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February 2, 2021

Via ECF

The Honorable Judge Kiyo A. Matsumoto  
United States Courthouse  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Agudath Israel of America, et al. v. Cuomo, No. 20-cv-04834 (E.D.N.Y.)(KAM)(RML)

Dear Judge Matsumoto:

This Office represents Governor Andrew M. Cuomo, the defendant in the above-referenced matter. The purpose of this letter is to request that the Court cancel the preliminary injunction hearing presently scheduled for February 8, 2021 concerning "Executive Order 202.68's 25% and 33% capacity limits on houses of worship." Minute Entry, January 26, 2021. Defendant makes this request because, as set forth below, he does not contest the entry of a preliminary injunction against these percentage capacity limits.

Executive Order ("EO") 202.68 provides that in areas designated as "red zones," "houses of worship shall be subject to a capacity limit of 25% of maximum occupancy or 10 people, whichever is fewer." EO 202.68 further provides that in areas designated as "orange zones," houses of worship shall be subject to a capacity limit of "33% of maximum occupancy or 25 people, whichever is fewer." On January 19, 2021, this Court issued a preliminary injunction against the enforcement of these 10- and 25- person numerical limitations set forth in EO 202.68.

In light of the decisions made in this case by this Court and the appellate courts that have considered it, Defendant Cuomo does not oppose the entry of a preliminary injunction against the enforcement of (i) the 25 percent capacity limit on houses of worship in areas designated as red zones imposed under EO 202.68, as extended, and (ii) the 33 percent capacity limit on houses of worship in areas designated as orange zones imposed under EO 202.68, as extended. The injunction would remain in force for as long as Executive Order 202.68, as extended, remains in effect.

Defendant believes that his stated position herein obviates the need for the February 8, 2021 hearing. Consequently, he respectfully requests that the hearing and related briefing be canceled. Although the parties have negotiated in good faith on this matter, they have not reached an agreement. I asked Plaintiffs' counsel whether he would consent to Defendant's request to cancel the hearing, but received no response to my question.

