

## Florida District Court Judge Strikes Down U.S. Mask Mandate for Transportation

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On Monday, April 18, 2022, Judge Kathryn Kimball Mizelle of the Middle District of Florida issued a 59-page order striking down the CDC's national mask mandate on airplanes and mass transit, which was based on a regulation published February 3, 2021. The judge's decision freed airlines, airports and mass transit systems to make their own decisions about mask requirements, resulting in a mix of responses. The Transportation Security Administration announced on Monday evening that it will no longer enforce the mask requirement. And several airlines and airports have begun repealing their requirements that passengers wear face coverings.

The underlying case has been pending for several months. In July 2021, Sarah Pope, Ana Daza, and Health Freedom Defense Fund sued various government officials and the CDC, seeking a declaratory judgment that the mask mandate was unlawful and to have it set aside for violating the Administrative Procedure Act ("APA"). Following submission of the administrative record, the government moved for summary judgment on January 18, 2022, and briefing of the motion was completed on March 31, 2022. The judge did not hear any arguments on the motion.

The court concluded that the relevant statute invoked by the CDC, 42 U.S.C. § 264(a), did not permit it to impose the current mask mandate, noting:

That provision empowers [the Director of the CDC] to promulgate regulations aimed at "identifying, isolating, and destroying" diseases, *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Sews.*, 141 S. Ct. 2485, 2488 (2021) (per curiam):

The [CDC], with the approval of the [Secretary of Health and Human Services], is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the [CDC] may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

§ 264(a).

Interpreting § 264(a), Judge Mizelle concluded that it has "no 'unmistakeably clear' language indicating that Congress intended for the CDC to invite the traditionally State-operated arena of population-wide, preventative public-health regulations." Judge Mizelle also chided the CDC for not providing notice and comment on the mask mandate regulation, and found that was another basis on which the regulation could be struck down, finding the mask mandate to be "arbitrary and capricious."

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