

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

ALLISON S. ALESSANDRO,)	
)	
Plaintiff,)	Civil No. 3:20-cv-00023-GFVT
)	
V.)	
)	
ANDREW BESHEAR, in his official)	
capacity as Govern, <i>et al.</i> ,)	ORDER
)	
Defendants.)	
)	
)	

*** **

This matter is before the Court upon Plaintiff Allison S. Alessandro’s Motion for Temporary Restraining Order. [R. 3.] For the past several months, the world has been collectively fighting against a global pandemic. To curb the spread of the coronavirus in the Commonwealth of Kentucky, Governor Andrew Beshear has issued a series of executive orders limiting social interaction between Kentuckians. Non-essential businesses are temporarily closed, restaurants are relegated to take-out only, and citizens have been asked to practice social distancing. On March 30, 2020, as part of his efforts to “flatten the curve,”¹ Governor Beshear issued an executive order instructing Kentuckians to refrain from travel interstate except “when required by employment; to obtain groceries, medicine, or other necessary supplies; to seek or obtain care by a licensed healthcare provider; to provide care for the elderly, minors, dependents,

¹ The term “flatten the curve” refers to slowing the spread of the coronavirus through the population. The goal is to “reduce[] the number of cases that are active at any given time, which in turn gives doctors, hospitals, police, schools, and vaccine-manufacturers time to respond, without becoming overwhelmed.” Siobhan Roberts, *Flattening the Coronavirus Curve*, The New York Times, <https://www.nytimes.com/article/flatten-curve-coronavirus.html>. The result is that, when plotted on a line graph, the rate of infection appears as a flattened curve rather than a steep peak.

persons with disabilities, or other vulnerable persons; or when required by court order.”

Executive Order 2020-258. Those residents returning to Kentucky from out of state “must . . . self-quarantine for fourteen days.” *Id.*

Plaintiff filed her Complaint and Motion for Temporary Restraining Order (TRO) simultaneously on April 2, 2020. [R. 1; R. 3.] Ms. Alessandro seeks “injunctive and declaratory relief against Governor Andrew Beshear and Attorney General Daniel Cameron for the unconstitutional infringement on the right of every Kentuckian to travel to other states in the United States of America.” [R. 1 at ¶ 1.] Ms. Alessandro “is a citizen of Kentucky who regularly travels to Ohio and visits friends and family in Ohio.” *Id.* at ¶ 21. Plaintiff alleges that as a result of the Executive Order, she “has been unable to travel to the State of Ohio for the purpose of associating at a safe distance with her friends and family who reside there,” or “to enjoy Ohio’s parks and other public areas[.]” *Id.* ¶¶ 22–23. Plaintiff argues interstate travel is a constitutional right and asks the Court to enjoin enforcement of the Executive Order for the next fourteen days, until the Court can conduct a hearing on a preliminary injunction. [R. 3 at 6.]

Rule 65 allows the Court to issue a TRO without notice to the other party only if “(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1). “[A] temporary restraining order is an extraordinary remedy designed for the limited purpose of preserving the status quo pending further proceedings on the merits[.]” *Stein v. Thomas*, 672 Fed. App’x 565, 572 (6th Cir. 2016). This is because “our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a

dispute.” *Reed v. Cleveland Bd. of Educ.*, 581 F.2d 570, 573 (6th Cir. 1978) (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 439 (1974)). Thus, for the Court to issue a TRO, Ms. Alessandro must establish that she would suffer immediate, irreparable harm if her motion is not granted.

Ms. Alessandro argues in her motion that “[t]he constitutional right of interstate travel is virtually unqualified,” and “[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed.” [R. 3 at 4; *California v. Aznavorian*, 439 U.S. 170, 176 (1978); *ACLU Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 649 (6th Cir. 2015) (internal citations omitted).] But Rule 65 requires Ms. Alessandro to demonstrate her irreparable harm is also immediate. A TRO is an emergency measure, and the Court is not convinced that desire to visit friends and family in Ohio satisfies the immediacy requirement of Rule 65. Interstate travel for foreseeable emergencies—a need to obtain medical care, purchase essential items, care for an ailing relative, or attend a court proceeding—is allowable under Executive Order 2020-258. Ms. Alessandro has not alleged any emergency or one-time event will occur in Ohio within the next fourteen days such that emergency relief is warranted. In addition, Ms. Alessandro’s complaint does not allege that she plans to travel to Ohio in the next fourteen days, nor does it allege she has faced prosecution for violation of the executive order. Therefore, the Court finds the injury is not sufficiently immediate to warrant entry of a TRO until the Court can schedule a hearing on a preliminary injunction.

Further, it is not clear that the relief requested can prevent Ms. Alessandro’s alleged irreparable harm. Ms. Alessandro’s complaint says Kentucky’s “travel ban” prevents her from “associating at a safe distance with her friends and family who reside [in Ohio],” or “enjoy[ing] Ohio’s parks and other public areas[.]” [R. 1 at ¶¶ 22–23.] But it appears that enjoining

enforcement of Kentucky’s order would not allow Ms. Alessandro to travel freely into and about Ohio. On April 2, 2020, Ohio updated its own directive for preventing the spread of COVID-19 among its citizens. *Ohio Stay-at-Home Order Extended Until May 1*, NBC4i. (Apr. 2, 2020), <https://www.nbc4i.com/community/health/coronavirus/gov-dewine-extends-ohios-stay-at-home-order-until-may-1/>. Ohio has prohibited “[a]ll public and private gatherings of any number of people occurring outside a single household or living unit[.]” *Id.* Further, “persons entering the State with the intent to stay are asked to self-quarantine for fourteen days.” Briana Rice, *Ohio’s Stay-at-Home Order Extended Until May 1, Here’s What the New Order Includes*, Cincinnati Enquirer (Apr. 3, 2020), <https://www.dispatch.com/news/20200403/ohios-stay-at-home-order-extended-until-may-1-heres-what-new-order-includes>.

Finally, the Court also considers the balance of harms between Plaintiff and the Defendants. *Northeast Ohio Coalition for the Homeless v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006). Generally, if a law is found unconstitutional, “no substantial harm to others can be said to inhere in its enjoinder.” *Déjà vu of Nashville, Inc. v. Metro Gov’t of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001). But this is a truly unprecedented time. Enjoinder of the Governor’s order may well substantially harm citizens, especially those who are particularly vulnerable to illness. Enjoining this order could also erode the public’s conformity with earlier executive orders which have not faced constitutional challenges. These are complicated constitutional issues that would benefit from full briefing from both parties as well as a hearing.

In light of the foregoing, the Court will deny Plaintiff’s Motion for a TRO. But the Court’s review at this stage is preliminary. In depth consideration of the constitutional issues at play will require additional briefing from the parties, and particularly a response from

Defendants. Expedited consideration is appropriate. Accordingly, and the Court being otherwise sufficiently advised, it is **ORDERED** as follows:

1. Plaintiff's Motion for Temporary Restraining Order [**R. 3**] is **DENIED**;
2. A telephonic scheduling conference shall be held **Monday, April 6, 2020** at **11:00 a.m.**, with Judge Van Tatenhove sitting in **Frankfort**, Kentucky;
3. To join the teleconference, the parties are **DIRECTED** to call AT&T Teleconferencing at 1-877-336-1280 and enter Access Code 2086161 (followed by #), and, when requested, enter the Security Code 09170 (followed by #); and
4. Plaintiff is **DIRECTED** to serve a copy of this Order upon Defendants or their counsel.

This the 3d day of April, 2020.



Gregory F. Van Tatenhove
United States District Judge