



CDC TRAVEL MASK MANDATE LITIGATION

November 4, 2022


In response to rising numbers of [COVID-19 cases](#) and President Biden's [Executive Order 13998](#) calling on the heads of executive departments and agencies to mandate masking, the Centers for Disease Control and Prevention (CDC) issued an Order, [Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs](#) ("CDC's Mask Mandate" or "Mandate"), on January 29, 2021.

CDC's Mask Mandate required all persons traveling on specific public conveyances throughout the United States to wear a mask. The public health rationale was that masking would help mitigate the spread of COVID-19 between and within states and internationally. Since public transportation typically places passengers in close proximity for sometimes lengthy periods, people are at higher risk for contracting COVID-19 on public transportation, as confirmed by a recent [study](#) published in March 2022. Donning a mask in indoor public spaces can [substantially decrease](#) one's chance of contracting COVID-19.

Pursuant to the Public Health Service Act (PHSA) [Section 361\(a\)](#), CDC's Mask Mandate requires that "[p]ersons must wear masks over the mouth and nose when traveling on conveyances into and within the [U.S.]. Persons must also wear masks at transportation hubs as defined in this order." Certain categories of persons and conveyances are exempted, including children younger than two years old; persons with disabilities pursuant to the Americans with Disabilities Act (ADA); persons for whom wearing a mask would create an occupational risk; private, non-commercial conveyances; commercial motor vehicles when the driver is the only occupant; and military conveyances that adhere to similar precautions.

On April 18, 2022, [a federal district court](#) in Florida struck down CDC's Mandate, barring its national enforcement. Less than 2 weeks later, on April 29, [another federal court](#)—in the same Florida district—reached an opposite conclusion in a separately filed case and upheld the Mandate. While appeals and other litigation ensue, however, CDC's Mandate is not being enforced. Consequently, increases in COVID-19 cases among those who use public transportation are predictable. Of note, the [daily number of COVID-19 cases](#) in the U.S. significantly increased between April 7 - May 21, 2022.

This fact sheet explains these two district court decisions and other litigation, including ongoing appeals, assessing CDC's Mask Mandate.



***Health Freedom Defense Fund v. Biden*¹ (M.D. Fla. 4/18/2022)**

In July 2021, the Health Freedom Defense Fund, along with two individuals, sued President Biden, Department of Health and Human Services (HHS) Secretary Xavier Becerra, CDC Director Rochelle Walensky, and CDC Director of the Global Migration and Quarantine Division, Martin Cetron (all in their official capacity), challenging CDC's Mask Mandate. On April 18, 2022, [the U.S. District Court for the Middle District of Florida vacated the Mandate](#) on two primary grounds:

(1) the Mandate exceeded CDC's authority under the PHSa. The court read [PHSA Section 361\(a\)](#) as requiring CDC's prevention measures to fall within the categories of "inspection, fumigation, disinfection, sanitation, pest extermination, [or] destruction of animals or articles found to be so infected...." Focusing on "sanitation," the court defined the term in the PHSa to include "active cleaning," but not mask-wearing; and

(2) CDC did not follow proper procedures required by the [Administrative Procedure Act \(APA\)](#) in issuing the Mandate. Due to the COVID-19 public health emergency, CDC found "[good cause](#)" to bypass the APA's notice-and-comment requirements, which are generally required for agency rulemaking. The court found CDC's reasoning insufficient, suggesting the "single conclusory sentence" offered by CDC was outweighed by significant public interest in participating in a notice-and-comment period before the Mandate was issued.

***Wall v. CDC*² (M.D. Fla. 4/29/2022)**

In June 2021, Plaintiff Lucas Wall sued CDC (among other governmental agencies) challenging CDC's Mask Mandate and the international traveler testing requirement. [Mr. Wall had been diagnosed with Generalized Anxiety Disorder](#) and was unable to wear masks without feeling as though he would experience a panic attack, ultimately rendering him unable to fly while the Mandate was in place.

In its decision, the Florida federal district court [upheld CDC's Mask Mandate](#)—less than 2 weeks after the contrary decision by a court in the same district. It found that the Mandate was within CDC's scope of authority and compliant with APA requirements. The court determined that terms like "sanitation" and "inspection" in the [PHSA Section 361\(a\)](#) were ambiguous, so it only had to determine whether CDC's interpretation was reasonable, which it was. The court concluded that CDC had provided sufficient reasoning to invoke a [good cause exception](#) from the notice-and-comment period. "Frankly," stated the court, "if battling this elusive enemy [COVID-19] does not rise to the level of urgency that qualifies for deviation from normal rulemaking procedures under the good cause exception, the Court is not sure what does."

Other Ongoing Litigation & Appeals

CDC issued a [statement](#) on April 20, 2022, recommending Americans continue to wear masks on public transportation. At CDC's request, on May 31 the Department of Justice (DOJ) [appealed](#) the *Health Freedom* ruling to the U.S. Court of Appeals for the Eleventh Circuit. The CDC's Mandate officially remains unenforced while DOJ appeals the decision, despite a [recent surge](#) in COVID-19 infections. No date has been set for a hearing.

In its appeal, DOJ implored the Eleventh Circuit to reverse the Florida district court's decision in *Health Freedom*, arguing that the Mandate is staunchly within CDC's statutory authority. DOJ states that Supreme Court precedent holds that the PHSa authorizes CDC to impose requirements related to stopping interstate spread of disease.

¹ No. 21-cv-1693, 2022 U.S. Dist. LEXIS 71206 *1 (M.D. Fla. Apr. 18, 2022).

² No. 21-cv-975, 2022 U.S. Dist. LEXIS 93556 *1 (M.D. Fla. Apr. 29, 2022).

[Six former CDC directors and over 200 public health stakeholders](#) have publicly supported the reinstatement of CDC's Mask Mandate.

Additional litigation challenging the Mandate awaits final resolution, depending on the *Health Freedom* decision. [In February 2022, Texas Attorney General Ken Paxton](#) sued the Biden administration in the U.S. District Court for the Northern District of Texas, alleging major over-steps of CDC's authority in issuing the Mandate. Not long after, in March 2022, in the U.S. District Court for the Middle District of Florida, [21 state attorneys general also sued](#), claiming that enforcement of CDC's Mask Mandate "harms the states" and interferes with local laws. In both cases, the courts stayed the proceedings (on [May 24](#) and [June 2](#), respectively), pending the Eleventh Circuit's decision on the appeal of *Health Freedom*.

On August 8, 2022, the Eleventh Circuit held that CDC lacked statutory authority to issue a nationwide mask mandate. The court found that the mandate was not a "sanitation" measure as provided in the PHSA. Referencing the "major questions doctrine," it noted that "courts should 'hesitate' before concluding that Congress delegated substantial authority over matters of 'economic and political significance'" to an agency. In this case, the court viewed CDC as asserting "incredibly broad power" to "take any measures necessary 'to prevent the spread of communicable disease.'" This attitude echoes U.S. Supreme Court reasoning to strike down CDC's "breathtaking" claim of "authority" to issue a nationwide eviction moratorium to curb the spread of COVID-19 and mitigate economic and other consequences of the pandemic in *Alabama Ass'n of Realtors* (2021).

Corbett v. Transportation Security Administration

[On October 31, 2022, the Supreme Court declined to consider a challenge](#) to TSA's authority to require masks while traveling. The case, *Corbett v. Transportation Security Administration*, was on appeal following [a December 2021 decision from the U.S. Court of Appeals for District of Columbia](#) denying review. The Court declined *certiorari* without comment.

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