos's family has a record of longevity, and his great aunt was the late Ramona Trinidad Iglesias-Jordan, who on March 29, 2004, was recognized as the oldest person alive by the *Guinness Book of World Records*.

130. Mr. Matos, as is the case with most of his family (including all his children and grandchildren), refuses to get vaccinated because of conscientious objections stemming from previous adverse experiences when he vaccinated his daughters in the 1980s.

131. His current job provides him a low wage of \$8.00/hr, and he works 40 hours per week. After deducting for Social Security, Medicare, and \$104 for child support that is automatically deducted from his paycheck, that translates to a weekly net income of \$194. His employer does not provide him with a health insurance plan. Starting on August 30, 2021, because of EO No. 64, Mr. Matos will now be required to pay for and provide weekly negative Covid tests to work at the supermarket or will be forced to quit his job.

132. As a result of inconsistent (arbitrary?) application of the applicable regulations, Mr. Matos was able to secure the health certificate that allows him to work in a grocery store, but he fears that Regulation 138-A will be used to deprive him of that certificate or prevent him from renewing it.

133. Accordingly, the government orders and actions here deprive Plaintiff Matos of his right to earn an honest living, and threaten his property interest in his health certificate, without sufficient justification for restricting or infringing on those rights.

134. A similar conclusion follows as to Plaintiff Vega, Hillside Cabin's owner.

135. Hillside Cabin is a modern tropical and safe container (wagon) made into a mini house. It is situated on 1.5 acres of land, above one of the highest peaks of the mountainous city of Mayaguez, and it is completely private and isolated.

136. As part of her business, Ms. Vega never has physical contact with any of her guests—and the guests never have contact with guests not in their traveling party. Instead, the guests make their booking online and then unlock a key container with a password provided to them shortly before their stay commences. Staying in a private and isolated Airbnb like Hillside Cabin is not different, for COVID purposes, from staying at a friend's or family member's private house—except it's less risky, because there's no interaction with the friend or family member.

137. Ms. Vega objects to having to verify the vaccination status of guests she never meets in person.

138. Requiring her to ask guests to show proof of vaccination or a negative COVID-19 test as a precondition to staying in her Airbnb the night has no rational basis (and goes against her religious and moral beliefs, as will be described in the next claim).

139. Accordingly, the government orders and actions here deprive Plaintiff Vega of her right to earn an honest living, without sufficient justification for restricting or infringing on those rights.

Count No. II: Rights to Bodily Integrity, Medical Decision Making, and Privacy Under the Fourteenth Amendment (Plaintiffs Tropical Chill, Llenza, Matos, and Vega)

140. The Rolling EOs further violate the liberty of Plaintiffs Llenza, Matos, and Vega, as protected by the Fourteenth Amendment to the Constitution, in terms of their rights of personal autonomy, bodily integrity, and the right to reject medical treatment. "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992).

141. The Commonwealth's Rolling EOs compel Plaintiffs Tropical Chill and Vega to violate their clients' or customers' constitutional right to privacy.

142. The Rolling EOs also substantially burden the constitutional rights to privacy, personal autonomy, bodily integrity and medical choice of Plaintiffs Matos, Llenza, and Vega, as they are being forced to be vaccinated or submit to invasive COVID testing any time they want to attend restaurants, bars, get a haircut, or stay in a hotel or Airbnb, among other activities.

143. For example, Ms. Llenza has always participated as a community activist, lobbying for important issues, as well as filming public hearings as part of her community engagement, and has not been able to attend any events at the Capitol where a vaccination ID is required in order to enter.

144. To be sure, none of the plaintiffs is challenging any individual business's right to require proof of vaccination, masking, or any other covid-related measure. But their complaint, and the harm the plaintiffs suffer, results from the Rolling EOs and related government enforcement measures.

145. As mandated vaccinations are a significant burden on the plaintiffs' exercise of their constitutional rights, the government must justify its impositions with more particularity than simple references to a general interest in the need to maintain public health.

146. Even if there were a compelling interest in mandating vaccinations to the private sector, the Rolling EOs are not narrowly tailored to such an interest.

147. A blanket mandate, for example, ignores individual factors that increase or decrease the risks that the plaintiffs or their clients pose to themselves or others. For example, the western part of Puerto Rico is the current (hotspot of hospitalizations and deaths (which are still low, relatively speaking), while older age and, co-morbidities increase risks from COVID-19.

148. In like vein, having natural immunity from having had and recovering from COVID decreases those risks.

149. There is less justification for government coercion now than before vaccines were developed, with the pandemic having largely subsided-Delta variant notwithstanding and the Commonwealth's hospitals facing no real threat of being overwhelmed by COVID-19 cases.

150. And the statistics and recent studies show that, given the effectiveness of the vaccines, the vaccinated are rarely affected by the unvaccinated, even with the advent of the Delta variant.

151. In the United States, the data from the 25 states that report breakthrough cases, hospitalizations, and deaths indicate that these occurrences are extremely rare among those who are fully vaccinated.

152. And as more people get vaccinated, the share of cases, hospitalizations, and deaths represented by unvaccinated people will tend to fall, because there will be fewer unvaccinated people in the population. That will be true even if infection, hospitalization, and death from COVID is still very rare among vaccinated people.

153. The logical conclusion is that the Rolling EOs is the government's attempt to protect the unvaccinated population, who choose to assume the risk of not getting vaccinated, from themselves.

154. Thus, requiring a negligible number of people to become vaccinated goes "beyond what [i]s reasonably required for the safety of the public," *Jacobson*, 197 U.S. at 28.

155. The same evidence that shows there is no compelling interest or narrow tailoring with Rolling EOs shows that it fails even under *Jacobson* which, contrary to popular myth,

didn't uphold forcible vaccination but a \$5 (now \$140) penalty for not getting vaccinated. Indeed, as Justice Gorsuch noted concurring in *Roman Cath. Diocese of Brooklyn v. Cuomo*, "*Jacobson* pre-dated the modern tiers of scrutiny," 141 S. Ct. 63, 70 (2020) (Gorsuch, J., concurring). *See also id.* at 71 (also noting that, unlike here, "[t]he imposition on Mr. Jacobson's claimed right to bodily integrity, thus, was avoidable and relatively modest").

156. Even if the government could show a compelling interest for the Rolling EOs, there are less onerous means to obtain the desired result which would lessen the burden on the plaintiffs' individual liberties and property interest.

Count No. III: RFRA (Plaintiff Vega as to EO No. 63)

157. The plaintiffs incorporate by reference all the foregoing paragraphs.

158. RFRA, which applies to actions by the Commonwealth as a covered entity of the United States, 42 U.S.C. § 2000bb-2(2), describes the "free exercise of religion as an unalienable right." §§ 2000bb(a)(1).

159. To protect this right, Congress provided that the "Government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability" unless "it demonstrates that application of the burden . . . is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." §§ 2000bb-1(a)-(b).

160. A person whose religious practices are burdened in violation of RFRA "may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief." § 2000bb-1(c).

161. Here, for instance, Plaintiffs Vega's sincere religious beliefs compel her not to take the COVID vaccine.

162. Indeed, Plaintiff Vega objects to the COVID vaccine based on her interpretation of the Bible. Ms. Vega is a Christian of deep religious faith, who believes that her body is a temple that must be taken care of using natural means.

163. Ms. Vega also doesn't understand why she is being compelled to verify the vaccination status of guests she never meets in person. For Ms. Vega, requiring her guests to show proof of vaccination or a negative COVID test as a precondition to staying in her Airbnb has no rational basis and goes against her religious and moral beliefs.

164. EO 062 specifically burdens Plaintiff Vega's religious beliefs—by compelling her to become the government's vaccination or COVID test verifier—as it obligates her to participate in and condone forced vaccination, which go against her religious beliefs.

165. But EO 062's alternatives are neither the least restrictive nor the narrowly tailored ways in which to further the Commonwealth's interest.

166. Accordingly, EO 062 violates Plaintiff Vega's rights under RFRA.

***Count No. IV: Pendent Claims: Separation of Powers; Non-Delegation Doctrine;
Legality of Criminal Penalties under Rolling EOs***

167. The plaintiffs incorporate by reference all the foregoing paragraphs.

168. The Puerto Rico constitutional structure emulates the federal design, including a government that is organized pursuant to the doctrine of separation of power with distinct legislative, judicial, and executive branches. P.R. Const., Art. I, § 2. As is the case in most

state constitutions, in Puerto Rico, the power to enact laws for the protection of the life, health, and general welfare of the people rests with the legislative branch. P.R. Const., Art. II, § 19.

169. The Puerto Rico Legislative Assembly has enacted specific laws for the protection of life and health against the threat of an epidemic or infectious disease, *none* of which include rulemaking delegation to the governor by way of executive order. *See* Proclamation of Epidemics Act, P.R. Laws Ann. tit. 24, § 354 and Act No. 81 of March 14, 1912, which delegates to the Secretary of Health the power to quarantine sick individuals during times of pandemic.

170. An executive order of general application constitutes a state act of a legislative nature which, without an appropriate legal basis, constitute a violation of the separation of powers.

171. Indeed, it is well-settled under Puerto Rico caselaw that the Governor does not possess the power to issue executive orders abridging fundamental rights or that contravene an act of the Legislature. *Hernandez, Romero v. Pol. de P.R.*, 177 DPR 121, 138. (2009); *Rodríguez Ramos v. ELA*, 190 DPR 448, 464 (2014).

172. All the Rolling EOs invoke their power from the same law: Puerto Rico Department of Public Safety Act, Act 20-2017, P.R. Laws Ann., tit. 25, § 3550, et seq.

173. Specifically, the Rolling EOs point to Article 5.10 of Act 20-2017, which provides in pertinent part:

In emergency or disaster situations, the Governor of Puerto Rico may declare through a proclamation that a state of emergency or disaster exists, as the case may be, in all of the territory of Puerto Rico or part thereof. The Governor, for the duration of such state of emergency or disaster shall have, in addition to any others conferred by other laws, the following powers:

(a) May request the President of the United States of America any federal disaster assistance available under the federal legislation in effect, and accept such assistance and use it at his discretion and subject only to the conditions established by the federal legislation under which it was granted.

(b) May prescribe, amend, and revoke any regulations as well as issue, amend, and rescind such orders as deemed convenient which shall be in effect for the duration of the state of emergency or disaster. Regulations prescribed or orders issued during a state of emergency or disaster shall have force of law for the duration of the state of emergency or disaster.

(c) May render effective any state regulations, orders, plans, or measures for emergency or disaster situations or modify them at his discretion. . . .

P.R. Laws Ann. tit. 25, § 3650.

174. It is of critical importance to consider that the purpose of Act 20-2017 was to reform Puerto Rico's public security system and consolidate under the new Department of Public Safety all resources to combat criminality and violence in Puerto Rico, as well as emergency response to disaster situations.

175. And zeroing-in on Article 5.10 of Act 20-2017 reveals that it forms part of the provisions concerning the management of natural disasters in Puerto Rico—such as hurricanes and earthquakes—for which the Emergency Management and Disaster Administration Bureau is responsible. P.R. Laws Ann. tit. 25, §§ 3641-3655.

176. It bears highlighting that the Puerto Rico Department of Public Health was not even considered as being part of the agencies consolidated under Act 20-2017 to serve as a key element to Puerto Rico's emergency response system.

177. Thus, Article 5.10, cannot be construed to authorize the governor to declare an emergency of a completely different nature, such as learning how to grapple with COVID.

178. As most governors, the Governor of Puerto Rico has ample powers, but he is not legally authorized to issue any executive order he wants.

179. To say that the governor may issue any executive order he deems "convenient" with whatever content or impact upon fundamental rights he decides, based on the existence of a health situation and in disregard of the statutory framework specifically granting those kinds of powers to the Health Secretary, cannot be a sound construction of Article 5.10.

180. In fact, under his own statutory authority (Act 81) the Health Secretary can adopt rules and regulations to address health safety matters and has done so in relation to the COVID situation. *See* Regulation 9210 of the Puerto Rico Health. Department, August 21, 2020 (requiring mandatory use of masks and establishing administrative fines for non-compliance).

181. To adopt this kind of regulation, the Health Department must comply with the rulemaking process established by the Puerto Rico Uniform Administrative Procedure Act (LPAU), Act. 38-2017, P.R. Laws Ann., tit. 3, §§ 9601-9713, which provides for citizen

participation through a written comments period and in the case of the Health Department, even a public hearing.

182. As a principle of separation of power, the Governor cannot exercise rulemaking power specifically delegated by the Legislature to an administrative agency. The Puerto Rico Supreme Court has recognized that an executive order of such fashion undermines the public policy of public participation that encompasses the LPAU. *Rodríguez Ramos v. ELA*, 190 P.R. Dec. 448, 464 (2014). That is the case of the Rolling EOs.

183. Moreover, in case of urgent need to act in cases such as the COVID situation, the LPAU specifically provides for an emergency rulemaking procedure which allows the governor himself to grant immediate effectiveness to a regulation adopted by an administrative agency, subject to subsequent completion of the regular rulemaking process. P.R. Laws Ann. tit. 3, § 9623.

184. The Rolling EO's adoption unlawfully sidelined this statutory framework and constitute an attempt to circumvent compliance with LPAU under color of an emergency, which has its own emergency rulemaking provisions.

185. By directly infringing on the conduct of private citizens, in violation of their fundamental individual and economic liberties, the rolling EOs' extraordinary measures unconstitutionally encroach upon the legislative powers.

186. In sum, the Rolling EOs are null and void in so far as the governor does not possess statutory authority for having issued them.

187. In the alternative, if this Court finds that Article 5.10 grants authority to the governor to issue these types of Rolling EOs, it should nonetheless hold that it constitutes an unconstitutional delegation of power.

188. The non-delegation doctrine equally applies to separation-of-powers controversies under Puerto Rico law. *Dominguez Castro v. ELA*, 178 P.R. Dec. 1, 92-94 (2010).

189. A delegation of legislative powers is valid if it provides intelligible principles and sufficient procedural and substantive guidelines that limit the use of the delegated power.

190. But by limiting Article 5.10 to a simple notion of authorizing any order the governor deems “convenient,” the Puerto Rico Legislature failed to provide the safeguards mandated by the Puerto Rico Constitution: Article 5.10 lacks parameters or “intelligible principles” to guide his executive actions.

191. Inasmuch as any responsible public officer will act upon a matter with a purpose and not merely based on an arbitrary desire, that officer will always act as he or she deems convenient and necessary. Taking that as a commonsense interpretation of what “deemed convenient” means, it cannot be considered itself as the statutory parameter that is needed to validate a constitutional delegation of power.

192. In any case, no intelligible principle or guidelines can be inferred from Act 20-2017’s legislative history or Statement of Motives that could limit the Governor’s sole discretion.

193. Thus, Article 5.10 of Act 20-2017’s delegation of power is excessively vague and overbroad and should be declared unconstitutional.

194. To make matters worse, each Rolling EOs include a direct threat of criminal sanctions for failing to comply with its provisions. *See* Paragraph 73, above.

195. This threat of criminal penalties lacks a legal basis and should be declared null and void by the Court.

196. Neither Art. 5.14 of Act 20-2017 nor Art. 33 of the Health Department Act (Act 81) provides for such penalty.

197. Act. 5.14 details certain specific conducts that are punishable, but noncompliance with an EO is not included among those.

198. And although Art. 33 of the Health Department Act contemplates criminal punishment by failing to comply with Health Department regulations, it provides no such power against noncompliance with executive orders, like the Rolling EOs.

199. In sum, the unlawful threat of criminal prosecution contained in the Rolling EOs are null and void and should be so declared by this Court.

Prayer for Relief

WHEREFORE, the plaintiffs request a judgment where this Court:

- a. Declares the Rolling EOs unconstitutional on their face, or, alternatively, declares the Rolling EOs unconstitutional as applied to each plaintiff;
- b. Declares that the Rolling EOs violate RFRA as applied to Plaintiff Vega;
- c. Declare Regulation 138-A unconstitutional on its face, or as applied to Plaintiff Llenza;
- d. Enjoins the defendants from enforcing the Rolling EOs and Regulation 138-A;

- e. Grants the plaintiffs their costs and attorney's fees under 42 U.S.C. § 1988, and any other applicable authority; and
- f. Grants any and all other such relief as this Court deems just and equitable.

Jury Demand

The plaintiffs demand a trial by jury of any triable issues in this case.

Dated: October 7, 2021

Respectfully submitted,

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Counsel for Plaintiffs

DEPARTMENT OF

Health



Government of Puerto Rico
Health Department

Regulation of the Secretary of Health No. 138-A to amend the Regulation of the Secretary of Health No. 138 for the Issuance of Health Certificates in Puerto Rico

Number: 9295

Date: August 5th of 2021

Approved: Omar J. Marrero Díaz

Secretario de Estado

A handwritten signature in blue ink, appearing to read "Omar J. Marrero Díaz", is positioned below the text of the Secretary of State's approval.

Government of Puerto Rico
Health Department

Regulation of the Secretary of Health No. 138-A

Amendment to the Regulation of the Secretary of Health No. 138, Regulation for the issuance of health certificates in Puerto Rico, Regulation No. 7784 of December 9, 2009, as registered in the Department of State.

Article 1: Legal Basis

Regulation of the Secretary of Health No. 138, Regulation for the issuance of health certificates in Puerto Rico, Regulation No. 7784 of December 9, 2009, as registered in the Department of State (Regulation No. 138), and is promulgated by virtue of Act No. 81 of March 14, 1912, as amended, better known as the "Organic Law of the Department of Health," Act No. 38 of June 30, 2017, as amended, better known as "Uniform Administrative Procedure Act of the Government of Puerto Rico" and Act No. 232 of August 30, 2000, known as the "Puerto Rico Health Certification Act."

Article 2: Purpose

These amendments are adopted with the purpose of expressly establishing the requirement to present the vaccination card against COVID-19 or the "COVID-19 Vaccination Record Card" as an essential document for a doctor to issue a health certificate.

As indicated below, Article IV is amended to add subsections (s) and (t) of Regulation No. 138. Also, subsection (1) of Article X and subsection 4 (A) is added to Article X of Regulation No. 138.

Article IV is amended. Definitions, to add the following subsection:

s. CDC: Disease Control and Prevention of the United States Department of Health.

t. "COVID-19 Vaccination Record Card": official vaccination card against COVID-19 issued by the CDC, which identifies individuals who have been completely inoculated with the aforementioned virus. It is the proof or supporting evidence that an individual is vaccinated or inoculated.

Article X is amended. Tests required to issue a health certificate to read:

1. No doctor may issue health certificates without the following: (1) a medical evaluation, (2) having certified that the person has shown evidence of vaccination against COVID-19 (COVID-19 Vaccination Record Card) with the series of complete vaccine, issued by the CDC, (3) the results of the in vitro tuberculin or tuberculosis test and (4) the serological test for syphilis, with their respective confirmatory tests when applicable.

As an exception, a doctor may issue the health certificate without the person being inoculated with the COVID-19 vaccine in those cases where the patient has a compromised immune system or there is a medical contraindication that prevents inoculation. This must be certified by a doctor authorized to practice in Puerto Rico or by the doctor who issues the Health Certificate. In addition, the doctor must certify the duration of the medical contraindication and whether it is temporary or permanent. If it were temporary, once the contraindication ceases, the person must comply with the vaccination requirement, for subsequent Certificates.

On the other hand, it is allowed - by way of exception - that the Health Certificate be issued to people not inoculated for religious reasons, as long as the vaccine goes against the dogmas of the patient's religion. The doctor must certify that he was shown the sworn statement required by the Department of Health for these cases, in accordance with the Executive Orders in force.

4 (A) The doctor will require the original vaccination card, as well as a legible copy of it in order to prove its validity. For high-risk patients, the licensed physician may require a negative COVID-19 result from a qualified SARSCoV2 viral test (nucleic acid amplification tests (NAAT) or antigen tests).

Article 3: Validity

This Regulation shall take effect immediately, by virtue of Section 2.13 of Act No. 38-2017, as amended, known as the "Uniform Administrative Procedure Act of the Government of Puerto Rico" (3 LPR S 9623).

In San Juan, Puerto Rico, today August 5, 2021.


Dr. Carlos R. Mellado López
Secretario de Salud

**GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO**

Administrative Bulletin No. OE-2021-062

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. PEDRO R. PIERLUISI, TO REQUIRE A VACCINE AGAINST COVID-19 TO CONTRACTORS OF THE EXECUTIVE BRANCH, AS WELL AS IN THE HEALTH AND HOSPITALITY SECTORS

WHEREAS: Since March 12, 2020 - after registering the first cases of COVID-19 on our Island - we are in a state of emergency to address the pandemic that we are currently suffering. From that date on, a number of strategies have been implemented to control it. The last one was the promulgation of Administrative Bulletin No. OE-2021-058, in which all public employees of the Executive Branch were required to present the certificate of immunization against the aforementioned virus, subject to certain exceptions and available options.

WHEREAS: Currently, the increase in infections continues to rise. The data provided by the Puerto Rico Department of Health indicates that the daily average increased to 288 positive cases. In relation to the cases of hospitalized patients, the statistics show an increase in the past days for a total of 235 hospitalized people. Not satisfied with this, the positivity rate, that is, the percentage of people who test positive for the virus of all those who take the test, increased to 11.04% according to data from the Department of Health.

On the other hand, data published on August 3, 2021 for the aforementioned government agency show that during the week of July 19 to 25, 191 COVID-19 outbreaks occurred in a total of 47 municipalities, which represents 65.3% of the infected people for that period.

In the United States, the data is the same or more worrying than in Puerto Rico. The average of positive cases during a week is around 90,000 cases, a number that has not been seen since November 2020, date prior to the vaccination against COVID-19. Worldwide, the average is over 570,000 cases. This increase, in part, is due to the emergence of the *Delta* variant. Certainly this increase is worrying and requires the Government to take new affirmative actions to control the



infections and avoid affecting the government and health services, while at the the same time protecting the lives of all citizens. Therefore, the Government has the responsibility and the pressing and important interest to prevent any major event, to strengthen areas of sensitivity such as health facilities that care for patients directly and hospitality facilities that receive tourists.

WHEREAS: The increase in the rate of positivity, in infections and in hospitalizations in Puerto Rico as in the United States has a common factor that we cannot ignore: people not vaccinated against COVID-19. According to data from the Department of Health and official entities in the United States, the vast majority of infected and hospitalized people are those not inoculated. This has led to an increase in community transmission.

WHEREAS: Scientific evidence shows that the most effective measure to control COVID-19 is vaccination. As fully explained in Administrative Bulletin No. OE-2021-058, the World Health Organization ("WHO") has determined that available vaccines are safe and effective, and that they prevent people from becoming seriously ill or dying because of SARS-CoV2. Therefore, the WHO urges to be vaccinated, even if the person has already been infected with COVID-19.

Similarly, the United States Food and Drug Administration ("FDA") has indicated that the three (3) vaccines against COVID-19 that it authorized for emergency use do work, because they prevent said disease and serious health effects, including hospitalization and death. In turn, it stated that the available information suggests that authorized vaccines protect against strains or variants that are currently in circulation. Therefore, the FDA - the agency charged with evaluating and authorizing vaccines - has promoted vaccination as an effective mechanism to reduce the spread of COVID-19.

Finally, the Centers for Disease Control and Prevention ("CDC") have stated that COVID-19 vaccines are safe and effective, especially in preventing severe cases and death. They asserted that it can prevent people from contracting and spreading the virus, making people seriously ill,

even if they contract COVID-19, and it helps protect their family members and those around them. In turn, they clarified that the vaccines are not experimental, since they have already passed through the stages required in clinical trials. Therefore, they maintain that the safest option to fight this pandemic is to inoculate against COVID-19.

WHEREAS: In Puerto Rico, vaccination is in full swing. As of today - according to CDC data - more than 77.4% of people eligible to receive the vaccine have at least one dose. On the other hand, approximately 67.4% of eligible people have the vaccine completed. These data and the few adverse reactions recorded confirm that COVID-19 vaccines are safe and effective.

WHEREAS: It is important to note that as of today 1,920,091 people in Puerto Rico have the complete series of vaccines. This means that 60.1% of the total population of our Island is duly inoculated and that there is still a significant percentage of people to be vaccinated. In addition, the accumulated count of administered doses shows that vaccination has decreased in these days, that is, not so many people are inoculated daily. This fact has delayed the goal of achieving the so-called "herd immunity", that is, the moment in which the virus cannot spread because the population is protected. Be warned that until the above is achieved, Puerto Rico is in danger of suffering the most severe consequences of COVID-19.

WHEREAS: What happens in Puerto Rico regarding vaccination is consistent with what happens in other jurisdictions. Worldwide, only a little more than 15% of the entire population has been fully vaccinated and 29.3% with a single dose. In the United States of America only more than 49.8% have been completely inoculated and 58% of the entire population with a dose. These numbers confirm the need to implement in Puerto Rico measures that guarantee the safety of tourists and people who work in that sector.

WHEREAS: In relation to vaccination in general, as stated in Administrative Bulletin No. OE-2021-058, the United States Supreme Court has examined the power of the State to regulate its use. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the mandatory inoculation of the smallpox vaccine was challenged. Upon hearing the case, the Court determined that the freedom guaranteed by



the United States Constitution is not an absolute right and is subject to reasonable restrictions that the government deems necessary to promote the safety, health, peace, good order, and morals of the community.

Not satisfied with it, in *Zucht v. King*, 260 U.S. 174 (1922), the United States Supreme Court upheld a Texas state law that prohibited the admission of unvaccinated minors to state schools. In its reasoning, it concluded that what was ordered did not establish an arbitrary power, but rather a broad discretion required to attend and protect public health.

Consequently, in both cases, the Supreme Court of the United States validated the state authority to reasonably compel the vaccination.

WHEREAS: In the case of Puerto Rico, in *Lozada Tirado v. Jehovah's Witnesses*, 177 DPR 893 (2010), our Supreme Court recognized that, although people have a right to refuse medical treatment, it is not absolute. Using as a base Federal jurisprudence (*Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)), the Court concluded that there might be certain interests of the State that must be taken into account, such as the protection of third parties. The latter applies when it intends to subject citizens to certain medical treatment during a public health crisis. There, it recognized that the State may require certain mandatory vaccines in the threat of a pandemic. *Id. n.13*.

WHEREAS: Certainly, people have a constitutional right to refuse medical treatment. However, unlike individual treatments that do not affect the health of other people, vaccines are aimed at fighting a collective enemy, not an individual one. That is why that vaccination has been considered one of the great achievements in public health in the 20th century. See *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 226 (2011).

WHEREAS: In the case of COVID-19 vaccines, although there is no binding case law, as recently as August 2, 2021, the United States Court of Appeals for the Seventh Circuit upheld the determination of the United States District Court of Indiana. In that case, students and workers were required to be fully inoculated to attend the university in person. Upon hearing the case, the Court of



Appeals ruled that in accordance with the case of *Jacobson v. Massachusetts, supra*, there was no constitutional problem with requiring such vaccine. The decision was based on the fact that, unlike *Jacobson*, in Indiana they were more permissive (sic) and some exceptions were allowed and the vaccine was not mandatory for all citizens, but a condition to attend university. See, *Klaasen v. Trustees of Indiana University*, 2021 WL 3281209; *Klaasen et al v. The Trustees of Indiana University*, 2021 WL 3025893.

On the other hand, in *Bridges v. Houston Methodist Hospital*, 2021 WL 2399994, Texas hospital employees were required to be properly inoculated against COVID-19. The Federal District Court validated the actions of the hospital and the vaccination requirement. It understood that conditioning employment to a vaccine is not a form of coercion and that it can be part of the employment conditions.

WHEREAS: Consistent with the foregoing, on July 6, 2021, the United States Department of Justice, through its Office of Legal Counsel ("OLC"), issued an Opinion in which it concluded that the federal provisions that authorized the emergency use of vaccines against COVID-19 do not prohibit public and private entities from imposing as a requirement being vaccinated against SARS-CoV2. That is, it understood, Section 564 of the Food, Drug, and Cosmetic Act ("FDCA"), 21 USC sec. 360bbb-3, only requires that whoever is going to administer the vaccine to a person, inform of the type of authorization given, the potential benefits and risks, and the option to accept or reject the vaccine, including informing the consequences of rejecting it.

WHEREAS: Not satisfied with the above, on July 29, 2021, the President of the United States, Joseph R. Biden Jr., required all federal employees and contractors to be vaccinated or get weekly tests to detect COVID-19. This after the United States Department of Veterans Affairs was the first federal agency to implement the requirement that all healthcare workers had to be vaccinated.

Also, several states and cities announced that they would require the vaccine for their employees. New York City was the first to announce it. Mayor Bill de Blasio ordered that, effective September 13, 2021, all city employees must be



vaccinated or, alternatively, should be tested for COVID-19 weekly. Likewise, it required vaccination of people who go to businesses in a closed setting, such as restaurants, theaters and gyms. In that state, Governor Andrew Cuomo ordered that hospital employees be vaccinated before September 6, 2021. In addition, he ordered transportation employees to get vaccinated or test negative for COVID-19 on a weekly basis.

For its part, in the state of California, starting this month, the vaccine will be required to all public employees or, as an alternative, a negative COVID-19 test. Likewise, the governor of New Jersey, Phil Murphy, ordered mandatory vaccination for employees in health care, long-term care centers, in prisons, among others, or alternatively, have a weekly test to detect COVID-19.

WHEREAS: Article 5.10 of Act No. 20-2017, as amended, known as the "Puerto Rico Public Safety Department Act", empowers me as Governor to, after declaring a state of emergency or disaster, to put into effect, and for the time the emergency exists, those measures that are necessary for its management in order to protect the safety, health, and property of all residents of Puerto Rico.

WHEREAS: Subsection (b) of Article 5.10 of Act No. 20-2017, establishes that as Governor of Puerto Rico I can issue, amend and revoke those regulations and issue, amend and rescind those orders that I deem convenient to govern during the state of emergency or disaster. Regulations or orders issued during a state of emergency shall have the force of law for the duration of said state of emergency.

WHEREAS: The Government of Puerto Rico has the responsibility to make the necessary efforts to prevent and stop the spread of COVID-19 and to safeguard the health, life and safety of all the residents of Puerto Rico.

WHEREAS: The power to lead the people comes with the great responsibility to ensure that its population is healthy and safe. In turn, the power of reason of State—as delegated to the Executive Branch by Law No. 20-2017— empowers the government to take the necessary measures to protect the health and safety of its population. That is, it is the inherent power of the State that allows creating and promoting regulation in general in order to protect the health



safety and general well-being. To achieve these benefits for the community, the State has the power to restrict certain personal interests, which are not absolute.

WHEREAS: With the specific objective of protecting the health of the people of Puerto Rico, it is deserving to take clear and forceful actions to ensure that each citizen is healthy, while at the same time ensuring that government and health services are not affected. This Government has a pressing and important interest to safeguard the life of the entire general population and of workers in essential services such as government, health and hospitality services. Likewise, a necessary step to meet these objectives is to implement affirmative actions - such as vaccination - to ensure that people who provide government, health or hospitality services are inoculated, which will avoid the spread in these essential facilities. This will definitely help Puerto Rico become a safe destination for all of our visitors and residents.

WHEREAS: The COVID-19 pandemic represents a dynamic and changing scenario, which requires the Government to redesign strategies to manage infections in the population in a timely manner.

WHEREAS: Given the significant increase in infections, as Governor I have the responsibility and duty to continue to closely monitor the daily statistics issued by the Department of Health and, consequently, take the necessary measures to guarantee the health of all. If the increase in infections is not reduced, I will be forced to implement significant restrictions, including ordering to reduce the hours of service in the operations of the private sector and the capacity in the public and private places.

WHEREAS: It should be emphasized that each citizen has an individual responsibility to be judgmental and critical of any personal, commercial or professional activity that he or she attends or is involved in. If each Puerto Rican follows very precisely all the precautionary measures ordered by the Centers for Disease, Control and Prevention ("CDC") and by Administrative Order No. 2021-508 issued by the Secretary of the Department of Health, there is no doubt that we will all protect ourselves. Thus, each of the citizens has the responsibility to continue taking the precautionary safety measures imposed by the Secretary and, in addition, to be



judicious and determine not to participate in any activity that they understand could put their health or that of others at risk.

THEREFORE: I, PEDRO R. PIERLUISI, Governor of Puerto Rico, by virtue of the powers inherent to my office and the authority that has been conferred on me by the Constitution and the laws of the Government of Puerto Rico, hereby decree and order the following:

SECTION 1: VACCINATION REQUIREMENT FOR THE CONTRACTORS OF THE EXECUTIVE BRANCH.

In order to safeguard the health of the entire population in Puerto Rico and avoid getting infected in Government facilities, while ensuring the continuation of government services, I order that as of the effective date of this Executive Order, all public agencies of the Executive Branch require all of their contractors and their employees who work in person or visit the offices—with the exception of what is indicated in Section 5 of this Executive Order—to be duly inoculated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of this requirement, it will be sufficient for the contractor or its employees show that by the effective date of this Executive Order they began the vaccination process with the first dose. However, they must comply and subsequently present evidence of the administration of the second dose to the contracting government agency, if the type of vaccine that was administered requires it. For this they will have until September 30, 2021.

It will be the responsibility of each appointing authority, or of the person to whom it delegates, to request the contractor and its employees the immunization certificate ("COVID-19 Vaccination Record Card") or document proving that they have completed or started the vaccination process against COVID-19. For its part, it will be the responsibility of the contractor and its employees to present their immunization certificate ("COVID-19 Vaccination Record Card") or document proving that they have started or completed their vaccination process against COVID-19 to be allowed to be physically inside a government building. Substitution of the immunization certificate for any other authorized physical or digital method that proves the vaccination is allowed.

SECTION 2: VACCINATION REQUIREMENT FOR EMPLOYEES IN HEALTH SECTOR FACILITIES.

In order to strengthen and safeguard the health of the entire population in Puerto Rico and



to avoid complications and even a collapse in the health system, I order that as of the effective date of this Executive Order, all employees of the health care sector detailed in this Section —with the exception of what is indicated in Section 5 of this Executive Order -- must be properly inoculated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of this requirement, it will be sufficient for the employee demonstrate that by the effective date of this Executive Order, they began the vaccination process with the first dose. However, they must comply and certify to the employer the administration of the second dose, if the type of vaccine that was administered requires it. For this you will have until September 30, 2021.

It will be the responsibility of each employer to request from the employee the immunization certificate ("COVID-19 Vaccination Record Card") or document proving that he has completed or started the vaccination process against COVID-19. For their part, it will be the employees' responsibility to submit their immunization certificate ("COVID-19 Vaccination Record Card") or document proving that they have started or completed their vaccination process against COVID-19 in order to be physically allowed in a health care facility. Substituting the immunization certificate for any other authorized physical or digital method that proves the vaccination is allowed.

For the purposes of this Executive Order, health sector facilities refer to places where direct health services are offered to the population. In particular, they include, but are not limited to, hospitals, clinical laboratories, emergency rooms, medical services clinics, health centers, offices of primary physicians and specialists, therapy centers, blood banks, pharmacies, all elderly care centers, medical cannabis dispensaries, among others.

SECTION 3: VACCINATION REQUIREMENT FOR HOTELS, INNS AND GUESTHOUSES EMPLOYEES.

With the purpose of strengthening the health in the tourism sector and, in particular, guarantee the continuity of hospitality services, I order that as of the effective date of this Executive Order all employees of hotels, inns and guesthouses - with the exception of what is indicated in the Section 5 in this Executive Order - must be properly inoculated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of that requirement it will be



sufficient that they show that by the effective date of this Executive Order they began the vaccination process with the first dose. However, employees must subsequently comply with and certify to their employer the administration of the second dose, if the type of vaccine that was administered thus requires it. For this they will have until September 30, 2021.

It will be the responsibility of hotels, inns and guesthouses management to request the employee the immunization certificate ("COVID-19 Vaccination Record Card") or document proving that they have completed or started their vaccination process against COVID-19. For their part, it will be the responsibility of the employee to present their immunization certificate ("COVID-19 Vaccination Record Card") or document proving that they have started or completed their vaccination process against COVID-19 in order to be physically allowed in the facilities of the hotel, inn or guesthouse. Substitution of the immunization certificate with any other authorized physical or digital method that demonstrates vaccination is allowed.

It is recommended that all concessionaires, businesses and casinos that operate within or in the vicinity of hotels, inns and guesthouses apply the same requirements detailed in this Executive Order.

SECTION 4: VACCINATION REQUIREMENT FOR GUESTS OF HOTELS, INNS, GUESTHOUSES AND SHORT-TERM RENTALS.

Likewise, with the purpose of strengthening the health in the tourism sector and in the population of Puerto Rico, I order that from the effective date of this Executive Order all guests of hotels, inns and guesthouses, including short-term rentals ("Short: Term Rentals" marketed independently or through platforms such as Airbnb, VRBO, Join a Join, among others) —with the exception of what is indicated in Section 5 of this Executive Order— must by the effective date of this Order Executive be properly inoculated with a vaccine authorized by the FDA to address the COVID-19 emergency. If they do not comply with the above, they must proceed in accordance with the provisions of Section 6, which requires the presentation of a negative COVID-19 result.

It will be hotels, inns and guesthouse management responsibility, including the administrators or operators of short-term rentals, to request the guest's certificate of



immunization ("COVID-19 Vaccination Record Card") or document proving that they have completed their vaccination process against COVID-19. For their part, it will be the guest's responsibility to present their immunization certificate ("COVID-19 Vaccination Record Card") or document proving that they have completed their vaccination process against COVID-19 in order to be physically allowed in the hotel facilities, inn or guesthouse. Substitution of the immunization certificate for any other authorized physical or digital method that proves the vaccination is allowed.

SECTION 5: EXCEPTIONS. For the purposes of this Order, people whose immune system is compromised and this can be harmful to their health will be exempt from being inoculated with the COVID-19 vaccine. Likewise, people who have any other medical contraindication that prevents their inoculation will be exempted. A physician authorized to practice in Puerto Rico must certify this. In addition, the doctor must certify the duration of the medical contraindication and whether it is temporary or permanent. If it is temporary, once the contraindication ceases, the person must comply with the vaccination requirement, as applicable in this Order.

On the other hand, it is allowed- by way of exception - not to be inoculated for religious reasons as long as the vaccine goes against the dogmas of the religion of the contractor, employee or guest. To comply with this exception, the person must present a sworn statement certifying together with the minister or ecclesiastical leader of his religion or sect, and both declaring under oath and subject to perjury, that because religious beliefs he cannot be inoculated against COVID-19. If you do not have a minister or ecclesiastical leader, you must submit a sworn statement with the specific bases of his sincere religious convictions. If the above criteria are not met, said request must be processed in accordance with that stated in Section 6 of this Executive Order.

People who cannot be vaccinated for any of the aforementioned exceptions may go in person to the corresponding facilities, using the appropriate safety measures, which include the use of a mask, social distancing and any other determined form time to time by the Secretary of the Department of Health.



In addition to the above, these people must — while the emergency declared in Administrative Bulletin No. OE-2020-020 lasts — comply with the following:

1. In the case of contractors of the Executive Branch, if the person goes daily to government offices, they must present a weekly negative COVID-19 result from a qualified SARS-CoV2 viral test (nucleic acid amplification tests ("NAAT ") or antigen tests) performed within a maximum period of seventy-two (72) hours before, or a positive COVID-19 result of the past three (3) months, along with documentation of their recovery, including a letter from a certified health care provider or government health official certifying that the person is recovered and ready to appear at public places. If the contractor or its employees visit the government facility frequently but not on a daily basis, they must comply with the above at every visit on different weeks. The appointing authorities of the public agency, or the person to whom they delegate, must ensure compliance with the above.

2. In the case of employees of healthcare facilities, hotels, inns and guesthouses, they must present a weekly negative result of COVID-19 from a qualified SARS-CoV2 viral test (nucleic acid amplification tests ("NAAT") or antigen tests) performed within a maximum term of seventy-two (72) hours before, or a positive COVID-19 result of the past three (3) months, together with documentation of their recovery, including a letter from a certified healthcare provider or government health official certifying that the person is recovered and ready to appear in public places. The employer, or the person to whom he delegates, must ensure compliance with the above at the beginning of each week.

3. Finally, in the case of guest at hotels, inns and guesthouses, including short-term rentals, the person may stay if at the beginning of the stay they presents the corresponding employee a negative COVID-19 result from a qualified SARS-CoV2 viral test (nucleic acid amplification tests ("NAAT") or antigen tests



performed within a maximum term of seventy-two (72) hours before, or a positive result for COVID-19 of the past three (3) months, together with documentation of recovery, including a letter from a certified health care provider or a government health official certifying that the person is recovered and ready to appear in public places. If the person is staying for more than a week, they must submit the above on a weekly basis. Management for each site must ensure compliance with the above at the beginning of each week.

SECTION 6: VACCINATION DENIAL. Any contractor, its employee or employee of the facilities of the health care sector, hotels, inns and guesthouses, and their guests who do not present their immunization certificate ("COVID-19 Vaccination Record Card") or document that proves that they have completed or started their vaccination process against COVID-19, and that any of the exceptions do not apply, must - while the emergency declared in Administrative Bulletin No. OE-2020-020 lasts - comply with the following: submit a negative COVID-19 result from a SARS-CoV2 qualified viral test (nucleic acid amplification tests ("NAAT") or antigen tests) performed within a maximum term of seventy-two (72) hours before, or a positive COVID-19 result from the past three (3) months, along with documentation of recovery, including a letter from a certified health care provider or government health official certifying that the person is recovered and ready to appear in public places. This must be done according to the conditions set forth in Section 5 of this Executive Order.

Should the aforementioned persons, not present their immunization certificate ("COVID-19 Vaccination Record Card"), the weekly negative COVID-19 result nor the positive result to COVID-19 with documentation of their recovery, and if they do not comply with any of the exceptions detailed in this Executive Order, they will be subject to the following measures:

1. If you are a government contractor or its employee, you will not be able to visit government agencies in person. If because of the contractor's work duties or at the discretion of the contracting agency, their physical presence at the office is necessary, the governmental entity may take the



relevant contractual measures, which may include - but are not limited to - contract cancellation.

2. If the person is an employee of the facilities of the health sector, hotels, inns and guesthouses, they will not be able to go to work in person. Therefore, the employer must take the pertinent applicable measures, including allowing them to take advantage of the applicable regular leave or a leave without pay.

3. If the person is a guest at a hotel, inn or guesthouse, including short-term rentals, he will not be able to stay in the aforementioned place until he complies with the provisions of this Executive Order.

SECTION 7: GUIDES AND REGULATIONS. The Department of Health, the Department of Labor and Human Resources, the Office of Administration and Transformation of Human Resources of the Government of Puerto Rico ("OATRH") and the Tourism Company of the Department of Economic Development and Commerce shall establish the guidelines and the pertinent regulation, according to the applicable sector, to enforce what is ordered in this Executive Order. In addition, they must oversee compliance with the provisions herein. Finally, I delegate to these agencies the power to interpret what is ordered in this Executive Order.

SECTION 8: NONCOMPLIANCE. Failure to comply with the provisions contained in this Executive Order by any person and/or or business, will result in the imposition of the criminal sanctions and those fines established by Article 5.14 of Law No. 20-2017, as amended, which establishes a penalty of imprisonment that will not exceed six (6) months or a fine that will not exceed five thousand (\$ 5,000) dollars or both penalties at the discretion of the court and of any applicable law. Furthermore, pursuant with the provisions of Article 33 of the Department of Health Act, "any natural or legal person who violates the provisions of this law or the regulations issued by the Department of Health under such laws, will incur in a misdemeanor and sentenced, which could include imprisonment not to exceed six (6) months or a fine of no more than five thousand dollars (\$5,000) or both penalties at the discretion of the court. "

Any person who fails to comply with the provisions of this Order, will be facing criminal proceedings, which must be initiated without delay by the Public Prosecutor, whom, in turn, must

request bail be set, as established by the Rules of Criminal Procedure.

SECTION 9: MUNICIPALITIES, PUBLIC CORPORATIONS AND OTHER BRANCHES OF GOVERNMENT.

The Legislative Assembly, the Judiciary, the public corporations and the municipalities are recommended to take similar measures to those set forth herein regarding private contractors, in order to guarantee and protect the lives of all their employees and the public who visits them or needs their services.

SECTION 10: DEFINITION OF THE TERM AGENCY.

For the purposes of this Executive Order, the term "agency" refers to any agency, instrumentality, office or dependency of the Executive Branch of the Government of Puerto Rico, regardless of its name.

SECTION 11: NON-CREATION OF ENFORCEABLE RIGHTS.

This Executive Order is not intended to create substantive or procedural rights in favor of third parties, enforceable before judicial, administrative or other forums, against the Government of Puerto Rico or its agencies, its officers, employees or any other person.

SECTION 12: SEVERABILITY.

The provisions of this Executive Order are independent and separate from each other. If a court with jurisdiction and competence declares unconstitutional, null or invalidated any part, section, provision or sentence of this Executive Order, that determination will not affect the validity of the remaining provisions, which will remain in full force.

SECTION 13: DEROGATION.

This Executive Order, at the time of its validity, will supersede the parts of all those executive orders that, in whole or in part, are inconsistent with it to the extent that such incompatibility exists.

SECTION 14: PUBLICATION.

This Executive Order must be filed immediately with the Department of State and its widest publication is ordered.

SECTION 15: VALIDITY.

This Executive Order will enter into force on August 16, 2021, and will remain in effect until the emergency declared in Administrative Bulletin No. OE-2020-020 is no longer in effect, or until this Order is amended or revoked by a later Executive Order or by law.



IN WITNESS WHEREOF, I issue this Executive Order under my signature and have the great seal of the Government of Puerto Rico stamped at La Fortaleza, in San Juan, Puerto Rico, today August 5, 2021.



PEDRO R. PIERLUISI
GOVERNOR

Enacted in accordance with the law, today, August 5, 2021.

OMAR J. MARRERO DIAZ
SECRETARY OF STATE

CERTIFICATE OF TRANSLATION

I, BLANCHE GONZALEZ HODGE, am competent to translate from Spanish to English, and certify that this translation of Administrative Bulletin OE 2021-062 is true and accurate to the best of my abilities.

Blanche Gonzalez-Hodge
(787) 509-7465



GOVERNMENT OF PUERTO RICO
PUERTO RICO TOURISM COMPANY

August 6, 2021

To: All Tourism Stakeholders

From: Carlos Mercado
Executive Director

Re: Updated guidance for tourism businesses for the implementation of the [Executive Order 2021-062](#) with measures applicable effective August 16, 2021 and the measures currently in place regarding the use of face coverings, point of entry requirements and capacity limitations.

Dear Tourism Industry Stakeholders,

The Governor, Hon. Pedro Pierluisi, signed and published [Executive Order 2021-062](#) that dictates the updated health and safety measures that are applicable to our sector beginning next Monday, August 16, 2021.

Given the recent increase in the rate of positivity, in infections and in hospitalizations in Puerto Rico in the United States, the Executive emoted a series of safety measures directed to mitigate the community transmission of the COVID-19 and its variants.

What follows are the guidelines on the applicability of this recent [Executive Order](#) for all tourism operations for the period beginning August 16, 2021. Note that these measures do not have an end term in sight. Changes to the existing measures will be conducted with upcoming Executive Orders and/or Administrative Orders from the Department of Health that can be found [HERE](#).

Vaccination requirement for tourism businesses:

Guests: It is a national mandate that all guests must be properly inoculated with any of the three vaccines authorized by the FDA (Janssen (J&J), Moderna or Pfizer) in order to be allowed in the facilities.

The vaccination requirement is applicable to any person staying 1 night or more at any hotel, bed and breakfast (B&B), short-term rental, hostel, glamping facility, guest houses, tourism villas, condo-hotels and Paradores and Posadas de Puerto Rico.

If by any reason the guest can not provide the vaccination card or proper proof of vaccination, the guest is required to provide evidence of a COVID-19 test taken within 72 hours of checking in. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test.



GOVERNMENT OF PUERTO RICO
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Guests that fail to present either the proper vaccination proof or the negative COVID-19 test within 72 hours of check in, cannot be permitted to remain in the facilities.

Per the requirement established in the [Health and Safety program](#) of the Puerto Rico Tourism, the assigned Health and Safety Officer, manager or owner of the lodging establishment are responsible to implement a screening process to secure the implementation of the mandate described above.

Employees and Staff Members: As a national mandate, all employees or contracted staff working in lodging businesses must be duly inoculated with any of the three vaccines authorized by the FDA (Janssen (J&J), Moderna or Pfizer) in order to be physically allowed to work at the establishment. This is applicable to staff members working in the property including casinos, gym, spa, pool, beach, golf courses, experience providers and concessionaries.

The vaccination requirement is applicable to any employee in hotels, bed and breakfasts (B&B), short-term rentals, hostels, glamping facilities, guest houses, tourism villas, condo-hotels and Paradores and Posadas de Puerto Rico.

If by any reason the employee cannot provide the vaccination card or proper proof of vaccination, the employee must present weekly evidence of a COVID-19 test taken within 72 hours of the weekly check point.

The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test.

This weekly check point to the unvaccinated employees must take place every 7 calendar days until the employee presents proof of vaccination.

Employees that fail to present either the proper vaccination proof or the negative COVID-19 test within 72 hours of check in, cannot be permitted to work physically in the facilities.

Note that if a non-inoculated employee begins the vaccination cycle prior to the effective date of August 16, 2021, he or she can present evidence of the first dose inoculation to be allowed to work physically at the establishment. However, that employees must subsequently comply with the complete the inoculation cycle by September 30, 2021.

Per the requirement established in the [Health and Safety program](#) of the Puerto Rico Tourism, the assigned Health and Safety Officer, manager, owner and human resources official of the establishment are responsible to implement a screening process to secure the implementation of the mandate described above.



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Non-lodging services: The Puerto Rico Tourism Company strongly recommends that all non-lodging tourism services adapt the vaccination or negative test requirement stated in the Executive Order. This vital recommendation is for areas including casinos, gyms, spa, pool and beach facilities, restaurants and bars within lodging properties, tour operations and guides, tourist transportation businesses, attractions, entertainment facilities, museums, and experiences providers among others.

Specifically:

- Patrons attending any event hosted at any lodging property are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to the event.
- Patrons visiting or consuming any service at any lodging property including restaurants, bars, nightclubs, gyms, and spa are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to entering the facilities.
- Casino patrons are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to accessing the casino area.
- Day passes holders at lodging properties are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to accessing the facilities.
- Patrons visiting museums, attractions or consuming any tour or experiences are strongly recommended to present evidence of vaccination or proof of negative test 72 hours prior to accessing the facilities.

Non-Compliance of the newly executed measures: A guest and business not complying with the established measures are subject to a sentence of imprisonment that will not exceed six (6) months or a fine of no more than five thousand dollars (\$ 5,000) or both penalties at the discretion of the court.

Short-term rentals: Legally and properly registered properties are the only properties authorized to operate.

- Short-term rental properties, duly registered and identified by their Innkeepers at the PRTC, as per Act 272-2003, are authorized to operate. For information on registration and identification visit [HERE](#). If a listing is not duly registered, it's illegally operating and is subject to fines and penalties as outlined under Act 272-2003 and Executive Order 2020- 044.
- Strict compliance of the terms established in the updated [Health and Safety Program](#) are required of all short-term rental properties.

Vaccination requirement: It is a national mandate that all guests staying at a short-term rental must be properly inoculated with any of the three vaccines authorized by the FDA (Janssen (J&J), Moderna or Pfizer) in order to be allowed in the property.

The vaccination requirement is applicable to any person staying 1 night or more at short-term rental in Puerto Rico.



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If by any reason the guest cannot provide the vaccination card or proper proof of vaccination, the guest is required to provide evidence of a COVID-19 test taken within 72 hours of checking in. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test.

Guests that fail to present either the proper vaccination proof or the negative COVID-19 test within 72 hours of check in, cannot be permitted to stay in the property.

Per the requirement established in the [Health and Safety program](#) of the Puerto Rico Tourism, the property manager is responsible to implement a screening process to secure the implementation of the mandate described above.

Non-Compliance of the newly executed measures: A guest and property manager not complying with the established measures are subject to a sentence of imprisonment that will not exceed six (6) months or a fine of no more than five thousand dollars (\$ 5,000) or both penalties at the discretion of the court.

Use of Face Coverings or Masks for Patrons and Employees: As updated with the most recent [Administrative Order 512](#) of the Department of Health, the existing local mandate regarding the use of mask is as follows:

Patrons in Indoor Spaces: Regardless of vaccination status, all customers are required to wear a mask or face covering indoors.

Patrons in Outdoor Areas: Regardless of vaccination status, all patrons are required to wear a mask in outdoor areas where the safe distancing minimum of 6ft between customers can not be observed.

Employees: All staff members must wear a mask or face covering at all times while on duty. This mandate is applicable to all work force, regardless of the vaccination status. Masks must be worn by staff members in all business settings including indoor and outdoor spaces, back office or behind the scenes.

Destination-Wide Health & Safety Program: As a reminder, the mandatory [Health and Safety Program](#) for all tourism businesses released last July 7, 2021 is available [HERE](#).

This the deadline to have completed [the acknowledgement form](#) was last July 31, 2021. All travel and tourism businesses must have [completed the online form](#) and attest that they have read the updated guidelines and have applied the measures successfully in their businesses.

Regardless of having completed the previous acknowledgement form or having received the Health and Safety Certification, this updated acknowledgement form should have been filled by all businesses.



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The applicable businesses required to follow through the implementation of the [Health and Safety Program](#) are:

Bed and Breakfasts (B&B)	Alternative Lodgings	Short-Term Rentals	Hostels
Glamping Facilities	Guest Houses	Tourism Villas	Condo-Hotels
Hotels	Paradores and Posadas de Puerto Rico		Casinos
Tour Operators	Certified Tour Guides	Travel Agencies	
Excursions Wholesalers	Restaurants, bars, and nightclubs within lodging properties		
Cultural Attractions			

Passenger Arrival Requirements. The point of entry requirements and protocol have not changed with the recent Administrative Order. The protocol in place continues to be the one implemented on May 25th via [Executive Order 2021-037](#). In summary:

The completion of the [Travel Declaration Form](#) continues to be mandatory for all arriving passengers. The following are the entry requirements for the following three scenarios:

- A. **Fully vaccinated travelers** flying in from any US domestic destination are no longer required a negative PCR molecular test result within 72 hours of arrival, as long as they can prove vaccination administration. Vaccinated passengers will have the opportunity to upload their official Vaccination Card through the Travel Declaration Form portal; or
- B. **Non-vaccinated travelers** arriving from a US Domestic destination are still required to provide evidence of a pre-departure COVID-19 test taken within 72 hours of arrival. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test; or
- C. **International arriving passengers**, regardless of vaccination status, are required to provide evidence of a pre-departure negative COVID-19 test taken within 72 hours of arrival as required by the CDC. The negative result must be from a qualified SARS-CoV2 viral test; either a nucleic acid amplification test ("NAAT") or an antigen test taken at an authorized center.

One person is considered fully vaccinated two (2) weeks after the second dose was administered for the Pfizer or Moderna vaccines, or two (2) weeks after receiving the only dose of the Johnson & Johnson's Janssen vaccine.

Capacity Limitations: Current Administrative Order does not impose capacity limitations.

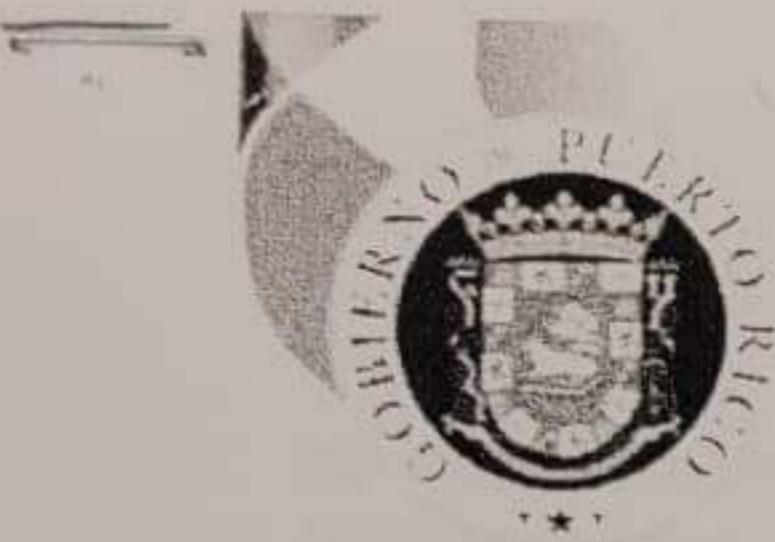
Operations schedule limitations: Current Administrative Order does not impose hour of operations constraints.



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Reporting of Suspicious or Confirmed Cases: Each employer, including owners of businesses, must immediately report suspicious and confirmed COVID-19 cases among its workforce or patrons. The business must reach out to the Department of Health via the following email address: covidpatronos@salud.pr.gov.

Questions or Additional Support: If you need support with the clarification of the Executive Orders or Administrative Orders, or with any matter regarding the [Updated Health and Safety Program](#) for all tourism businesses, please feel free to reach out to Ana Leticia Velez via: Ana.Velez@tourism.pr.gov.



comunicado

OFICINA DEL GOBERNADOR

Gobernador ordena vacunación a empleados de industria de salud y hospederías turísticas

(Con excepción de quienes presenten situaciones médicas o religiosas)

5 de agosto de 2021- El gobernador de Puerto Rico, Pedro R. Pierluisi, ordenó hoy en la **Orden Ejecutiva 2021-062** que todos los contratistas del gobierno que frecuenten de manera presencial su trabajo, así como todos los empleados que trabajen en sector de la Salud público o privado deben estar vacunados o contar con algunas de las excepciones. También, se ordena a todos los huéspedes de hoteles, paradores, hospederías o alquileres de corto plazo a presentar prueba de inoculación.

La Orden establece que todo contratista del gobierno que trabaje de forma presencial tendrá que presentar evidencia de vacunación o prueba negativa semanalmente. Los que se vacunen deben terminar el proceso en o antes del 30 de septiembre.

Como en la pasada Orden Ejecutiva contra el COVID-19, las excepciones serán las personas con condición médica cuya salud pueda perjudicarse, pero deberán tener un certificado médico a esos fines certificado por un profesional de la salud. Asimismo, personas que por motivos religiosos decidieron no vacunarse tendrá que ser certificado mediante declaración jurada del líder de su congregación o denominación religiosa. Sin embargo, deberán presentar pruebas negativas de COVID-19 o prueba positiva con certificado médico de recuperación.

“Como he dicho en otras ocasiones estamos ante una emergencia de salud pública mundial y está en cada uno de nosotros protegernos y por tanto proteger a nuestra comunidad. Todos tenemos que remar juntos en la misma dirección para vencer este virus. Estas estrategias de vacunación, así como las acciones del Departamento de Salud haciendo pruebas por todo Puerto Rico, llevando las vacunas a zonas remotas y exigiendo las mascarillas en espacios cerrados o en lugares donde existen aglomeraciones, son esenciales para combatir el COVID-19. Continuamos monitoreando el avance de los contagios y no descartamos tomar medidas adicionales, tales como limitar horarios de actividades públicas y comerciales o reducir la capacidad permitida en los establecimientos. Todos tenemos que cooperar”, sentenció el gobernador.

Por su parte, el secretario de Salud, Carlos Mellado, “continuamos la lucha para hacerle frente al COVID-19. Mientras haya personas sin vacunar, vamos a continuar viendo escenarios como el de las últimas dos semanas; aumento de contagios y nivel de posibilidad alta. Sin embargo, en nuestra misión de salvaguardar la salud de todos los ciudadanos en la Isla nos dirigimos a tomar medidas importantes de seguridad. La exhortación es la inmunización mediante la vacuna contra el virus, lavado de manos, uso

de mascarilla, distanciamiento y protegeremos para cuidar a los nuestros. Es nuestra responsabilidad comunitaria. Queremos controlar la pandemia, pero necesitamos la cooperación de toda la ciudadanía”.

El secretario de salud, dio a conocer una enmienda a Reglamento Núm. 138-A para establecer como requisito para la expedición de certificados de salud en Puerto Rico, presentar la tarjeta de vacunación contra el COVID-19. “A partir de hoy toda persona que requiera un certificado de salud deberá estar vacunado contra el COVID-19 para obtenerlo”.

En el caso de las instalaciones de salud, se requerirá la vacunación o en la alternativa una prueba negativa de COVID-19 semanalmente a todos los empleados. Esto incluye, pero no se limita, a hospitales, laboratorios clínicos, oficinas médicas, centros de salud y de terapias, bancos de sangre, farmacias. Este requerimiento es extensivo a todos los que laboran en centros de cuidado diurno o prolongados de adultos mayores.

En torno a la industria turística, los huéspedes de hoteles-paradores-hospederías incluyendo los alquileres de corto plazo a través de plataformas como AIRBNB/VRBO/Join a Join entre otras tendrán de igual forma que presentar evidencia de vacunación o prueba negativa de COVID-19. En el caso de turistas que llegaron a Puerto Rico con prueba negativa de COVID-19 y su estadía se prolonga por más de una semana, tendrán que realizarse otra prueba.

Este requerimiento es extensivo a los empleados de los hoteles-paradores y hospederías, quienes deberán tener su ciclo de vacunación completado antes del próximo 30 de septiembre. De hecho, Pierluisi y Mellado recomendaron a los concesionarios de estos establecimientos que apliquen reglas como esta a sus empleados.

Cada agencia o empresa será responsable de asegurar el cumplimiento de esta Orden y de no cumplirla se exponen a multas de hasta seis meses de cárcel, multa que no exceda \$5 mil o ambas a discreción del Tribunal.

“Reiteramos nuestra recomendación a las otras Ramas de gobierno, corporaciones públicas, municipios, establecimientos privados y comerciales a adoptar esta Orden Ejecutiva de forma voluntaria”, concluyó Pierluisi.

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**GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO**

Administrative Bulletin Number: OE-2021-063

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. PEDRO R. PIERLUISI, FOR THE PURPOSES OF REQUIRING MANDATORY COVID-19 VACCINATIONS AND SCREENING FOR THE RESTAURANT, BAR, THEATER, CINEMA, STADIUM, AND ACTIVITY CENTER SECTORS, AMONG OTHERS.

WHEREAS: Since March 12, 2020—after the first cases of COVID-19 were recorded on our Island—we have been in a state of emergency to address the pandemic we are currently facing. From that date, countless strategies have been employed to control it. The most recent one was issuing administrative bulletins OE-2021-058 and OE-2021-062, in which public employees and contractors working for the Executive Branch of the Government, as well as employees in the healthcare sector and hotel employees and clients, to present a certificate of immunization against said virus, subject to certain exemptions and available alternatives.

WHEREAS: Currently, the rise in cases continues to accelerate. The data provided by the Puerto Rico Department of Health indicates the daily average for confirmed cases has increased to 288 positive cases. Exactly one month ago, that figure was approximately 57 cases, which is why this increase in infections may compromise our hospitals' capacity to respond. Concerning this particular point, the statistics confirm an increase in hospitalizations in recent days, totaling 346 hospitalized individuals, including 76 adults and 2 children who are in intensive care units. Statistically, one month ago, the number of adults hospitalized due to COVID-19 only represented 1%. Today, that number is 4%. In the case of intensive care units, there was an increase of 11%. There has been an increase from 2% to 3% in cases involving minors, and intensive pediatric care has increased to 2%. At the same time, the positive rate, which means the percentage of people who received a positive result out of all people tested for the virus, continues at an average of 11.42%, which represents an 8.6% increase from the previous month.

In the United States, the data is either similar or even more concerning than in Puerto Rico. Average weekly cases increased to over 120,000 cases, a number not reached since November 2020, before COVID-19 vaccinations were available. At a global



I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

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level, the average is over 570,000 cases. This increase is partly due to the emergence of the *Delta* variant. Said increase is alarming and requires that the Government take new actions to control the spread and protect the lives of all citizens. Therefore, the Government has a responsibility and a pressing and vital interest to protect the lives of others, requiring that the risk of infection is minimized at activities and places where there is a high potential for exposure to the virus.

WHEREAS:

The increase in the rate of positive results, infections, and hospitalizations in Puerto Rico and in the United States have common factors that cannot be ignored: individuals not vaccinated against COVID-19. According to data from the Department of Health and official entities in the United States, the vast majority of infected and hospitalized individuals are unvaccinated. This has caused an increase in infections within the community.

WHEREAS:

The scientific data collected in Puerto Rico shows the great effectiveness of the vaccine. In particular, it has been concluded that only 7.5% of total recorded COVID-19 cases correspond to fully vaccinated individuals. Therefore, the risk of infection for unvaccinated individuals is 6.9 times greater than the risk for those who are vaccinated. As for hospitalizations, only 4.5% of patients are vaccinated individuals. This means that the risk of an unvaccinated individual being hospitalized is 12.2 times greater than the risk for vaccinated individuals. Lastly, regarding deaths, only 2.5% of total deaths related to COVID-19 correspond to fully vaccinated individuals. This indicates that the risk of death for unvaccinated individuals is 25.7 times greater than the risk for vaccinated individuals. This is to say that being vaccinated is at least 3 times better for avoiding infection, 8 times better for avoiding hospitalization, and 16 times better for avoiding death due to COVID-19.

WHEREAS:

Scientific evidence shows that the most effective measure for controlling COVID-19 is vaccination. As it was thoroughly explained in Administrative Bulletin OE-2021-058, the World Health Organization (WHO) has determined that the available vaccines are safe and efficient, and that they prevent people from becoming gravely ill or dying due to SARS-CoV2. Therefore, the WHO recommends vaccination, even for those who have already been infected with COVID-19.



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The United States Food and Drug Administration (FDA) has similarly indicated that the 3 COVID-19 vaccines it has authorized for emergency use do work, as they prevent said illness and its severe effects on a person's health, including hospitalization and death. It has also stated that the available information suggests that the authorized vaccines protect against the variants that are currently circulating. Therefore, the FDA—an agency in charge of evaluating and authorizing the vaccines—has promoted vaccination as an effective method for reducing the spread of COVID-19.

Lastly, the Centers for Disease Control and Prevention (CDC) has stated that COVID-19 vaccines are safe and effective, especially for preventing severe cases and death. It has asserted that they can prevent people from becoming infected and spreading the virus. In addition, they help prevent people from becoming severely ill even when they become infected with COVID-19, and they help protect their families and those around them. It also clarified that the vaccines are not experimental, because they have gone through the required stages in the clinical trials. Therefore, it sustains that the safest option for fighting said pandemic is to undergo vaccination for COVID-19.

WHEREAS: In Puerto Rico, vaccinations are well underway. To date—according to data from the CDC—over 78.2% of people who can be vaccinated have received at least one dose. Approximately 68.1% of people who can be vaccinated are fully vaccinated. This data, along with the few recorded adverse reactions, confirm that COVID-19 vaccinations are safe and efficient.

WHEREAS: It is important to highlight that, to date, 1,939,815 people in Puerto Rico are fully vaccinated. This means that 60.7% of our island's total population is fully vaccinated, and that a significant percentage of people have yet to be vaccinated. In addition, the cumulative count of administered doses shows that vaccination has declined in recent days, that is to say, not a lot of people are being vaccinated on a daily basis. Said fact has delayed the goal of achieving so-called "herd immunity," or the point at which the virus cannot spread because the community is protected. Be

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advised that until said milestone is achieved, Puerto Rico is at risk of suffering the most severe consequences of COVID-19.

WHEREAS:

What is happening in Puerto Rico regarding vaccination is consistent with what is happening in other jurisdictions. At a global level, only slightly over 15.6% of the total population is fully vaccinated, and 30.2% have received a single dose. In the United States, only 49.8% are fully vaccinated and 59.9% of the total population has received a single dose. These numbers confirm the need to implement measures in Puerto Rico that guarantee the population's safety in places with high exposure to the virus.

WHEREAS:

Regarding vaccinations in general, as stated in Administrative Bulletin OE-2021-058, the United States Supreme Court has examined the State's authority to regulate its use. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), mandatory smallpox vaccination was challenged. Addressing the case, the Court determined that the freedom granted by the Constitution of the United States is not an absolute right and is subject to reasonable restrictions that the government believes are necessary to promote the safety, health, peace, good order, and morals of the community.

Not satisfied with that, in *Zucht v. King*, 260 U.S. 174 (1922), the United States Supreme Court upheld a law from the state of Texas that prohibits unvaccinated children from attending school. In its reasoning, it concluded that what was ordered did not establish an arbitrary power, but rather an ample discretion required to address and protect public health.

Therefore, in both cases, the United States Supreme Court upheld the state's authority to reasonable mandate vaccinations.

WHEREAS:

In the case of Puerto Rico, in *Lozada Tirado v. Testigos de Jehová*, 177 DPR 893 (2010), our Supreme Court acknowledged that, although people have a right to decline a medical treatment, this right is not absolute. Using federal case law as a basis (*Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)), the Court concluded that the State may have certain interests that must be taken into account, such as the protection of third parties. This last one applies when intending to submit citizens to a certain medical treatment during a public health crisis. Thus, it was acknowledged that the State may require certain vaccines in a mandatory capacity

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when facing the threat of a pandemic. *Id.*, n. 13.

WHEREAS:

Certainly, people have a constitutional right to decline a medical treatment. However, unlike individual treatments that do not affect the health of others, vaccinations are intended to combat a collective enemy, not an individual one. It is for that reason that vaccinations have been considered one of the 20th century's greatest achievements in public health. See *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 226 (2011).

WHEREAS:

In the case of COVID-19 vaccines, even though there is no binding case law, as recently as August 2, 2021, the United States Court of Appeals for the Seventh Circuit confirmed the decision of the federal District Court of Indiana. In this case, students and employees were required to be fully vaccinated to attend university in person. In addressing the case, the Court of Appeals decided that, according to *Jacobson v. Massachusetts, supra*, there was no constitutional obstacle to requiring said vaccination. It based its decision on the fact that, unlike *Jacobson*, in Indiana there was more latitude because they allowed certain exemptions and the vaccine was not mandatory for all citizens, instead it was a condition for attending university. See *Klaasen v. Trustees of Indiana University*, 2021 WL 3281209; *Klaasen et al v. The Trustees of Indiana University*, 2021 WL 3025893.

On the other hand, in *Bridges v. Houston Methodist Hospital*, 2021 WL 2399994, employees of a hospital in Texas were required to be vaccinated against COVID-19. The federal District Court upheld the hospital's actions and the vaccination requirement. It believed that conditioning employment to a vaccine is not a form of coercion and that it may be part of the job's conditions.

WHEREAS:

Consistent with the above, on July 6, 2021, the United States Department of Justice issued an Opinion through its Office of Legal Counsel (OLC) in which it concluded that federal provisions authorizing the emergency use of COVID-19 vaccines does not prohibit public and private entities from imposing SARS-CoV2 vaccinations as a requirement. That is to say, in their understanding, Section 564 of the *Food, Drug, and Cosmetic Act* (FDCA), 21 USC sec. 360bbb-3, only requires that whoever is going to administer a vaccine to a person inform them of the type of authorization given, the potential benefits and risks, and the



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option to accept or decline the vaccine, including informing them of the consequences of declining it.

WHEREAS:

Not satisfied with the above, on July 29, 2021, the President of the United States, Joseph R. Biden Jr., required all federal employees and contractors to undergo vaccination or weekly COVID-19 testing. This occurred after the United States Department of Veteran Affairs was the first federal agency to implement a requirement for all healthcare workers to be vaccinated.

Several states and cities have also announced that they will require their employees to be vaccinated. The city of New York was the first to make such an announcement. Mayor Bill de Blasio ordered that, starting on September 13, 2021, all municipal employees must be vaccinated or, as an alternative, must undergo weekly COVID-19 testing. He also required vaccinations for people visiting indoor establishments, such as restaurants, theaters, and gyms. In said state, the Governor ordered that hospital employees be vaccinated by September 6, 2021. In addition, it was ordered that transportation employees must be vaccinated or present a negative COVID-19 test result on a weekly basis.

For its part, the state of California will require vaccinations for all of its public employees or, as an alternative, negative COVID-19 test results starting this month. Similarly, the governor of New Jersey, Phill Murphy, ordered mandatory vaccinations for healthcare employees and employees working at extended care centers and prisons, among others; as an alternative they may undergo weekly COVID-19 testing.

WHEREAS:

As recently as August 6, 2021, the Court of First Instance of San Juan issued a Judgment in which it upheld the vaccination requirement at schools in Puerto Rico. In its pertinent parts, it declared that “the State has an urgent interest in safeguarding public health and taking all necessary measures to effectively combat a pandemic that has affected the lives of every person on this planet and that is simply unprecedented in recent history. Without a doubt, these measures include requiring vaccinations against said disease and the use of masks in indoor spaces where people are close together, such as schools and universities.” It therefore concluded that “because it is our understanding that the executive and administrative orders in question are based on

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accurate and verifiable scientific data, and that, in addition, they are carefully designed to provide reasonable accommodations for those who qualify and need them, we concluded that they are valid and completely in line with the applicable constitutional parameters.”

WHEREAS: After declaring a state of emergency, Article 5.10 of Act 20-2017, as amended, known as the “Puerto Rico Public Safety Department Act,” empowers me, as Governor, to establish any measures deemed necessary for the duration of the emergency in order to manage it with the goal of securing the health, property, and safety of Puerto Rico’s residents.

WHEREAS: Subsection (b) of Article 5.10 of Act 20-2017 establishes that, as Governor of Puerto Rico, I may enact, amend, or repeal any regulation, and to enact, amend, or rescind any order as deemed appropriate to govern during the state of emergency or disaster. The regulations enacted or orders issued during a state of emergency shall have the force of law during said state of emergency.

WHEREAS: The Government of Puerto Rico has a responsibility to make the necessary efforts to prevent and stop the spread of COVID-19 and safeguard the health, lives, and safety of Puerto Rico’s residents.

WHEREAS: The power to govern a community comes with a great responsibility to ensure that its people are safe and healthy. The power of reason of State—as delegated to the Executive Branch by Act 20-2017—empowers the government to take the necessary measures to protect the health and safety of its people. That is to say, it is the State’s inherent power which allows for the creation and enactment of regulations in general for the purposes of protecting public health, safety, and wellbeing. In order to secure these benefits for the community, the State has the power to restrict certain personal interests, which are not absolute.

WHEREAS: With the specific objective of safeguarding the health of the people of Puerto Rico, clear and decisive action must be taken to ensure that each citizen is healthy. This Government has an urgent and important interest to safeguard the lives of the people and to ensure to minimize the risk of infection in everyday activities and at places where exposure to the virus is high. A necessary step for achieving these objectives is to implement decisive actions—such



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as requiring vaccinations or negative COVID-19 test results—at locations where prepared food and drink are sold, such as restaurants, theaters, cinemas, stadiums, and activity centers, which will prevent infections at these facilities.

WHEREAS: The COVID-19 pandemic presents a dynamic and changing scenario that requires the Government to redesign its strategies in order to appropriately manage infections in the population.

WHEREAS: In light of the significant rise in infections, I, as Governor, have a responsibility and duty to continue to carefully monitor the daily statistics issued by the Department of Health, and take the necessary measures to safeguard everyone’s health. Should these measures not have a significant impact on the increase in infections, I shall be forced to implement additional restrictions.

WHEREAS: I must emphasize that each citizen has an individual responsibility to exercise good judgment and care in any personal, commercial, or professional activity they are attending or involved in. If every Puerto Rican follows all of the precautionary measures issued by the CDC and the administrative orders issued by the Department of Health concerning COVID-19, there is no doubt that we would all be safer. Therefore, each citizen has a responsibility to continue following the precautionary measures issued by the Secretary, and to use good judgment and not participate in any activity they believe would put their health or the health of others at risk.

THEREFORE: I, PEDRO R. PIERLUISI, Governor of Puerto Rico, by virtue of the powers inherent to my office and the authority vested in me by the Constitution and the laws of the Government of Puerto Rico, hereby declare and order the following:

Section 1: **EMPLOYEE VACCINATION REQUIREMENTS.** In order to minimize infections and successfully safeguarding the health of Puerto Rico’s population, I hereby order that once this Executive Order enters into force, restaurants (including fast food restaurants, food courts, and cafeterias), bars, “chinchorros”, cafés, sports bars, theaters, cinemas, stadiums, convention or activity centers, and any other establishment—either indoor or outdoor—that sells prepared food or drink, must require all employees who work there in person to be fully vaccinated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of this requirement, it shall be

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sufficient for the employee to show that they have started the vaccination process with the first dose by the date this Executive Order goes into force, which, to wit, is August 23, 2021. However, the employee must comply with and later present evidence to their employer of having received the second dose, if the type of vaccine they have been administered requires so. They shall have until October 7, 2021 to do so.

It shall be the responsibility of each employer, or a person to whom they have delegated, to request employees to present a certificate of immunization (COVID-19 Vaccination Record Card) or a document that proves they have completed or initiated their COVID-19 vaccination process. For their part, it shall be the employee's responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card) or a document that proves they have completed or initiated their COVID-19 vaccination process in order to be permitted to work in person. Certificates of immunization may be substituted with any other physical or digital method authorized for verifying vaccination status.

For the purposes of this Executive Order, the term employee applies to any natural person who works physically or in person—including contractors, but not suppliers—in exchange for a salary, wages, compensation, emolument, or any type of remuneration at a restaurant (including fast food restaurants, food courts, and cafeterias), bar, "chinchorro", café, sports bar, theater, cinema, stadium, convention or activity center, and any other establishment—either indoor or outdoor—that sells prepared food or drink, even in a partial capacity. For the purposes of the vaccination requirement, as established in this Executive Order, individuals who are providing services in a voluntary and in-person capacity at these establishments shall also be considered employees.



Section 2:

EMPLOYEE EXEMPTIONS. For the purposes of this Order, individuals whose immune systems are compromised and for whom the COVID-19 vaccine may be detrimental to their health shall be exempted from the vaccination requirement. Similarly, individuals who have other medical contraindications that preclude



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their inoculation shall be exempted. This must be certified by a physician authorized to practice medicine in Puerto Rico. In addition, the physician must certify the duration of the medical contraindication and whether it is temporary or permanent. If it is temporary, once the contraindication is not present, the person must comply with the vaccination requirement, as applicable under this Order.

As an exception, declining vaccination for religious purposes is permitted, as long as the vaccine goes against the employee's religious dogma. In order to qualify for this exception, the person must present a sworn statement in which they certify, along with a minister or religious leader of their faith, both of whom shall be under oath and shall make their statement under penalty of perjury, that they cannot be inoculated against COVID-19 due to their religious beliefs. If they do not have a minister or religious leader, they must present a sworn statement in which they establish their religious convictions in a specific manner. If the above criteria are not met, said request must be processed in accordance with what is established in Section 3 of this Executive Order.

An employee that may not be vaccinated due to any of the abovementioned exceptions may work in person at the corresponding facilities, employing adequate safety measures, which include the use of masks, social distancing, and any other measure that may, from time to time, be issued by the Secretary of the Department of Health.

In addition to the above, this person must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces. The employer or a person to whom they have delegated must ensure compliance with the above.



Section 3: EMPLOYEES WHO DECLINE VACCINATION. Any employee of

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a restaurant (including fast food restaurants, food courts, and cafeterias), bar, “chinchorro”, café, sports bar, theater, cinema, stadium, convention or activity center, and any other establishment—either indoor or outdoor—that sells prepared food or drink who does not present their certificate of immunization (COVID-19 Vaccination Record Card) or a document that verifies that they have completed or initiated the COVID-19 vaccination process, and for whom none of the exemptions apply, must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—comply with the following: present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

Should the abovementioned individuals not present their certificate of immunization (COVID-19 Vaccination Record Card), a negative COVID-19 test result on a weekly basis, or a positive COVID-19 result with documentation of their recovery, and should they not qualify for one of the exemptions detailed in this Executive Order, they may not work in person. Therefore, the employer must take the corresponding applicable measures, including allowing them to use applicable regular leaves or an unpaid leave.

Section 4:

REQUIREMENTS FOR VISITORS. In the interest of safeguarding the health of Puerto Rico’s population and minimizing infections, I hereby order that, from the moment this Executive Order enters into force, all restaurants (including fast food restaurants, food courts, and cafeterias), bars, “chinchorros”, cafés, sports bars, theaters, cinemas, stadiums, convention or activity centers, and any other establishment, either indoor or outdoor, that sells prepared food or drink, must verify that all of their visitors above the age of 12—subject to the exemptions indicated in this section—comply with one of the following conditions:

1. The visitor is properly vaccinated with a vaccine approved by the FDA to address the COVID-19 emergency.

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2. The visitor presents a negative COVID-19 result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed 72 hours prior to visiting the establishment.
3. The visitor presents a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

It shall be the responsibility of each business or commercial entity to request that each visitor—before entering the business—present a certificate of immunization (COVID-19 Vaccination Record Card) or viral test result. For their part, it shall be the visitor’s responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card) or viral test result as a condition to access the business. The certificate of immunization or viral test may be presented through any other physical or digital method.

In addition, the private operator must ensure that all visitors comply with administrative orders 2021-508A and 2021-512, issued by the Secretary of the Department of Health, and subsequent orders. In particular, they must comply with mandatory mask usage in indoor spaces.

It is important to point out that what is established in this Executive Order does not limit the authority of any private operator to implement additional restrictions not contemplated herein. That is to say, none of what is established in this Executive Order may be interpreted as private operators not being able to take additional or more restrictive measures.

Individuals under the age of 12 are exempted from complying with the screening established in this section, as they currently cannot be vaccinated. All individuals who are exclusively acquiring food at restaurants (including fast food restaurants, food courts, and cafeterias), bars, “chinchorros”, cafés, and sports bars through a drive-through or curbside pickup; that is to say, they won’t consume the food at the establishment, are also exempted.



Section 5:

CAPACITY LIMITATION. All restaurants (including fast food restaurants, food courts, and cafeterias), bars, “chinchorros,” cafés, sports bars, theaters, cinemas, stadiums, convention or



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activity centers, and any other indoor establishment that sells prepared food or drink that does not comply with the requirements established in Section 4 of this Executive Order shall be obligated to limit their capacity to 50% of the establishment's maximum capacity.

Section 6:

ACCESS RESTRICTION. Visitors may not access an establishment if they refuse to comply with the requirements established in this Executive Order as implemented by its private operator. All citizens are urged to cooperate with private operators in complying with what is established herein. Should any citizen not cooperate and attempt to force a private operator to not comply with the provisions of this Executive Order, they may be subject to what is established in Section 9 of this Order and any other applicable provision of the Puerto Rico Criminal Code.

Section 7:

OVERSIGHT. The corresponding agencies are hereby ordered to oversee faithful compliance with what is established in this Executive Order. The public is also encouraged to inform the authorities of establishments that are not complying with this Order. In order for citizens to be able to contribute to oversight efforts and full compliance with this Executive Order, all establishments are hereby ordered to display posters in visible locations advertising the confidential COVID-19 hotline created by the Department of Health. These posters or signs must include the following contact information in order for citizens to report cases of noncompliance:

a) Phone: (787) 522-6300, extensions 6899, 6840, 6824, 6833, and 3893

b) Email: investigaciones@salud.pr.gov.”

It is also hereby required that, should they not comply with the requirements established in this Executive Order, this aforementioned poster or sign must include the number of people who total the establishment's maximum required capacity of 50% based on the current Puerto Rico building code (PR Building Code 0218) authorized by the Puerto Rico Firefighters Corps Bureau; the above is under penalty of noncompliance with this Executive Order.

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Citizens are urged to notify the corresponding agencies, including the Department of Health, of any private operator that is not complying with screening requirements or the limitation of an establishment's capacity to 50%, as established in this Executive Order.

Section 8: **GUIDELINES AND REGULATIONS.** The provisions established in this executive order may be defined, reinforced, or modified in detail through guidelines issued by any agency called upon to regulate the services discussed herein, including the Department of Health and the Department of Labor and Human Resources. All agencies that issue guidelines in order to describe the provisions of this Executive Order in detail must publish said guidelines immediately and as widely as possible.

Section 9: **NONCOMPLIANCE.** Failure to comply with the provisions of this Executive Order by any person or business shall result in the imposition of the criminal penalties and fines defined under the provisions of Article 5.14 of Act 20-2017, as amended, which sets a penalty of imprisonment not to exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties, at the discretion of the court and/or any applicable law. Furthermore, in accordance with the provisions of Art. 33 of the Department of Health Act, "[a]ny natural or juridical person who violates the provisions of this Act or the regulations issued by the Department of Health thereunder shall incur a misdemeanor, and upon conviction, may be sentenced to imprisonment that shall not exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties in the discretion of the court." Any person who fails to comply with the provisions of this Order shall be subject to criminal proceedings, which shall be initiated without any delay by the Public Prosecutor, whom, in turn, must request bail to be set in accordance with the Rules of Criminal Procedure.

Section 10: **DEFINITION OF "AGENCY".** For the purposes of this Executive Order, the term "Agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, including public corporations, regardless of its name.

Section 11: **NON-CREATION OF ENFORCEABLE RIGHTS.** This Executive Order is not intended to create any rights, substantive or

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procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative, against the Government of Puerto Rico or its agencies, officials, employees, or any other person.

Section 12: **SEVERABILITY.** The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void, or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

Section 13: **PRIOR ORDERS SUPERSEDED.** This Executive Order shall, when it enter into force, supersede the parts of any executive order that may, in whole or in part, be inconsistent with the provisions herein, to the extent of such inconsistency.

Section 14: **PUBLICATION.** This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.

Section 15: **VALIDITY.** This Executive Order shall enter into force on August 23, 2021 and shall remain in force until the state of emergency declared in Administrative Bulletin OE-2020-020 has been lifted, or until this Order is amended or annulled by a subsequent Executive Order or by law.

IN TESTIMONY WHEREOF, I hereby issue this Executive Order under my signature and cause the Great Seal of the Government of Puerto Rico to be affixed in San Juan, Puerto Rico, on this 11th day of August of 2021.



**PEDRO R. PIERLUISI
GOVERNOR**

Enacted in accordance with the law on this 11th day of August of 2021.

**OMAR J. MARRERO DÍAZ
SECRETARY OF STATE**

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**GOVERNMENT OF PUERTO RICO
LA FORTALEZA
SAN JUAN, PUERTO RICO**

Administrative Bulletin Number: OE-2021-064

EXECUTIVE ORDER OF THE GOVERNOR OF PUERTO RICO, HON. PEDRO R. PIERLUISI, FOR THE PURPOSES OF IMPLEMENTING MEASURES TO COMBAT COVID-19 AT GYMS, BEAUTY SALONS, BARBER SHOPS, SPAS, CHILD CARE CENTERS, CASINOS, GROCERY STORES, AND CONVENIENCE STORES, AMONG OTHERS.

WHEREAS: Since March 12, 2020—after the first cases of COVID-19 were recorded on our Island—we have been in a state of emergency to address the pandemic we are currently facing. From that date, countless strategies have been employed to control it. The most recent one was issuing administrative bulletins OE-2021-058, OE-2021-062, and OE-2021-063, in which certain important sectors of the community were required to present a certificate of immunization against said virus, subject to certain exceptions and available alternatives.

WHEREAS: Currently, the rise in cases continues to accelerate. The data provided by the Puerto Rico Department of Health indicates the daily average for confirmed cases has increased to 331 positive cases. Exactly one week ago, that figure was approximately 288 cases, and a month ago it was 26 cases. These statistics confirm an increase in hospitalizations in recent days, totaling 492 individuals. A week ago, there were 346 hospitalized individuals, a difference of 150 hospitalized individuals in just one week. With regard to intensive care unit, as of today, 108 adults and 2 minors are hospitalized, of which 83 are using ventilators. Statistically, one month ago, the number of adults hospitalized due to COVID-19 only represented 1%. Today, that number is 6%. In the case of intensive care units, there was an increase of 14%. There has been an increase from 2% to 3% in cases involving minors, and intensive pediatric care has increased to 2%. At the same time, the positive rate, which means the percentage of people who received a positive result out of all people tested for the virus, continues to be over 10%, which represents a 6% increase from the previous month.

Not in line with the above, deaths have increased significantly. In the past days, daily average deaths have reached approximately 7 daily cases, a figure not seen since April 2021.



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In the United States, the data is either similar or even more concerning than in Puerto Rico. Average weekly cases increased to over 140,000 cases, a number not reached since November 2020, before COVID-19 vaccinations were available. Similarly, hospitalizations are at levels not seen since November 2020. Deaths have reached an average of 800, a figure not seen since May 2021. At a global level, weekly averages total over 600,000 cases and 9,000 deaths. This increase is partly due to the emergence of the *Delta* variant. Said increase is alarming and requires that the Government take new decisive actions to control the spread and protect the lives of all citizens. Therefore, the Government has a responsibility and a pressing and vital interest in protecting the lives of others, requiring that the risk of infection is minimized at activities and places where there is a high potential for exposure to the virus.

WHEREAS:

The increase in the rate of positive results, infections, and hospitalizations in Puerto Rico and in the United States have a common factor that cannot be ignored: individuals not vaccinated against COVID-19. According to data from the Department of Health and official entities in the United States, the vast majority of infected and hospitalized individuals are unvaccinated. This has caused an increase in infections within the community.

WHEREAS:

The scientific data collected in Puerto Rico shows the great effectiveness of the vaccine. In particular, it has been concluded that only 7.5% of total recorded COVID-19 cases correspond to fully vaccinated individuals. Therefore, the risk of infection for unvaccinated individuals is 6.9 times greater than the risk for those who are vaccinated. As for hospitalizations, only 4.5% of patients are vaccinated individuals. This means that the risk of an unvaccinated individual being hospitalized is 12.2 times greater than the risk for vaccinated individuals. Lastly, regarding deaths, only 2.5% of total deaths related to COVID-19 correspond to fully vaccinated individuals. This indicates that the risk of death for unvaccinated individuals is 25.7 times greater than the risk for vaccinated individuals. This is to say that being vaccinated is at least 3 times better for avoiding infection, 8 times better for avoiding hospitalization, and 16 times better for avoiding death due to COVID-19.

WHEREAS:

Scientific evidence shows that the most effective measure for



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controlling COVID-19 is vaccination. As it was thoroughly explained in Administrative Bulletin OE-2021-058, the World Health Organization (WHO) has determined that the available vaccines are safe and efficient, and that they prevent people from becoming gravely ill or dying due to SARS-CoV2. Therefore, the WHO recommends vaccination, even for those who have already been infected with COVID-19.

The United States Food and Drug Administration (FDA) has similarly indicated that the 3 COVID-19 vaccines it has authorized for emergency use do work, as they prevent said illness and its severe effects on a person's health, including hospitalization and death. It has also stated that the available information suggests that the authorized vaccines protect against the variants that are currently circulating. Therefore, the FDA—an agency in charge of evaluating and authorizing the vaccines—has promoted vaccination as an effective method for reducing the spread of COVID-19.

Lastly, the Centers for Disease Control and Prevention (CDC) has stated that COVID-19 vaccines are safe and effective, especially for preventing severe cases and death. It has asserted that they can prevent people from becoming infected and spreading the virus. In addition, they help prevent people from becoming severely ill even when they become infected with COVID-19, and they help protect their families and those around them. It also clarified that the vaccines are not experimental, because they have gone through the required stages in the clinical trials. Therefore, it sustains that the safest option for fighting said pandemic is to undergo vaccination for COVID-19.

WHEREAS:

In Puerto Rico, vaccinations are well underway. To date—according to data from the CDC—over 79.9% of people who can be vaccinated have received at least one dose. Approximately 68.9% of people who can be vaccinated are fully vaccinated. This data, along with the few recorded adverse reactions, confirm that COVID-19 vaccinations are safe and efficient.

WHEREAS:

It is important to highlight that, to date, 1,963,906 people in Puerto Rico are fully vaccinated. This means that 61.5% of our island's



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total population is fully vaccinated, and that a significant percentage of people have yet to be vaccinated in order to control and combat the pandemic. In addition, the cumulative count of administered doses shows that vaccination has declined in recent days, that is to say, not a lot of people are being vaccinated on a daily basis. Said fact has delayed the goal of achieving so-called “herd immunity,” or the point at which the virus cannot spread because the community is protected. Be advised that until said milestone is achieved, Puerto Rico is at risk of suffering the most severe consequences of COVID-19.

WHEREAS:

What is happening in Puerto Rico regarding vaccination is consistent with what is happening in other jurisdictions. At a global level, only slightly over 23.8% of the total population is fully vaccinated, and 31.7% have received a single dose. In the United States, only 51% are fully vaccinated and 60% of the total population has received a single dose. These numbers confirm the need to implement measures in Puerto Rico that guarantee the population’s safety in places with high exposure to the virus.

WHEREAS:

Regarding vaccinations in general, as stated in Administrative Bulletin OE-2021-058, the United States Supreme Court has examined the State’s authority to regulate its use. In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), mandatory smallpox vaccination was challenged. Addressing the case, the Court determined that the freedom granted by the Constitution of the United States is not an absolute right and is subject to reasonable restrictions that the government believes are necessary to promote the safety, health, peace, good order, and morals of the community.

Not satisfied with that, in *Zucht v. King*, 260 U.S. 174 (1922), the United States Supreme Court upheld a law from the state of Texas that prohibits unvaccinated children from attending school. In its reasoning, it concluded that what was ordered did not establish an arbitrary power, but rather an ample discretion required to address and protect public health.

Therefore, in both cases, the United States Supreme Court upheld the state’s authority to reasonable mandate vaccinations.

WHEREAS:

In the case of Puerto Rico, in *Lozada Tirado v. Testigos de Jehová*, 177 DPR 893 (2010), our Supreme Court acknowledged that,



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although people have a right to decline a medical treatment, this right is not absolute. Using federal case law as a basis (*Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261 (1990)), the Court concluded that the State may have certain interests that must be taken into account, such as the protection of third parties. This last one applies when intending to submit citizens to a certain medical treatment during a public health crisis. Thus, it was acknowledged that the State may require certain vaccines in a mandatory capacity when facing the threat of a pandemic. *Id.*, n. 13.

WHEREAS:

Certainly, people have a constitutional right to decline a medical treatment. However, unlike individual treatments that do not affect the health of others, vaccinations are intended to combat a collective enemy, not an individual one. It is for that reason that vaccinations have been considered one of the 20th century's greatest achievements in public health. See *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 226 (2011).

WHEREAS:

In the case of COVID-19 vaccines, even though there is no binding case law, as recently as August 2, 2021, the United States Court of Appeals for the Seventh Circuit confirmed the decision of the federal District Court of Indiana. In this case, students and employees were required to be fully vaccinated to attend university in person. In addressing the case, the Court of Appeals decided that, according to *Jacobson v. Massachusetts, supra*, there was no constitutional obstacle to requiring said vaccination. It based its decision on the fact that, unlike *Jacobson*, in Indiana there was more latitude because they allowed certain exemptions and the vaccine was not mandatory for all citizens, instead it was a condition for attending university. This case was taken to the federal Supreme Court, which rejected it. See *Klaasen v. Trustees of Indiana University*, 2021 WL 3281209; *Klaasen et al v. The Trustees of Indiana University*, 2021 WL 3025893.

On the other hand, in *Bridges v. Houston Methodist Hospital*, 2021 WL 2399994, employees of a hospital in Texas were required to be vaccinated against COVID-19. The federal District Court upheld the hospital's actions and the vaccination requirement. It believed that conditioning employment to a vaccine is not a form of coercion and that it may be part of the job's requirements.

WHEREAS:

Consistent with the above, on July 6, 2021, the United States



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Department of Justice issued an Opinion through its Office of Legal Counsel (OLC) in which it concluded that federal provisions authorizing the emergency use of COVID-19 vaccines do not prohibit public and private entities from imposing SARS-CoV2 vaccinations as a requirement. That is to say, in their understanding, Section 564 of the *Food, Drug, and Cosmetic Act* (FDCA), 21 USC sec. 360bbb-3, only requires that whoever is going to administer a vaccine to a person inform them of the type of authorization given, the potential benefits and risks, and the option to accept or decline the vaccine, including informing them of the consequences of declining it.

WHEREAS:

Not satisfied with the above, on July 29, 2021, the President of the United States, Joseph R. Biden Jr., required all federal employees and contractors to undergo vaccination or weekly COVID-19 testing. This occurred after the United States Department of Veteran Affairs was the first federal agency to implement a requirement for all healthcare workers to be vaccinated.

Several states and cities have also announced that they will require their employees to be vaccinated. The city of New York was the first to make such an announcement. Mayor Bill de Blasio ordered that, starting on September 13, 2021, all municipal employees must be vaccinated or, as an alternative, must undergo weekly COVID-19 testing. He also required vaccinations for people visiting indoor establishments, such as restaurants, theaters, and gyms. In said state, the Governor ordered that hospital employees be vaccinated by September 6, 2021. In addition, it was ordered that transportation employees must be vaccinated or present a negative COVID-19 test result on a weekly basis.

For its part, the state of California will require vaccinations for all of its public employees or, as an alternative, negative COVID-19 test results starting this month. Similarly, the governor of New Jersey, Phill Murphy, ordered mandatory vaccinations for healthcare employees and employees working at extended care centers and prisons, among others; as an alternative they may undergo weekly COVID-19 testing.

WHEREAS:

As recently as August 6, 2021, the Court of First Instance of San Juan issued a Judgment in which it upheld the vaccination requirement at schools in Puerto Rico. In its pertinent parts, it

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declared that “the State has an urgent interest in safeguarding public health and taking all necessary measures to effectively combat a pandemic that has affected the lives of every person on this planet and that is simply unprecedented in recent history. Without a doubt, these measures include requiring vaccinations against said disease and the use of masks in indoor spaces where people are close together, such as schools and universities.” It also concluded that “because it is our understanding that the executive and administrative orders in question are based on accurate and verifiable scientific data, and that, in addition, they are carefully designed to provide reasonable accommodations for those who qualify and need them, we concluded that they are valid and completely in line with the applicable constitutional parameters.”

WHEREAS: After declaring a state of emergency, Article 5.10 of Act 20-2017, as amended, known as the “Puerto Rico Public Safety Department Act,” empowers me, as Governor, to establish any measures deemed necessary for the duration of the emergency in order to manage it with the goal of securing the health, property, and safety of Puerto Rico’s residents.

WHEREAS: Subsection (b) of Article 5.10 of Act 20-2017 establishes that, as Governor of Puerto Rico, I may enact, amend, or repeal any regulation, and to enact, amend, or rescind any order as deemed appropriate to govern during the state of emergency or disaster. The regulations enacted or orders issued during a state of emergency shall have the force of law while said state of emergency persists.

WHEREAS: The Government of Puerto Rico has a responsibility to make the necessary efforts to prevent and stop the spread of COVID-19 and safeguard the health, lives, and safety of Puerto Rico’s residents.

WHEREAS: The power to govern a community comes with a great responsibility to ensure that its people are safe and healthy. The power of reason of State—as delegated to the Executive Branch by Act 20-2017—empowers the government to take the necessary measures to protect the health and safety of its people. That is to say, it is the State’s inherent power which allows for the creation and enactment of regulations in general for the purposes of protecting public health, safety, and wellbeing. In order to secure these benefits for the community, the State has the power to



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restrict certain personal interests, which are not absolute.

WHEREAS:

With the specific objective of safeguarding the health of the people of Puerto Rico, clear and decisive action must be taken to ensure that each citizen is healthy. This Government has an urgent and important interest in safeguarding the lives of the people and ensuring to minimize the risk of infection in everyday activities and at places where exposure to the virus is high. A necessary step for achieving these objectives is to implement decisive actions—such as requiring vaccinations or negative COVID-19 test results—at locations where people have direct contact with each other, such as beauty salons, barber shops, aesthetics salons, spas, gyms, and other important businesses, which will prevent infections at these facilities.

WHEREAS:

The COVID-19 pandemic presents a dynamic and changing scenario that requires the Government to redesign its strategies in order to promptly manage infections in the population.

WHEREAS:

In light of the significant rise in infections, I, as Governor, have a responsibility and duty to continue to carefully monitor the daily statistics issued by the Department of Health, and take the necessary measures to safeguard everyone’s health. Should these measures not have a significant impact on the increase in infections, I shall be forced to implement additional restrictions.

WHEREAS:

I must emphasize that each citizen has an individual responsibility to exercise good judgment and care in any personal, commercial, or professional activity they are attending or involved in. If every Puerto Rican follows all of the precautionary measures issued by the CDC and the administrative orders issued by the Department of Health concerning COVID-19, there is no doubt that we would all be safer. Therefore, each citizen has a responsibility to continue following the precautionary measures issued by the Secretary, and to use good judgment and not participate in any activity they believe would put their health or the health of others at risk.

THEREFORE:

I, PEDRO R. PIERLUISI, Governor of Puerto Rico, by virtue of the powers inherent to my office and the authority vested in me by the Constitution and the laws of the Government of Puerto Rico, hereby declare and order the following:

Section 1:

EMPLOYEE VACCINATION REQUIREMENTS. In order to

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minimize infections and successfully safeguarding the health of Puerto Rico's population, I hereby order that once this Executive Order enters into force, beauty salons, barber shops, aesthetics salons, spas, gyms, child care centers, grocery stores, convenience stores (including businesses authorized by the WIC Program), casinos, and gas stations must require and ensure that all employees—regardless of their duties—who work there in person to be fully vaccinated with a vaccine authorized by the FDA to address the COVID-19 emergency. For the purposes of this requirement, it shall be sufficient for the employee to show that they have started the vaccination process with the first dose by the date this Executive Order goes into force, which, to wit, is August 30, 2021. However, the employee must comply with and later present evidence to their employer of having received the second dose, if the type of vaccine they have been administered requires so. They shall have until October 15, 2021 to do so.

It shall be the responsibility of each employer, merchant, owner, administrator, or analogous person—or a person to whom they have delegated—to request employees to present a certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or a document that proves they have completed or initiated their COVID-19 vaccination process. For their part, it shall be the employee or person's responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or a document that proves they have initiated or completed their COVID-19 vaccination process in order to be permitted to work in person. Certificates of immunization may be substituted with any other physical or digital method authorized for verifying vaccination status.

For the purposes of this Executive Order, the term employee applies to any natural person who works physically or in person—including a business's owner, administrator or analogous person, contractors, but not suppliers—in exchange for a salary, wages, compensation, emolument, or any type of remuneration at one of the abovementioned businesses. For the purposes of the vaccination requirement, as established in this Executive Order, individuals who are providing services in a voluntary and in-person capacity at these establishments shall also be considered

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employees.

Section 2:

EMPLOYEE EXEMPTIONS. For the purposes of this Order, individuals whose immune systems are compromised and for whom the COVID-19 vaccine may be detrimental to their health shall be exempted from the vaccination requirement. Similarly, individuals who have other medical contraindications that preclude their inoculation shall be exempted. This must be certified by a physician authorized to practice medicine in Puerto Rico. In addition, the physician must certify the duration of the medical contraindication and whether it is temporary or permanent. If it is temporary, once the contraindication is not present, the person must comply with the vaccination requirement, as applicable under this Order.

As an exception, declining vaccination for religious purposes is permitted, as long as the vaccine goes against the employee's religious dogma. In order to qualify for this exception, the person must present a sworn statement in which they certify, along with a minister or religious leader of their faith, both of whom shall be under oath and shall make their statement under penalty of perjury, that they cannot be vaccinated against COVID-19 due to their religious beliefs. If they do not have a minister or religious leader, they must present a sworn statement in which they establish their religious convictions in a specific manner. If the above criteria are not met, said request must be processed in accordance with what is established in Section 3 of this Executive Order .

An employee that may not be vaccinated due to any of the abovementioned exceptions may work in person at the corresponding facilities, taking adequate safety measures, which include the use of masks, social distancing, and any other measure that may, from time to time, be issued by the Secretary of the Department of Health.

In addition to the above, this person must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed no more than 72 hours prior, or a positive COVID-19

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result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces. The employer or a person to whom they have delegated must ensure compliance with the above.

Section 3:

EMPLOYEES WHO DECLINE VACCINATION. Any employee of a beauty salon, barber shop, aesthetics salon, spa, gym, child care center, grocery store, convenience store (including businesses authorized by the WIC program), casino, or gas station who does not present their certificate of immunization (COVID-19 Vaccination Record Card Vacu ID) or a document that verifies that they have completed or initiated the COVID-19 vaccination process, and for whom none of the exemptions apply, must—while the emergency declared in Administrative Bulletin OE-2020-020 persists—comply with the following: present a negative COVID-19 test result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test or antigen test) performed no more than 72 hours prior, or a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

Should the abovementioned individuals not present their certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID), a negative COVID-19 test result on a weekly basis, or a positive COVID-19 result with documentation of their recovery, and should they not qualify for one of the exemptions detailed in this Executive Order, they may not work in person. Therefore, the employer must take the corresponding applicable measures, including allowing them to use applicable regular leaves or an unpaid leave.

Section 4:

REQUIREMENTS FOR VISITORS. In the interest of safeguarding the health of Puerto Rico’s population and minimizing infections, I hereby order that, from the moment this Executive Order enters into force, all beauty salons, barber shops, aesthetics salons, spas, gyms, and casinos must verify that all of their visitors above the age of 12—subject to the exemptions indicated in this section—comply

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with one of the following conditions:

1. The visitor is properly vaccinated with a vaccine approved by the FDA to address the COVID-19 emergency.
2. The visitor presents a negative COVID-19 result from a qualified SARS-CoV2 viral test (Nucleic Acid Amplification Test (NAAT) or antigen test) performed 72 hours prior to visiting the establishment.
3. The visitor presents a positive COVID-19 result from the past 3 months, along with documentation of their recovery, including a letter from a certified healthcare provider or a government health official that certifies that the person has recovered and is ready to be present in public spaces.

It shall be the responsibility of each business or commercial entity to request that each visitor—before entering the business—present a certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or viral test result. For their part, it shall be the visitor's responsibility to present their certificate of immunization (COVID-19 Vaccination Record Card or Vacu ID) or viral test result as a condition to access the business. The certificate of immunization or viral test may be presented through any other physical or digital method.

In addition, the private operator must ensure that all visitors comply with administrative orders 2021-508A and 2021-512, issued by the Secretary of the Department of Health, and subsequent orders. In particular, they must comply with mandatory mask usage in indoor spaces.

It is important to point out that what is established in this Executive Order does not limit the authority of any private operator to implement additional restrictions not contemplated herein. That is to say, none of what is established in this Executive Order may be interpreted as private operators not being able to take additional or more restrictive measures.

Individuals under the age of 12 are exempted from complying with the screening established in this section, as currently they cannot be vaccinated.



Section 5:

CAPACITY LIMITATION. Any beauty salons, barber shops, aesthetics salons, spas, gyms, or casinos that do not comply with the requirements established in Section 4 of this Executive Order

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shall be obligated to limit their capacity to 50% of the establishment's maximum capacity, as established in the building code currently in effect in Puerto Rico (PR Building Code 2018).

Section 6:

ACCESS RESTRICTION. Visitors may not access an establishment if they refuse to comply with the requirements established in this Executive Order as implemented by its private operator. All citizens are urged to cooperate with private operators in complying with what is established herein. Should any citizen not cooperate and attempt to force a private operator to not comply with the provisions of this Executive Order, they may be subject to what is established in Section 9 of this Order and any other applicable provision of the Puerto Rico Criminal Code.

Section 7:

OVERSIGHT. The corresponding agencies are hereby ordered to oversee faithful compliance with what is established in this Executive Order. The public is also encouraged to inform the authorities of establishments that are not complying with this Order. In order for citizens to be able to contribute to oversight efforts and full compliance with this Executive Order, all establishments are hereby ordered to display posters in visible locations advertising the confidential COVID-19 hotline created by the Department of Health. These posters or signs must include the following contact information in order for citizens to report cases of noncompliance:

- a) Phone: (787) 522-6300, extensions 6899, 6840, 6824, 6833, and 3893
- b) Email: investigaciones@salud.pr.gov

It is also hereby required that, should they not comply with the requirements established in this Executive Order, this aforementioned poster or sign must include the number of people who total the establishment's maximum required capacity of 50% based on the current Puerto Rico building code (PR Building Code 0218) authorized by the Puerto Rico Firefighters Corps Bureau; the above is under penalty of noncompliance with this Executive Order.

Citizens are urged to notify the corresponding agencies, including the Department of Health, of any private operator that

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is not complying with screening requirements or the limitation of an establishment's capacity to 50%, as established in this Executive Order.

Section 8:

GUIDELINES AND REGULATIONS. The provisions established in this executive order may be defined, reinforced, or modified in detail through guidelines issued by any agency called upon to regulate the services discussed herein, including the Department of Health and the Department of Labor and Human Resources. All agencies that issue guidelines in order to describe the provisions of this Executive Order in detail must publish said guidelines immediately and as widely as possible.

Section 9:

NONCOMPLIANCE. Failure to comply with the provisions of this Executive Order by any person or business shall result in the imposition of the criminal penalties and fines defined under the provisions of Article 5.14 of Act 20-2017, as amended, which sets a penalty of imprisonment not to exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties, at the discretion of the court and/or any applicable law. Furthermore, in accordance with the provisions of Art. 33 of the Department of Health Act, "[a]ny natural or juridical person who violates the provisions of this Act or the regulations issued by the Department of Health thereunder shall incur a misdemeanor, and upon conviction, may be sentenced to imprisonment that shall not exceed six (6) months, or a fine of not more than five thousand dollars (\$5,000), or both penalties in the discretion of the court." Any person who fails to comply with the provisions of this Order shall be subject to criminal proceedings, which shall be initiated without any delay by the Public Prosecutor, whom, in turn, must request bail to be set in accordance with the Rules of Criminal Procedure.

Section 10:

DEFINITION OF "AGENCY". For the purposes of this Executive Order, the term "agency" refers to any agency, instrumentality, office, or department of the Executive Branch of the Government of Puerto Rico, including public corporations, regardless of its name.

Section 11:

NON-CREATION OF ENFORCEABLE RIGHTS. This Executive Order is not intended to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative, against the

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Government of Puerto Rico or its agencies, officials, employees, or any other person.

Section 12: **SEVERABILITY.** The provisions of this Executive Order are separate and independent of each other, and if any part, section, provision, or sentence of this Executive Order is declared unconstitutional, void, or invalid by a court of jurisdiction and venue, such decision shall not affect the validity of the remaining provisions, which shall remain in full force.

Section 13: **PRIOR ORDERS SUPERSEDED.** This Executive Order shall, when it enter into force, supersede the parts of any executive order that may, in whole or in part, be inconsistent with the provisions herein, to the extent of such inconsistency.

Section 14: **PUBLICATION.** This Executive Order must be filed immediately with the Department of State and the widest possible publication is hereby ordered.

Section 15: **VALIDITY.** This Executive Order shall enter into force on August 30, 2021 and shall remain in force until the state of emergency declared in Administrative Bulletin OE-2020-020 has been lifted, or until this Order is amended or annulled by a subsequent Executive Order or by law.



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IN TESTIMONY WHEREOF, I hereby issue this Executive Order under my signature and cause the Great Seal of the Government of Puerto Rico to be affixed, at La Fortaleza, in San Juan, Puerto Rico, on this 19th day of August of 2021.

**PEDRO R. PIERLUISI
GOVERNOR**

Enacted in accordance with the law on this 19th day of August of 2021.

**OMAR J. MARRERO DÍAZ
SECRETARY OF STATE**