

Circuit)² determines this Petition for Review. In the alternative, I ask for the Court to enjoin TSA's rules severely restricting mask exemptions for the disabled who medically can't tolerate having our breathing obstructed. *See* Section III-H below.

I respectfully ask for relief no later than **MONDAY, DEC. 20**, because I have a flight booked Dec. 21 on American Airlines from Kansas City, Missouri, to Colorado Springs to visit my 15-year-old son from a previous marriage for Christmas. I don't get to see my son often and it's critically important for me to be able to spend Christmas with him.

"I was previously booked from Kansas City to Colorado Springs Nov. 18 to spend Thanksgiving with my son but had to cancel the ticket because American Airlines is unlawfully denying mask exemptions to passengers with disabilities and TSA isn't doing anything about it. ... It was crushing to miss such an important holiday with my son." App. 11-17. "I submitted a mask-exemption demand to American, but it e-mailed me twice Nov. 8 to deny my request

1544-21-02B, and 1582/84-21-01B (Sept. 14, 2021); and 5) TSA Emergency Amendment 1546-21-01B (Sept. 14, 2021).

² I filed this Petition for Review in the U.S. Court of Appeals for the Eighth Circuit (No. 21-3362). On TSA's motion, the case was transferred to the D.C. Circuit (No. 21-1236). I have moved to have it sent with four similar cases to the Fifth Circuit. *See* Joint Letter filed Dec. 15.

unless I agreed to submit to numerous illegal procedures including submitting a medical certificate from my doctor, negative COVID-19 test, and consultation with a third-party medical vendor.” *Id.*

“Due to my military injury of a gunshot wound to the chest, asthma, and breathing difficulties, it is unbearable and sometimes impossible to maintain normal breathing. I can’t tolerate wearing a face mask. Covering my nose and mouth brings back my severe Post-Traumatic Stress Disorder from being in Iraq, in the way of after I was shot, I was not able to breathe due to where I was shot. So my PTSD affects me and prevents me from properly wearing the mask.” *Id.*

The Supreme Court has issued at least six emergency injunctive orders³ in the past year or so unequivocally holding that governments may not restrict constitutional rights or disregard clear statutory terms even in the name of fighting a pandemic. Because TSA unlawfully issued Health Directives without congressional, statutory, regulatory, or constitutional authority, this Court must immediately enjoin enforcement of the FTMM – as numerous

³ *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 66 (2020); *Robinson v. Murphy*, 141 S.Ct. 972 (2020); *High Plains Harvest Church v. Polis*, 141 S.Ct. 527 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S.Ct. 716 (2021); *Tandon v. Newsom*, 141 S.Ct. 1294 (2021); and *Alabama Ass’n of Realtors v. HHS*, No. 21A23 (U.S. Aug. 26, 2021).

tribunals have done in halting similar pandemic measures⁴ – hopefully entirely nationwide but at a minimum for the disabled with medical exemptions.

I already attempted to obtain interim relief from the Eighth Circuit and was denied Nov. 17 without any explanation. App. 9. I submitted an Emergency Application for Stay to the Supreme Court on Dec. 4. Brief at Ex. 1; Appendix (“App.”) at Ex. 2. I received a package Dec. 15 from the Supreme Court returning my Emergency Application because even though the Eighth Circuit denied my motion for stay, the case was transferred to this circuit and I must again move for a stay here before I can ask the Supreme Court for interim relief. Ex. 3.

Therefore I submit this motion as a condensed version of my Supreme court Emergency Application and refer the Court to that document for my full arguments. Ex. 1.

⁴ *Tiger Lily v. HUD*, No. 2:20-cv-2692, 2021 WL 1171887 (W.D. Tenn. Mar. 15, 2021); *Tiger Lily v. HUD*, No. 21-5256 (6th Cir. July 23, 2021); *Alabama Ass’n of Realtors v. HHS*, No. 20-cv-3377 (D.D.C. May 5, 2021); *Alabama Ass’n of Realtors v. HHS*, No. 21A23 (U.S. Aug. 26, 2021).; *Skyworks v. CDC*, No. 5:20-cv-2407 (N.D. Ohio March 10, 2021); *Terkel v. CDC*, No. 6:20-cv-564, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021); *State of Florida v. Becerra*, No. 8:21-cv-839 (M.D. Fla. June 18, 2021); *State of Florida v. Becerra*, No. 21-12243 (11th Cir. July 23, 2021); and *BST Holdings v. OSHA*, No. 21-60845 (5th Cir. Nov. 12, 2021).

II. THE FEDERAL TRANSPORTATION MASK MANDATE

A detailed description of the FTMM is attached. Ex. 1 at 5-15.

III. ARGUMENT

A. Under the statute authorizing review of TSA orders, only “good cause” is required to obtain interim relief.

I will explore below the traditional four-part test for obtaining a stay or preliminary injunction. But first, I must point out that I need not meet such a high bar in this application because the statute authorizing courts to review TSA orders requires a lesser standard. “[T]he court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order... After reasonable notice to the ... Administrator of the Transportation Security Administration ... the court may grant interim relief by staying the order or taking other appropriate action *when good cause for its action exists.*” 49 USC § 46110(c) (emphasis added).

See additional argument in Emergency Application. Ex. 1 at 19-20.

B. Even if the Court declines to use the more lenient “good cause” standard of 49 USC § 46110(c), I meet all four prongs of the typical judicial standard to obtain a stay of agency action.

Although the statute demands I only show “good cause” for staying TSA’s Health Directives and Emergency Amendment, I meet the four typical factors used to determine whether preliminary injunctive relief should be granted. *See* argument in Emergency Application. Ex. 1 at 20-22.

C. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates exceed TSA’s statutory and regulatory authority.

I have a substantial likelihood of success on the merits for at least 12 reasons, starting with my first point: TSA doesn’t have any authority from Congress to mandate what travelers must place on our faces. TSA isn’t assigned the job of health inspector or disease preventer. Its mission is transportation security, period. Masks have nothing to do with security.

Unfortunately a panel of this Court erroneously decided this issue last week. *Corbett v. TSA*, No. 21-1074 (D.C. Cir. Dec. 10, 2021). Therefore, I refer the Court to my extensive discussion of this topic (Ex. 1 at 23-30) and move on to my other 11 arguments.

D. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates, issued at the direction of CDC, exceed CDC’s statutory authority under the Public Health Service Act.

Because TSA’s directives were issued at the instruction of CDC, the Court has to take note of the illegality of CDC’s action. Congress never gave CDC

the staggering amount of power it claims, a fact the Supreme Court forcefully opined on recently in reviewing the agency's Eviction Moratorium. The Court resoundingly rejected CDC's position that it has immense authority under the PHSA to ban evictions to supposedly reduce the transmission of COVID-19. *Alabama Ass'n of Realtors*.

In the administrative record, CDC nor TSA have provided evidence proving that masks reduce the spread of a virus. Whereas I have offered 223 documents posted to <https://lucas.travel/masksarebad> showing the opposite.⁵

TSA's Health Directives were only put into place because of CDC's demand. It follows that if the CDC order is unlawful, so are the TSA mandates. Congress has *never* enacted into law a mask mandate. *See* additional argument in Emergency Application. Ex. 1 at 30-36.

E. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates run afoul of the 10th Amendment.

⁵ I don't submit all 223 documents into evidence separately because the Court would be overwhelmed with some 2,000 pages of material showing that scientists have known for decades that masks don't prevent transmission of respiratory viruses and actually cause harm to human health. I submit in the appendix just one of these studies – "Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?" published in the International Journal of Environmental Research & Public Health in April 2021 – to illustrate the findings of many of the others. App. 215-256.

The FTMM violates the 10th Amendment because TSA's directives apply to intrastate travel, including taking a rideshare car or transit bus just one mile, during which there is no nexus to interstate commerce. TSA's directives are in direct contradiction to the mask policies of 44 states. App. 198. TSA can't overrule state mask rules such as those such in several states that **prohibit** any public entity from requiring face coverings. *Id.* States without mask mandates have fewer COVID-19 infections than the few remaining states that require muzzling. App. 199-200.

CDC's eviction "moratorium intrudes into an area that is the particular domain of state law ... 'Our precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power...'" *Alabama Ass'n of Realtors*. Likewise this Court must find that the FTMM intrudes into areas (intrastate transport and public health) that are the particular domain of state law. The "Mandate raises serious constitutional concerns that either make it more likely that the petitioners will succeed on the merits, or at least counsel against adopting OSHA's broad reading of § 655(c) as a matter of statutory interpretation." *BST Holdings*.

Unlike TSA, the states are the appropriate authorities – as both a constitutional and practical matter – to determine whether imposing mask mandates is necessary to mitigate COVID-19. *See* additional argument in Emergency Application. Ex. 1 at 36-42.

F. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the constitutional guarantee of freedom to travel.

TSA’s mask directives restrict the free movement of disabled Americans such as myself who can’t wear face masks. The right to travel includes more than the ability to drive one’s own car. “The constitutional right to travel from one State to another, and necessarily to use the highways ***and other instrumentalities of interstate commerce*** in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.” *United States v. Guest*, 383 U.S. 745, 757 (1966) (emphasis added).

The FTMM violates the constitutional freedom to travel without undue governmental interference. “It is a familiar and basic principle, recently reaffirmed in *NAACP v. Alabama*, 377 U.S. 288, 307 ... that ‘a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly

and thereby invade the area of protected freedoms.” *Aptheker v. Secretary of State*, 378 U.S. 500 (1964). “[T]he ‘constitutional right to travel from one State to another’ is firmly embedded in our jurisprudence. ... the right is so important that it is ‘assertable against private interference as well as governmental action ... a virtually unconditional personal right, guaranteed by the Constitution to me all.” *Saenz v. Roe*, 526 U.S. 489, 498 (1999).

The Supreme Court consistently applies strict scrutiny to restrictions on the right to interstate travel. *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

Congress affirmed the constitutional right to fly for disabled Americans by enshrining it into statute:

“A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board ... before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.” 49 USC § 40103.

See additional argument in Emergency Application. Ex. 1 at 42-47.

G. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the Fifth Amendment right to due process.

Travelers, including myself, have a liberty interest in not being forced to wear something that we don't want to wear to block our breathing – a function essential for human life – or alternatively being barred from all modes of public transportation.

The FTMM deprives travelers of due process by assigning determinations on mask-exemption requests to private companies such as airlines with no opportunity to appeal a denial to a neutral federal decisionmaker. TSA's Health Directives purport to allow the disabled to get mask exemptions, but the reality is the government and airlines have made it nearly impossible. I have qualified disabilities but can't get exemptions. I have experienced numerous denials when requesting mask exemptions from airlines (App. 11 *et seq.*) – and there's no procedure to appeal to TSA or any other federal agency.

If TSA mandates masks and claims to allow disability exceptions, TSA itself constitutionally must provide due process in the form of a rapid pre-deprivation hearing to determine whether an airline wrongly applied the Health Directives in denying a disabled person transportation.

The Supreme Court recently spoke forcefully to the issue of pandemic restrictions that violate constitutional rights. An American is “irreparably harmed by the loss of [constitutionally protected] rights ‘for even minimal

periods of time’; the State has not shown that ‘public health would be imperiled’ by employing less restrictive measures.” *Tandon*.

H. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the Air Carrier Access Act.

TSA’s mask mandate blatantly discriminates against Americans with medical conditions who can’t wear masks in violation of the ACAA. 49 USC § 41705(a). TSA may not issue a directive that is contrary to statute.

Numerous DOT regulations illustrate how the FTMM is illegal. DOT, violating its own regulations, has allowed airlines to prohibit all passengers with disabilities who can’t wear face masks from flying and/or impose numerous onerous requirements to obtain an exemption. App. 185-192.

TSA’s contention that I “may request an exemption from the relevant airline” is disingenuous because I’ve already done so many times and been refused. Documentation of my health problems have been provided to airlines, yet refusals still abound. *See* my Veterans Administration medical records. App. 71-101.

In an earlier decision in a related case (*Wall v. TSA*, No. 21-1220), this Court ignored that health experts strongly advise that tens of millions of Americans with a variety of medical conditions can’t safely wear a mask. App.

208-256. And there is no “readily available” exemption process. It’s a total farce.

TSA makes numerous false claims that the FTMM doesn’t unlawfully bar those with medical conditions who can’t wear masks from traveling. The FTMM violates the ACAA in at least eight ways. Here’s an excerpt of TSA Health Directive 1544-21-02B with illegal sections highlighted in bold underline and corresponding DOT regulations placed in brackets:

“Aircraft operators **may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask [1], including medical consultation by a third party [2], medical documentation by a licensed medical provider [3], and/or other information as determined by the aircraft operator [4],** as well as **require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19 [5].** ... Aircraft operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as **scheduling travel at less crowded times or on less crowded conveyances [6], or seating or otherwise situating the individual in a less crowded section of the conveyance [7]** or airport. Aircraft operators may further require that persons seeking exemption from the requirement to wear a mask **request an accommodation in advance [8].**” App. 136.

Regulations TSA’s Health Directives and Emergency Amendment violate:

1. “[Y]ou must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.” 14 CFR § 382.19(a).
2. Since airlines may not require a medical certificate for a passenger unless he/she has a communicable disease (14 CFR § 382.23(a)), they may also not require a third-party medical consultation. “[Y]ou may require that a passenger **with a medical certificate** undergo additional medical review by you if there is a legitimate medical reason for believing that there has been a significant adverse change in the passenger’s condition since the issuance of the medical certificate...” 14 CFR § 382.23(d) (emphasis added).
3. “Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.” 14 CFR § 382.23(a). “You may also require a medical certificate for a passenger if he or she **has** a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight.” 14 CFR § 382.23(c)(1) (emphasis added). This requirement does not include speculation or presumption that a

person might have a communicable disease such as COVID-19; evidence is required that the passenger **has** a communicable disease, e.g. has tested positive for coronavirus.

4. Airlines are prohibited from requiring that a passenger wear a face covering or refuse him/her transportation unless they determine that the passenger “has” a communicable disease and poses a “direct threat” to other passengers and the flight crew. 14 CFR § 382.21. TSA’s Health Directive illegally assumes every single traveler is infected with COVID-19, even those who are fully vaccinated and/or have natural immunity. This violates the regulation that “In determining whether an individual poses a direct threat, you must make an **individualized assessment**.” 14 CFR § 382.19(c)(1) (emphasis added).
5. No provision of the ACAA or its accompanying regulations permits TSA to allow airlines to require that passengers submit a negative test for any communicable disease. Mandating disabled flyers needing a mask exemption submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1).

6. “[Y]ou must not limit the number of passengers with a disability who travel on a flight.” 14 CFR § 382.17.
7. “[Y]ou must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA or applicable foreign government safety requirements.” 14 CFR § 382.87(a).
8. “As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.” 14 CFR § 382.25.

I. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates were issued without notice and comment required by the Administrative Procedure Act.

TSA’s Health Directives were issued without following APA procedures including notice and comment. “Legislative rules have the ‘force and effect of law’ and may be promulgated only after public notice and comment. *INS v. Chadha*, 462 U.S. 919, 986...” *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014). A court must “hold unlawful and set aside agency action ... found to be ... without observance of procedure required by law.” 5 USC § 706(2)(D).

TSA claims that if it determines a security directive must be issued immediately, notice and comment are waived. Because the FTMM is not a security policy, the mask mandate does not fall under this exemption. COVID-19 began in December 2019 and was declared a global pandemic in March 2020. TSA had nearly 11 months to put the FTMM through APA's required notice-and-comment procedures,⁶ but failed to do so. *See* additional argument in Emergency Application. Ex. 1 at 55-57.

⁶ Had TSA put its mask directives through the required APA notice-and-comment period, I would have submitted the following concerns: (1) data shows states without mask mandates suffered fewer deaths per capita than states that imposed such requirements; (2) the FTMM is out of step with the current policies of nearly every state plus numerous businesses who don't require their customers cover their faces; (3) requiring masks in the transportation sector leads to widespread chaos in the skies and on the ground, endangering aviation and transit safety; (4) the FTMM unlawfully discriminates against travelers who can't wear a face covering due to a disability; (5) the gargantuan amount of scientific and medical evidence showing that masks have proven to be totally ineffective in reducing COVID-19 spread and deaths (*see* 223 scientific studies, medical articles, and videos at <https://lucas.travel/masksarebad>); (6) scientists have known for a long time that masks aren't effective in reducing transmission of respiratory viruses (*Id.*); (7) masks pose serious health risks to humans forced to wear them (*Id.*); (8) many experts consider forcing kids to wear masks child abuse; (9) masks have contributed to a surge in serious crime; (10) masks contribute to the huge problem of racism in America; (11) masks are damaging the environment (*Id.*); (12) unlike masks, vaccines are extremely effective in reducing COVID-19 infections and deaths; (13) people who have recovered from COVID-19 have long-lasting immunity; and (14) airplane cabins pose little risk for coronavirus spread and there have been few, if any, reports of coronavirus transmission on aircraft.

J. I have a substantial likelihood of success on the merits of my claim that the challenged mandates must be vacated because they are arbitrary and capricious in violation of the APA.

TSA's mandate forcing me to wear a mask (even though my medical conditions prohibit it) as a condition of using any form of public transportation is the perfect example of arbitrary and capricious executive policies that the law demands be stopped. A court must "hold unlawful and set aside agency action ... found to be ... arbitrary, capricious, [or] an abuse of discretion." 5 USC § 706(2)(A). *See* additional argument in Emergency Application. Ex. 1 at 57-60.

K. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the Food, Drug, & Cosmetic Act.

TSA's mask mandate must be stayed because it violates federal law prohibiting the mandatory use of any medical device approved under an Emergency Use Authorization ("EUA") by the Food & Drug Administration ("FDA"). Individuals to whom any EUA product is offered must be informed "of the option to accept *or refuse administration of the product...*" 21 USC § 360bbb-3(e)(1)(A)(ii)(III) (emphasis added). TSA can't force travelers to use EUA products such as masks. TSA may only *recommend* masks.

By supplying surgical masks to passengers at its airport checkpoints, TSA is a distributor of FDA EUA medical devices and is subject to the law's restrictions that any person may refuse administration of the product. By distributing EUA masks, TSA is carrying out an activity "for which an authorization ... is issued" under the FDCA. *See* additional argument in Emergency Application. Ex. 1 at 60-64.

L. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate Occupational Health & Safety Administration regulations for transportation workers.

The FTMM applies to transportation employees as well as passengers. Its Health Directives don't comply with OSHA's extensive rules regulating maskwearing in the workplace. 29 CFR § 1910.134. The fact OSHA stringently regulates employee masking shows the severe dangers the practice imposes. TSA has no authority to impose those dangers on transit passengers or workers. *See* additional argument in Emergency Application. Ex. 1 at 64-66.

M. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate several international treaties the U.S. has ratified.

TSA's mask requirements break several provisions of international law.

See argument in Emergency Application. Ex. 1 at 66-69.

N.I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates can't survive strict scrutiny.

“Strict scrutiny is a searching examination, and it is the government that bears the burden” of proof. *Fisher v. University of Texas*, 570 U.S. 297, 310 (2013). Specifically, the government must establish that a mandate is “justified by a compelling governmental interest and ... narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531-532 (1993). The FTMM fails strict scrutiny because there are far less restrictive options available to advance the federal government’s asserted interest in combatting the spread of COVID-19.

“[T]he government has the burden to establish that the challenged law satisfies strict scrutiny. ... [N]arrow tailoring requires the government to show that measures less restrictive of the [constitutionally protected] activity could not address its interest in reducing the spread of COVID. Where the government permits other activities to proceed with precautions, it must show that the [constitutionally protected] exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for [constitutionally protected] exercise too.” *Tandon*.

Although the virus is still circulating at low levels in the United States – as it likely always will – the public-health system is not under any strain.

States such as Florida and Missouri that have never required masks are seeing low rates of COVID-19 infection compared to other states and localities that do mandate face coverings. App. 199-203. See additional argument in Emergency Application. Ex. 1 at 69-72.

O. I'm suffering irreparable harm of being banned from the nation's entire public-transportation system due to TSA's FTMM enforcement because I medically can't wear a face mask.

If the requested relief is not granted, I will suffer the irreparable harm of being denied the ability to spend Christmas with my 15-year-old son who lives in another state, since driving the long distance from my home in Warsaw, Missouri, to Colorado Springs is not practical, especially given hazardous winter highway conditions I would likely encounter. The effects of my gunshot wound make long car trips impractical and intolerable. If this Christmas passes without me being able to fly to see my son, there is no way any future relief I might obtain could ever rewind time and restore that holiday joy I hope to share with him. App. 12.

As this Court has held, a "violation of a constitutional right constitutes irreparable injury..." *Gordon v. Holder*, 721 F.3d 638 (D.C. Cir. 2013). And failure "to provide notice and comment ... establishes irreparable injury. ... the harm flowing from a procedural violation can be irreparable." *State of Florida*.

The Supreme Court frowns on pandemic restrictions that violate constitutional rights. An American is “irreparably harmed by the loss of [constitutionally protected] rights ‘for even minimal periods of time’; the State has not shown that ‘public health would be imperiled’ by employing less restrictive measures.” *Tandon*.

“It is clear that a denial of the petitioners’ proposed stay would do them irreparable harm. For one, the Mandate threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their job(s). For the individual petitioners, the loss of constitutional freedoms ‘for even minimal periods of time ... unquestionably constitutes irreparable injury.’ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).” *BST Holdings*. See additional argument in Emergency Application. Ex. 1 at 72-74.

P. The equities weigh strongly in favor of a stay.

The equities strongly tip in my favor because, as the Supreme Court has held many times, an executive agency can’t be harmed by being enjoined from enforcing unlawful orders. And the public policy of the United States is to ensure the disabled shall not be discriminated against.

The injuries I’m suffering because of TSA’s FTMM enforcement outweigh the harm the requested interim relief would inflict on the agency. Whereas I have been denied the ability to use airline tickets I have paid for and been

deprived of my constitutional rights to due process and freedom to travel, the government would suffer no harm if the Court grants a stay. The relief requested would actually match the federal government's hands-off mask policy in every other realm of society and the no-mask rules of 44 states. App. 198.

A “stay will do OSHA no harm whatsoever. Any interest OSHA may claim in enforcing an unlawful (and likely unconstitutional) [Mandate] is illegitimate. Moreover, any abstract ‘harm’ a stay might cause the Agency pales in comparison and importance to the harms the absence of a stay threatens to cause countless individuals...” *BST Holdings*.

TSA admits more than 11,000 of its employees have been infected with COVID-19. App. 205. But TSA workers are forced to don face coverings. If masks are effective, why have so many TSA workers tested positive? The agency fails to answer this critical question.

Q. Entry of a stay stopping TSA from enforcing the FTMM would serve the public interest.

A stay is warranted because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Am. Bev. Ass’n v. City and Cty. of S.F.*, 916 F.3d 749, 758 (9th Cir. 2019) (en banc). “[I]t is too late for

the State to defend extreme measures with claims of temporary exigency, if it ever could.” *South Bay* (Gorsuch, J.).

TSA has produced no evidence showing that face masks are effective in reducing COVID-19. In fact, masking has been totally ineffective in reducing coronavirus infections and deaths. <https://lucas.travel/masksarebad>. “The public interest is also served by maintaining our constitutional structure and maintaining the liberty of individuals to make intensely personal decisions according to their own convictions – even, or perhaps **particularly**, when those decisions frustrate government officials.” *BST Holdings* (emphasis original).

It’s in the public interest to prevent discrimination against travelers with medical conditions who can’t wear masks. 49 USC § 41705. There is “no public interest in the perpetuation of unlawful agency action.” *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 102 (D.C. Cir. 2021). A stay that “maintains the separation of powers and ensures that a major new policy undergoes notice and comment” is also in the public interest. *Texas v. United States*, 787 F.3d 733, 768 (5th Cir. 2015).

The Court must take into account that airplanes are among the safest places you can be during the pandemic due to high-efficiency filters that bring fresh air into the cabin every 3-4 minutes. Aircraft cabins have more

sterile air than many hospital operating rooms. Most importantly, there have not been any reported outbreaks of COVID-19 at airports or on board aircraft or other transportation hubs or conveyances.

Because of the FTMM, tens of millions of Americans who can't wear face coverings because of medical conditions are essentially banned from using all modes of public transportation nationwide for no rational reason. This can hardly be deemed to be in the public interest.

Also demonstrating the public interest is that regulation of public health is historically the province of the states, 44 of which do not require people to cover their nose and mouth. App. 198. And let's not forget Congress decides what's in the public interest, not unelected bureaucrats at CDC and TSA. Congress has *never* enacted a federal mask mandate.

The FTMM negatively impacts transportation security because it has created chaos in the sky and on the ground with several thousand reports of unruly passenger and crew behavior as a direct result of the mask mandate. Numerous airline executives recognize it's in the public interest to improve transportation security by ending the mask mandate. Just yesterday multiple airline CEOs told a Senate committee that masks are doing nothing to reduce COVID-19 spread on airplanes. Exs. 4-6. Executives of other air carriers

started speaking out against the FTMM six months ago.

<https://bit.ly/FG062321>.

Government “actors have been moving the goalposts on pandemic-related sacrifices for months, adopting new benchmarks that always seem to put restoration of liberty just around the corner.” *South Bay* (Gorsuch, J.).

IV. CONCLUSION

Equitable principles favor a nationwide stay of TSA’s Health Directives and Emergency Amendment as “the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, the FTMM is effective nationwide. A nationwide stay would promote the public interest of equal treatment under the law for the disabled and be consistent with basic administrative law principles. *Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1408-10 (D.C. Cir. 1998). It would make little sense if this Court, having found that the FTMM is likely unconstitutional and/or unlawful, merely enjoined its application only to me while allowing TSA to continue enforcing the *ultra vires* mask mandate against the tens of millions of other Americans who use and/or work in the transportation sector every day.

WHEREFORE, I request this Court issue an order granting the following relief:

1. TSA's three Health Directives and one Emergency Amendment challenged in this Petition for Review are hereby STAYED pending a final ruling in this case;
2. TSA and all of its officers, agents, servants, employees, contractors, and attorneys are hereby ENJOINED from enforcing the Federal Transportation Mask Mandate nationwide;
3. TSA is ORDERED to remove all signs from all airports stating masks are required and to scrub its website of any mention of face coverings; and
4. Because all airlines and other transportation providers nationwide who are subject to the FTMM's enforcement provisions are in active concert or participation with the enjoined federal agency in enforcing the mask mandate, all airlines and other transportation providers nationwide are also hereby ENJOINED from requiring that any passenger wear a face covering unless such a such a restriction is imposed by valid state or local law.

Respectfully submitted this 16th day of December 2021.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of FRAP 27(d) because it has been prepared in 14-point Georgia, a proportionally spaced font, and it conforms with the limit of 5,200 words because this document contains 5,190 words, according to the count of Microsoft Word (excluding sections not counted pursuant to FRAP 32(f)).

Petitioner's Exhibit 1

No. 21A_____

In the Supreme Court of the United States

ANTHONY EADES,

APPLICANT,

v.

TRANSPORTATION SECURITY ADMINISTRATION,

RESPONDENT.

To the Honorable Brett Kavanaugh
Associate Justice of the U.S. Supreme Court
& Circuit Justice for the Eighth Circuit

**EMERGENCY APPLICATION FOR STAY
RELIEF REQUESTED BY MONDAY, DECEMBER 20, 2021**

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Applicant pro se

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I. INTRODUCTION

Applicant Anthony Eades, a Purple Heart disabled Army veteran who can't medically wear a mask, asks this Court to grant a stay to immediately halt Respondent Transportation Security Administration ("TSA")'s nationwide enforcement of the Federal Transportation Mask Mandate ("FTMM")¹ until the U.S. Court of Appeals for the District of Columbia Circuit (or Eighth Circuit)² determines this Petition for Review and pending the timely filing and disposition by this Court of a petition for writ of certiorari.

I respectfully ask for relief no later than **MONDAY, DEC. 20**, because I have a flight booked Dec. 21 on American Airlines from Kansas City, Missouri, to Colorado Springs to visit my 15-year-old son from a previous marriage for Christmas. I don't get to see my son often and it's critically important for me to be able to spend Christmas with him.

"I was previously booked from Kansas City to Colorado Springs Nov. 18 to spend Thanksgiving with my son but had to cancel the ticket because American Airlines is unlawfully denying mask exemptions to passengers with disabilities and TSA isn't doing anything about it. ... It was crushing to miss such an important holiday with

¹ The Federal Transportation Mask Mandate consists of: 1) Executive Order 13998, 86 Fed. Reg. 7205 (Jan. 26, 2021); 2) Department of Homeland Security Determination 21-130 (Jan. 27, 2021); 3) Centers for Disease Control & Prevention Order "Requirement for Persons To Wear Masks While on Conveyances & at Transportation Hubs," 86 Fed. Reg. 8,025 (Feb. 3, 2021); 4) Transportation Security Administration Health Directives 1542-21-01B, 1544-21-02B, and 1582/84-21-01B (Sept. 14, 2021); and 5) TSA Emergency Amendment 1546-21-01B (Sept. 14, 2021).

² I filed this Petition for Review in the U.S. Court of Appeals for the Eighth Circuit (No. 21-3362). On TSA's motion, the case was transferred to the D.C. Circuit (No. 21-1236). I have moved to have it returned to the Eighth Circuit.

my son.” Eades Declaration, App. 11-17 . “I submitted a mask-exemption demand to American, but it e-mailed me twice Nov. 8 to deny my request unless I agreed to submit to numerous illegal procedures including submitting a medical certificate from my doctor, negative COVID-19 test, and consultation with a third-party medical vendor. ... These procedures are all prohibited by Air Carrier Access Act regulations. *Id.*

“Due to my military injury of a gunshot wound to the chest, asthma, and breathing difficulties, it is unbearable and sometimes impossible to maintain normal breathing. I can’t tolerate wearing a face mask. Covering my nose and mouth brings back my severe Post-Traumatic Stress Disorder from being in Iraq, in the way of after I was shot, I was not able to breathe due to where I was shot. So my PTSD affects me and prevents me from properly wearing the mask.” *Id.*

This Court has issued at least six emergency injunctive orders³ in the past year or so unequivocally holding that governments may not restrict constitutional rights or disregard clear statutory terms even in the name of fighting a pandemic. Because TSA issued the challenged orders without constitutional, statutory, or regulatory authority, this Court must immediately block TSA’s enforcement of the FTMM, as numerous tribunals have done in halting similar pandemic measures.⁴ Today I ask the

³ *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 66 (2020); *Robinson v. Murphy*, 141 S.Ct. 972 (2020); *High Plains Harvest Church v. Polis*, 141 S.Ct. 527 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S.Ct. 716 (2021); *Tandon v. Newsom*, 141 S.Ct. 1294 (2021); and *Alabama Ass’n of Realtors v. HHS*, No. 21A23 (U.S. Aug. 26, 2021).

⁴ *Tiger Lily v. HUD*, No. 2:20-cv-2692, 2021 WL 1171887 (W.D. Tenn. Mar. 15, 2021); *Tiger Lily v. HUD*, No. 21-5256 (6th Cir. July 23, 2021); *Alabama Ass’n of Realtors v. HHS*, No. 20-cv-3377 (D.D.C. May 5, 2021); *Alabama Ass’n of Realtors v. HHS*, No. 21A23 (U.S. Aug. 26, 2021).; *Skyworks v. CDC*, No. 5:20-cv-2407 (N.D. Ohio March 10, 2021); *Terkel v. CDC*, No. 6:20-cv-564, 2021 WL 742877 (E.D.

Court to also hold that other constitutional rights – including the freedom to travel, to due process, and states’ rights under the 10th Amendment – also can’t be suspended by the government because of COVID-19. Because TSA unlawfully issued Health Directives without congressional, statutory, regulatory, or constitutional authority, this Court must immediately enjoin enforcement of the FTMM.

II. PARTIES

Applicant is Anthony Eades, petitioner in the U.S. Court of Appeals for the Eighth Circuit and for the District of Columbia Circuit. I am proceeding *pro se*.

Respondent here and in the Eighth and D.C. circuits is the Transportation Security Administration, an agency within the Department of Homeland Security (“DHS”). TSA is responsible for ensuring transportation *security*, but by ordering all transit passengers and employees to wear face masks, it has illegally taken on an additional role not authorized by Congress as the Transportation Health & Disease Control Administration.

III. JURISDICTION

The Court has jurisdiction to grant this application for a stay pursuant to 28 USC § 1651. A stay of TSA’s Health Directives is also permitted by statute. “[T]he court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order... After reasonable notice to the ... Administrator of the Transportation Security Administration ... the court may grant interim relief by staying the order or taking

Tex. Feb. 25, 2021); *State of Florida v. Becerra*, No. 8:21-cv-839 (M.D. Fla. June 18, 2021); and *State of Florida v. Becerra*, No. 21-12243 (11th Cir. July 23, 2021).

other appropriate action when good cause for its action exists.” 49 USC § 46110(c). I have already attempted to obtain interim relief from Eighth Circuit and was denied. App. 9.

IV. DECISIONS BELOW

All decisions in the lower courts are styled *Eades v. Transportation Security Administration*.

The Nov. 17, 2021, order of the U.S. Court of Appeals for the Eighth Circuit denying my Emergency Motion to Stay or Preliminary Injunction Pending Review and granting TSA’s Motion to Transfer Petition for Review to D.C. Circuit is attached at App. 9.

V. QUESTIONS PRESENTED

1. Does applicant show “good cause” under 49 USC § 46110 for staying TSA’s enforcement of the FTMM pending a determination of this Petition for Review in the D.C. or Eighth circuits and pending the timely filing and disposition by this Court of a petition for writ of certiorari, a less demanding statutory standard for emergency relief than the typical four-part judicial standard?
2. If the Court uses the typical four-prong judicial standard, does applicant demonstrate a substantial likelihood of success on the merits of my claims that the FTMM must be vacated because TSA issued it: 1) in excess of its statutory and regulatory authority; 2) based solely on a Centers for Disease Control & Prevention (“CDC”) order that the agency issued in excess of its statutory and

regulatory authority under the Public Health Service Act (“PHSA”); 3) in violation of the 10th Amendment; 4) in violation the constitutional guarantee of freedom to travel; 5) in violation of my Fifth Amendment right to due process; 6) in violation of the Air Carrier Access Act (“ACAA”); 7) without notice and comment required by the Administrative Procedure Act (“APA”) (5 USC § 551 *et seq.*); 8) in an arbitrary and capricious manner in violation of the APA; 9) in violation of the Food, Drug, & Cosmetic Act (“FDCA”); 10) in violation of Occupational Health & Safety Administration (“OSHA”) regulations; 11) in violation of several international treaties the United States has ratified; and 12) in a way that can’t survive strict scrutiny?

3. Is applicant suffering irreparable harm of being banned or severely restricted from the nation’s entire public-transportation system due to TSA’s enforcement of the FTMM because I medically can’t wear a face mask?
4. Do the injuries to applicant outweigh the harm a stay would inflict on TSA if the Court enjoins enforcement of the FTMM?
5. Would entry of a stay stopping TSA from enforcing the FTMM serve the public interest?

VI. THE FEDERAL TRANSPORTATION MASK MANDATE

A. Presidential Action

The day after taking office, President Joseph Biden issued Jan. 21, 2021, “Executive Order Promoting COVID-19 Safety in Domestic & International Travel.” E.O.

13998, 86 Fed. Reg. 7205 (Jan. 26, 2021); App. 169-174. This executive order set in motion the FTMM issued by CDC and TSA.

It “is the policy of my Administration to implement these public health measures consistent with CDC guidelines on public modes of transportation and at ports of entry to the United States.” Heads of agencies “shall immediately take action, to the extent appropriate and consistent with applicable law, to require masks to be worn in compliance with CDC guidelines in or on: (i) airports; (ii) commercial aircraft; (iii) trains; (iv) public maritime vessels, including ferries; (v) intercity bus services; and (vi) all forms of public transportation as defined in section 5302 of title 49, United States Code.” *Id.*

“To the extent permitted by applicable law, the heads of agencies shall ensure that any action taken to implement this section does not preempt State, local, Tribal, and territorial laws or rules...” *Id.* But, as discussed below, the FTMM does pre-empt the current mask laws of 44 states, including Missouri, my state of residence. Missouri is one of 10 states that never imposed a statewide mask mandate. App. 198.

President Biden’s action marked an abrupt change of policy from the former administration. The U.S. Department of Transportation (“DOT”) in October 2020 rejected a petition to require masks on airplanes, subways, and other forms of transportation, with then-Transportation Secretary Elaine Chao’s general counsel saying the department “embraces the notion that there should be no more regulations than necessary.”

Likewise the Federal Aviation Administration last year deferred to airlines on masks, with FAA Administrator Stephen Dickson telling senators at a June 2020 hearing “I do not plan to provide an enforcement specifically on that issue.” Such matters are more appropriately left to federal health authorities, Dickson argued. “As

Secretary Chao has said, I believe that my space is in aviation safety, and their space is in public health,” Dickson said, referring to CDC and other health officials.

B. Department of Homeland Security Action

To carry out E.O. 13998, TSA’s parent agency, DHS, issued Determination 21-130 on Jan. 27, 2021, signed by David Pekoske, TSA’s administrator who was then serving as acting secretary of homeland security: “Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using & Employed by the Transportation System.” App 175-176.

DHS claims it possesses authority under 49 USC § 114(g) to determine that a national emergency exists. Mr. Pekoske directed TSA “to take actions consistent with the authorities in ATSA as codified at 49 USC sections 106(m) and 114(f), (g), (l), and (m) to implement the Executive Order to promote safety in and secure the transportation system.” *Id.*

“This includes supporting the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system, to the extent appropriate and consistent with applicable law. I specifically direct the Transportation Security Administration to use its authority to accept the services of, provide services to, or otherwise cooperate with other federal agencies, including through the implementation of countermeasures with appropriate departments, agencies, and instrumentalities of the United States in order to address a threat to transportation, recognizing that such threat may involve passenger and employee safety.” *Id.*

C. Centers for Disease Control & Prevention Action

Without providing public notice or soliciting comment in violation of the APA, CDC issued an order “Requirement for Persons To Wear Masks While on Conveyances & at Transportation Hubs” on Feb. 1, 2021, effective immediately. 86 Fed. Reg. 8,025 (Feb. 3, 2021); App. 177-182. CDC

“announces an Agency Order requiring persons to wear masks over the mouth and nose when traveling on any conveyance (e.g., airplanes, trains, subways, buses, taxis, ride-shares, ferries, ships, trolleys, and cable cars) into or within the United States. A person must also wear a mask on any conveyance departing from the United States until the conveyance reaches its foreign destination. Additionally, a person must wear a mask while at any transportation hub within the United States (e.g., airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation within the United States). Furthermore, operators of conveyances and transportation hubs must use best efforts to ensure that persons wear masks as required by this Order.” *Id.*

CDC falsely asserts the FTMM is required to “mitigate the further introduction, transmission, and spread of COVID–19 into the United States and from one state or territory into any other state or territory...” *Id.*

“This Order will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 USC 247d) that a public health emergency exists.” *Id.*

The Secretary of Health & Human Services issued the first COVID-19 Public Health Emergency Declaration on Jan. 31, 2020. It has since been extended seven times, mostly recently effective Oct. 18, 2021. App. 193. It appears the secretary can extend it indefinitely so long as he believes COVID-19 presents a public-health emergency.

As authority for the FTMM, CDC invoked § 361 of the PHS Act (42 USC § 264) and CDC regulations implementing that statute (42 CFR §§ 70.2, 71.31(b), and 71.32(b)), but CDC provided no analysis of this authority in the FTMM Order. App. 177-182.

CDC's FTMM Order requires that:

“(1) Persons must wear masks over the mouth and nose when traveling on conveyances into and within the United States. Persons must also wear masks at transportation hubs as defined in this Order. (2) A conveyance operator transporting persons into and within the United States must require all persons onboard to wear masks for the duration of travel. ... (4) Conveyance operators must use best efforts to ensure that any person on the conveyance wears a mask when boarding, disembarking, and for the duration of travel. Best efforts include: • Boarding only those persons who wear masks; • instructing persons that Federal law requires wearing a mask on the conveyance and failure to comply constitutes a violation of Federal law; • monitoring persons onboard the conveyance for anyone who is not wearing a mask and seeking compliance from such persons; • at the earliest opportunity, disembarking any person who refuses to comply ... (5) Operators of transportation hubs must use best efforts to ensure that any person entering or on the premises of the transportation hub wears a mask.” *Id.*

CDC's FTMM Order defines “interstate traffic” as having “the same definition as under 42 CFR 70.1, meaning “(1): (i) The movement of any conveyance or the transportation of persons or property, *including any portion of such movement or transportation that is entirely within a state or possession*; (ii) From a point of origin in any state or possession to a point of destination in any other state or possession ...” *Id.* (emphasis added). CDC's FTMM Order thus applies to wholly intrastate transportation, including taking a rideshare, city bus, subway, or other mode of transit less than one mile – or even just sitting alone at a city bus stop or train station reading a newspaper or talking on a cellphone without any intent to travel.

“This Order applies to persons on conveyances and at transportation hubs directly operated by U.S. state, local, territorial, or tribal government authorities, as well as the operators themselves. U.S. state, local, territorial, or tribal government authorities directly operating conveyances and transportation

hubs may be subject to additional federal authorities or actions, and are encouraged to implement additional measures enforcing the provisions of this Order regarding persons traveling onboard conveyances and at transportation hubs operated by these government entities.” *Id.*

“Transportation hub means any airport, bus terminal, marina, seaport or other port, subway station, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.” *Id.* Thus stationery buildings that can’t possibly move among the states are subject to the FTMM, in clear violation of the 10th Amendment and E.O. 13998’s specific guidance that “To the extent permitted by applicable law, the heads of agencies shall ensure that any action taken to implement this section does not preempt State, local, Tribal, and territorial laws or rules...” App. 169-174.

CDC then delegated enforcement of the FTMM to TSA: “To address the COVID-19 public health threat to transportation security, this Order shall be enforced by the Transportation Security Administration under appropriate statutory and regulatory authorities including the provisions of 49 USC 106, 114, 44902, 44903, and 46301; and 49 CFR part 1503, 1540.105, 1542.303, 1544.305, and 1546.105.” App. 177-182. However, CDC’s FTMM Order does not cite any authority whereby it may delegate its supposed statutory authority to another governmental agency.

D. Transportation Security Administration Actions

Based on CDC’s questionable delegation of its authority, TSA issued three “Security Directives” (actually Health Directives) and one Emergency Amendment Feb. 1, 2021, to transportation operators requiring them to vigorously enforce the FTMM.

These four orders were effective until May 11, 2021. TSA then extended the three Health Directives and one Emergency Amendment mandating masks until Sept. 13, 2021. TSA Administrator Pekoske signed Aug. 20, 2021, the second extension, currently in place until Jan. 18, 2022.⁵ App. 145-147. These are the four TSA orders challenged in my Petition for Review:

- Health Directive SD 1542-21-01B issued to airport operators. App. 148-152.
- Health Directive SD 1544-21-02B issued to aircraft operators. App. 153-157.
- Health Directive SD 1582/84-21-01 issued to operators of passenger railroads, intercity bus services, and other public transportation. App. 158-162.
- Emergency Amendment EA 1546-21-01 issued to foreign air carriers for all flights to, from, or within the United States. App. 163-167.

Under TSA's erroneous reading of the law, the agency could continue extending these directives forever if not enjoined by this Court.

⁵ President Joseph Biden announced Dec. 2 he's ordering TSA to extend the three Health Directives and one Emergency Amendment from Jan. 18 to March 18, 2022. "The Administration will continue to require masking during international or other public travel – as well as in transportation hubs such as airports or indoor bus terminals – through March 18 as we continue to battle COVID-19 this winter. The Transportation Security Administration will extend its implementing orders to maintain these requirements through March 18. Fines will continue to be doubled from their initial levels for noncompliance with the masking requirements – with a minimum fine of \$500 and fines of up to \$3,000 for repeat offenders." App. 194-196. TSA's administrator has yet to sign an order extending FTMM enforcement by two additional months.

1. Airports

TSA claims its statutory authority to issue Health Directive SD 1542-21-01B to airport operators – most of which are public agencies run by states or their subdivisions, triggering 10th Amendment concerns – comes from 49 USC §§ 114 & 44903 as well as 49 CFR § 1542.303.

“TSA is issuing this [Health Directive] requiring masks to be worn to mitigate the spread of COVID-19 during air travel. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC. The requirements in this directive apply to all individuals, *including those already vaccinated.*” App. 148-152 (emphasis added).

Airport operators, most of whom are state employees, must adopt the following measures:

“A. The airport operator must make best efforts to provide individuals with prominent and adequate notice of the mask requirements to facilitate awareness and compliance. This notice must also inform individuals of the following: 1. Federal law requires wearing a mask at all times in and on the airport and failure to comply may result in removal and denial of re-entry. 2. Refusing to wear a mask in or on the airport is a violation of federal law; individuals may be subject to penalties under federal law. B. The airport operator must require that individuals in or on the airport wear a mask ... If individuals are not wearing masks, ask them to put a mask on. 2. If individuals refuse to wear a mask in or on the airport, escort them from the airport. C. The airport operator must ensure direct employees, authorized representatives, tenants, and vendors wear a mask at all times in or on the airport...” *Id.*

“If an individual refuses to comply with mask requirements, follow incident reporting procedures in accordance with the Airport Security Program and provide the following information, if available: 1. Date and airport code; 2. Individual's full name and contact information; 3. Name and contact information for any direct airport employees or authorized representatives involved in the incident; and 4. The circumstances related to the refusal to comply.” *Id.*

TSA sent signs to airport operators and demanded they display them throughout every airport across America, overturning the no-mask policies in place in 44 states. App. 198.

2. Airlines

TSA issued Health Directive SD 1544-21-02B to aircraft operators requiring them to apply it to “all persons onboard a commercial aircraft operated by a U.S. aircraft operator, including passengers and crewmembers, *including those already vaccinated.*” App. 153-157 (emphasis added).

“ACTIONS REQUIRED: A. The aircraft operator must provide passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance. At a minimum, this notice must inform passengers, at or before check-in and as a pre-flight announcement, of the following: 1. Federal law requires each person to wear a mask at all times throughout the flight, including during boarding and deplaning. 2. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law. ... B. The aircraft operator must not board any person who is not wearing a mask ... C. The aircraft operator must ensure that direct employees and authorized representatives wear a mask at all times while on an aircraft or in an airport location under the control of the aircraft operator ...” *Id.*

“Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.” *Id.*

“Passengers who refuse to wear a mask will not be permitted to enter the secure area of the airport, which includes the terminal and gate area. Depending on the circumstance, those who refuse to wear a mask may be subject to a civil penalty for attempting to circumvent screening requirements, interfering with screening personnel, or a combination of those offenses.” App. 183-184.

EA 1546-21-01A applies to foreign air carriers for all flights to, from, or within the United States. It requires foreign airlines to apply the EA to “to all persons onboard a commercial aircraft operated by a foreign air carrier, including passengers and crewmembers, and *those already vaccinated.*” App. 163-167 (emphasis added).

The actions required of foreign airlines are similar to those required of U.S. airlines. *Id.*

3. Owners & Operators of Vehicles Used for Public Transportation

Health Directive SD 1582/84-21-01B applies to owners and operators of public-transportation vehicles “identified in 49 CFR 1582.1(a); each owner/operator identified in 49 CFR 1584.1 that provides fixed-route service as defined in 49 CFR 1500.3.” App. 158-162.

“The requirements in this [Health Directive] must be applied to all persons in or on one of the conveyances or a transportation facility used by one of the modes identified above, *including those already vaccinated.* TSA developed these requirements in consultation with the Department of Transportation (including the Federal Railroad Administration, the Federal Transit Administration, and the Federal Motor Carrier Safety Administration) and the CDC.” *Id.* (emphasis added).

“For the purpose of this [Health Directive], the following definitions apply: Conveyance has the same definition as under 42 CFR 70.1, meaning ‘an aircraft, train, road vehicle, vessel .. or other means of transport, including military.’ ... Transportation hub/facility means any airport, bus terminal, marina, seaport or other port, subway stations, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.” *Id.*

The actions required of public-transportation operators are similar to those required of airports and airlines. *Id.* “If an individual's refusal to comply with the mask

requirement constitutes a significant security concern, the owner/operator must report the incident to the Transportation Security Operations Center...” *Id.*

VII. PROCEDURAL HISTORY

I filed Oct. 19, 2021, a Petition for Review of the four TSA mask mandates with the U.S. Court of Appeals for the Eighth Circuit. *Eades v. Transportation Security Administration*, No. 21-3362. App. 2-8. TSA appeared Oct. 25 and moved Nov. 2 to transfer the case to the U.S. Court of Appeals for the District of Columbia Circuit, where the first petition challenging TSA’s FTMM enforcement was filed Feb. 26, 2021, but has still not been decided.⁶

I filed Nov. 8 an Emergency Motion for Stay or Preliminary Injunction Pending Review. TSA opposed the motion Nov. 17. Later that same day, the Eighth Circuit denied my motion to stay without explanation and, in the same order, transferred the Petition for Review to the D.C. Circuit (new case number 21-1236). This is the order I challenge in this application.

Since then, the D.C. Circuit issued Nov. 19 a Clerk’s Order holding my case in abeyance pending further order of the court. I filed a motion Nov. 24 to transfer the case back to the Eighth Circuit or, in the alternative, to vacate the Clerk’s Order and issue an expedited briefing schedule. TSA opposed my motion, asking the D.C. Circuit to consolidate my Petition for Review with four others (but not *Corbett*, the only one that’s been fully briefed). The D.C. Circuit has yet to decide this motion.

⁶ *Corbett v. Transportation Security Administration*, No. 21-1074 (D.C. Cir).

Also Nov. 24, I submitted a motion to compel TSA to restore my Pre-Check status, which it revoked in illegal retaliation because I filed this lawsuit against it. “Only three weeks after I sued TSA, I received a letter from the agency stating ‘As a result of recurrent checks and based on a comprehensive background check, TSA was unable to determine that you pose a sufficiently low risk to transportation and national security to continue to be eligible for expedited airport security screening through the TSA Pre-Check Application Program. As a result, TSA has determined that you are no longer eligible to participate in the TSA Pre-Check Application Program.’” App. 54. The D.C. Circuit has yet to decide this motion.

VIII. ARGUMENT

A. This Court has the power to grant me a stay.

The All Writs Act, 28 USC § 1651(a), authorizes an individual justice or the full Court to issue a stay when: 1) the circumstances presented are “critical and exigent”; 2) the legal rights at issue are “indisputably clear”; and 3) injunctive relief is “necessary or appropriate in aid of the Court’s jurisdiction.” *Ohio Citizens for Responsible Energy v. NRC*, 479 U.S. 1312 (1986) (Scalia, J., in chambers) (citations and alterations omitted). The Court also has discretion to issue interim relief “based on all the circumstances of the case,” without its order being “construed as an expression of the Court’s views on the merits” of the underlying claim. *Little Sisters of the Poor Home for the Aged v. Sebelius*, 571 U.S. 1171 (2014).

Caselaw has established four general criteria that an applicant normally must satisfy for the Court to grant a stay: 1) that there is a “reasonable probability” that

four justices will grant certiorari, or agree to review the merits of the case; 2) that there is a “fair prospect” that a majority of the Court will conclude upon review that the decision below on the merits was erroneous; 3) that irreparable harm will result from the denial of the stay; 4. finally, in a close case, the circuit justice may find it appropriate to balance the equities, by exploring the relative harms to the applicant and respondent, as well as the interests of the public at large.

In my case, there’s no doubt that at least four justices would grant certiorari to consider the FTMM, a novel question of pandemic law, since this Court frowns on administrative agencies issuing orders outside their congressionally assigned areas of expertise (i.e. an agency assigned to ensure the security of our transportation system has no authority to dictate health measures, especially when there is strong scientific evidence showing face masks do not reduce the spread of respiratory viruses and cause dozens of harms to human health. *See* 223 studies, articles, and videos compiled at <https://lucas.travel/masksarebad>.

Second, there is “fair prospect” that a majority of the Court will conclude the FTMM is *ultra vires* given its recent decision striking down CDC’s Eviction Moratorium. *Alabama Ass’n of Realtors v. HHS*, No. 21A23 (U.S. Aug. 26, 2021).

Third, I will suffer the irreparable harm of being denied the ability to spend Christmas with my 15-year-old son who lives in another state, since driving the long distance from my home in Warsaw, Missouri, to Colorado Springs is not practical, especially given hazardous winter highway conditions I will would likely encounter. The effects of my gunshot wound make long car trips impractical and intolerable. If this Christmas passes without me being able to fly to see my son, there is no way any

future relief I might obtain in the Court of Appeals or from this Court could ever rewind time and restore that holiday joy I hope to share with my son.

Fourth, the equities strongly tip in my favor because, as this Court has held many times, an executive agency can't be harmed by being enjoined from enforcing unlawful orders. And the public policy of the United States is to ensure the disabled – and especially those disabled due to injuries serving this nation's armed forces – shall not be discriminated against.

This Court should follow its recent precedent by granting relief from overbearing COVID-19 restrictions when applicants “have shown that their [constitutional] claims are likely to prevail, that denying them relief would lead to irreparable injury, and that granting relief would not harm the public interest.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 66 (2020); *see also Robinson v. Murphy*, 141 S.Ct. 972 (2020); *High Plains Harvest Church v. Polis*, 141 S.Ct. 527 (2020); *South Bay United Pentecostal Church v. Newsom*, 141 S.Ct. 716 (2021); *Tandon v. Newsom*, 141 S.Ct. 1294 (2021); and *Alabama Ass'n of Realtors*.

A circuit justice or the full Court may also grant relief if there is a “significant possibility” that the Court would grant certiorari “and reverse, and if there is a likelihood that irreparable injury will result if relief is not granted.” *Am. Trucking Ass'ns v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J.); *see also Lucas v. Townsend*, 486 U.S. 1301, 1304 (1988) (Kennedy, J., in chambers) (considering whether there is a “fair prospect” of reversal).

Because the Eighth Circuit's denial of my Emergency Motion for Stay or Preliminary Injunction Pending Review is clearly erroneous, this Court must grant this application and issue me a stay halting nationwide enforcement of the FTMM until the Court of Appeals decides my petition on the merits and this Court has the opportunity to dispose of any potential petition for a writ of certiorari. The Court should stay TSA's Health Directives and Emergency Amendment.

B. Under the statute authorizing review of TSA orders, only "good cause" is required to obtain interim relief.

I will explore in detail below the traditional four-part test for obtaining a stay or preliminary injunction. But first, I must point out that I need not meet such a high bar in this application because the statute authorizing courts to review TSA orders requires a lesser standard. "[T]he court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order... After reasonable notice to the ... Administrator of the Transportation Security Administration ... the court may grant interim relief by staying the order or taking other appropriate action *when good cause for its action exists.*" 49 USC § 46110(c) (emphasis added).

Here, good cause not only exists, it is abundant. As I'll argue below, TSA's Health Directives and Emergency Amendment requiring all travelers and employees to don masks throughout the nation's entire transportation system must be set aside for at least 12 reasons. They were issued: 1) in excess of TSA's statutory and regulatory authority; 2) based solely on a CDC order that the agency issued in excess of its statutory and regulatory authority under the PHSA; 3) in violation of the 10th Amendment; 4) in violation the constitutional guarantee of freedom to travel; 5) in violation

of my Fifth Amendment right to due process; 6) in violation of the ACAA; 7) without notice and comment required by the APA; 8) in an arbitrary and capricious manner in violation of the APA; 9) in violation of the FDCA; 10) in violation of OSHA regulations; 11) in violation of several international treaties the United States has ratified; and 12) in a way that can't survive strict scrutiny.

These numerous points showing the FTMM is *ultra vires* shows plenty of good cause for why this Court should stay TSA's Health Directives and Emergency Amendment.

C. Even if the Court declines to use the more lenient "good cause" standard of 49 USC § 46110(c), I meet all four prongs of the typical judicial standard to obtain a stay of agency action.

Although the statute demands I only show "good cause" for staying TSA's Health Directives and Emergency Amendment, I meet the four typical factors used to determine whether preliminary injunctive relief should be granted, which are whether the movant has established: 1) a substantial likelihood of success on the merits; 2) that irreparable injury will be suffered if the relief is not granted; 3) that the threatened injury outweighs the harm the relief would inflict on the nonmovant; and 4) that entry of the relief would serve the public interest. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc).

Reversal of a Court of Appeals decision refusing interim relief is appropriate if it applied an incorrect legal standard, applied improper procedures, relied on clearly erroneous fact-finding, or if it reached a conclusion that is clearly unreasonable or incorrect. *Klay v. United Healthgroup*, 376 F.3d 1092, 1096 (11th Cir. 2004); *Chicago*

Tribune v. Bridgestone/Firestone, 263 F.3d 1304, 1309 (11th Cir. 2001). In this case, the Court of Appeals in its ruling Nov. 17 (App. 9) on my Emergency Motion for Stay or Preliminary Injunction Pending Review applied an incorrect legal standard in refusing to use the “good cause” requirement, evaluating my claims of irreparable harm, and failing to consider appropriate caselaw – including this Court’s decisions – concerning the dozen major arguments I make. The Court of Appeals reached a conclusion denying my emergency motion for a stay that was clearly unreasonable and incorrect, yet offered zero explanation for its reasoning. *Id.*

The first of the four prerequisites to temporary injunctive relief (likely success on the merits) is generally the most important. *Gonzalez v. Reno*, No. 00-11424, 2000 WL 381901 at *1 (11th Cir. 2000). The necessary level or degree of possibility of success on the merits will vary according to the court's assessment of the other factors. *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981). But an extremely high likelihood of prevailing on the merits, as I have shown here, is not required. “A substantial likelihood of success requires a showing of only *likely* or probable, rather than certain, success.” *Home Oil Company v. Sam’s East*, 199 F.Supp.2d 1236, 1249 (M.D. Ala. 2002) (emphasis original); *see also Ruiz*, 650 F.2d at 565. “Where the ‘balance of the equities weighs heavily in favor of granting the [stay],’ the movant need only show a ‘substantial case on the merits.’” *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986).

A movant must demonstrate a “substantial likelihood,” not a substantial certainty. To require more undermines the purpose of even considering the other three

prerequisites. Instead, “the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the injunction.” *Ruiz*, 650 F.2d at 565. The review “require[s] a delicate balancing of the probabilities of ultimate success at final hearing with the consequences of immediate irreparable injury which could possibly flow from the denial of preliminary relief.” *Siegel*, 234 F.3d at 1178.

An applicant does not have to show that all factors favor it. A court will “balanc[e] the equities involved.” *Asbestos Info. Assoc. /North Am. v. OSHA*, 727 F.2d 415, 418 (5th Cir. 1984); see also *Ohio v. United States Army Corps of Eng’rs (In re EPA & DOD Final Rule)*, 803 F.3d 804, 806 (6th Cir. 2015) (calling the stay factors “not prerequisites to be met, but interrelated considerations that must be balanced”). “The first two factors of the ... standard are the most critical.” *Nken v. Holder*, 556 U.S. 418, 434 (2009). As shown below, all four factors weigh strongly in my favor.

When combined with my extremely high odds of winning on the merits, review of the other three factors reveals it is obvious that the equities weigh heavily in favor of granting a stay. First, there is no doubt I have already suffered, and will continue to suffer, irreparable harm as a direct result of the TSA’s enforcement of the FTMM. Second, the relief would inflict no injury on TSA because an executive agency can’t suffer any damages from adopting a policy that violates the Constitution, laws, regulations, and treaties. Third, the injunction is in the public interest. The Court should stay TSA’s Health Directives and Emergency Amendment.

D. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates exceed TSA's statutory and regulatory authority.

I have a substantial likelihood of success on the merits for at least 12 reasons, which I will explore starting with the heart of this case: TSA doesn't have any authority from Congress to mandate what travelers must place on our faces. TSA isn't assigned the job of health inspector or disease preventer. Its mission is transportation security, period. Congress named respondent the Transportation *Security* Administration, not the Transportation *Health & Disease Control* Administration. TSA, trying to become THDCA, has massively exceeded its statutory authority by, for the first time, claiming authority to regulate nonsecurity matters such as face masks.

Congress created TSA after the terrorist attacks of Sept. 11, 2001, the Aviation & Transportation Security Act ("ATSA"), to address "security in all modes of transportation." 49 USC § 114(d). TSA's function is limited to address *security threats*. Health measures are outside its scope. Nowhere in TSA's enabling legislation does Congress confer upon it the power to end pandemics. The regulations under which TSA's Health Directives and Emergency Amendment were issued clearly state they are to be used for security threats, not public health. "When TSA determines that additional security measures are necessary to respond to a *threat assessment or to a specific threat* against civil aviation, TSA issues a Security Directive setting forth mandatory measures." 49 CFR § 1542.303(a) (emphasis added). TSA has no congressional authority to expand its domain from transportation security to enforcing public-health orders.

“When an agency claims to discover in a long-extant statute an unheralded power ... we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance. ... An agency has no power to tailor legislation to bureaucratic policy goals by rewriting unambiguous statutory terms.” *Utility Air Regulatory Group v. EPA*, 573 U.S. 302 (2014).

When reviewing an agency’s construction of a statute it administers, courts apply the two-step *Chevron* framework. Where the statute is unambiguous, that is the end of the matter; a court applies it as written. Such is the situation here: TSA invented authority to force passengers and employees to wear masks. It thus receives no *Chevron* deference.

The honorable justices of this Court might view the FTMM and masks in general as good or bad public policy. Americans disagree passionately about this. But this case turns on whether Congress has authorized TSA to adopt a nationwide mask mandate. Congress has not – despite ample opportunity to pass a law amending ATSA during the 21-month-long pandemic.

“[B]efore deferring to an administrative agency’s statutory interpretation, courts ‘must first exhaust the traditional tools of statutory interpretation and reject administrative constructions’ that are contrary to the clear meaning of the statute.” *Black v. Pension Benefit Guar. Corp.*, 983 F.3d 858, 863 (6th Cir. 2020).

“Regardless of how serious the problem an administrative agency seeks to address, however, it may not exercise its authority ‘in a manner that is inconsistent with the administrative structure that Congress enacted into law.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000).

Congress' mandate to TSA is to regulate passenger and cargo screening, manage intelligence relating to aviation threats, deploy technology to detect weapons and explosives, supervise air marshals, etc. Never did Congress imagine a transportation *security* agency focused on ensuring planes aren't hijacked or blown up would get involved in *health* enforcement. "To avoid 'giving unintended breadth to the Acts of Congress,' courts 'rely on the principle of *noscitur a sociis* – a word is known by the company it keeps.' *Yates v. United States*, 574 U.S. 528, 543 (2015) (cleaned up)." *BST Holdings v. OSHA*, No. 21-60845 (5th Cir. Nov. 12, 2021). Here, TSA's attempt to shoehorn an airborne virus into the equivalent of protecting the transportation sector from security threats is beyond absurd.

TSA has invented authority to force passengers and employees in the nation's entire transportation system wear face masks everywhere – from the check-in counter, to security checkpoints, bathrooms, food courts, airline lounges, boarding areas, and on conveyances themselves, without any regard to physical distancing and whether a passenger or employee is vaccinated and/or possesses natural immunity to coronavirus.

TSA greatly disturbs the status quo with its foray into nonsecurity matters. This is especially troubling because the science is clear: Masks do nothing to prevent COVID-19 but harm our health in numerous ways. See 223 studies, medical articles, and videos compiled at <https://lucas.travel/masksarebad>.

TSA may only deny boarding to "a passenger who does not consent to a search." 49 USC § 44902(a). It can't stop someone not wearing a mask from embarking. TSA's mission is to prevent "violence and piracy," not a disease. 49 USC § 44903.

OSHA's Vaccine Mandate, like the FTMM, "involves broad medical considerations that lie outside of OSHA's core competencies, and purports to definitively resolve one of today's most hotly debated political issues. Cf. *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 231 (1994) ... There is no clear expression of congressional intent in § 655(c) to convey OSHA such broad authority, and this court will not infer one." *BST Holdings*.

The mask mandate actually *negatively* impacts transportation security because it has created chaos in the sky with thousands of reports to TSA and the Federal Aviation Administration of oxygen-starved passengers taking their masks off to breathe and being assaulted and/or harassed by flight attendants and other passengers.

TSA's mask directives go far above and beyond the few state rules for face coverings still in effect. The FTMM is in direct contradiction to the mask policies of 44 states and violate CDC's own May 13, 2021, guidance that "vaccinated people don't need masks ... *people who are fully vaccinated can stop wearing masks* or maintaining social distance..." CDC finally admitted May 13: "The science is clear: *If you are fully vaccinated, you are protected, and you can start doing the things that you stopped doing because of the pandemic...*"

TSA's directives are so far-reaching they explicitly require those who are eating and drinking at any transportation facility in the nation to wear masks "between bites and sips" – a policy found nowhere else in the country, even during the peak of the pandemic. This is hardly a matter of transportation "security" enforcement Congress envisioned when it passed ATSA after the terrorist attacks of Sept. 11, 2001.

“[H]ealth agencies do not make housing policy, and occupational safety administrations do not make health policy. ... In seeking to do so here, OSHA runs afoul of the statute from which it draws its power and, likely, violates the constitutional structure that safeguards my collective liberty.” *BST Holdings*.

Nowhere in any statute has TSA ever been assigned responsibility for health matters. Never did Congress imagine that TSA could fine passengers starting at \$500 for refusing to obstruct their breathing. “It is incumbent on the courts to ensure decisions are made according to the rule of law, not hysteria ... One hopes that this great principle – essential to any free society, including ours – will not itself become yet another casualty of COVID-19.” *Dept. of Health & Human Services v. Manke*, No. 20-4700-CZ (Mich. 2020) (Viviano, J., concurring).

If TSA is permitted to regulate what a person wears on his/her face, there would be no end to its powers. There is no distinction between the authority it claims to stop a virus and the authority that would be required to set crew sleep requirements, maintenance standards for the escalators between arrivals and departures levels of an airport, or the speed limit on the roads entering a parking garage at any transportation hub.

TSA’s FTMM includes harsh enforcement methods not authorized by law:

“If a passenger refuses to comply with an instruction given by a crew member with respect to wearing a mask, the aircraft operator must: 1. Make best efforts to disembark the person who refuses to comply as soon as practicable; and 2. Follow incident reporting procedures in accordance with its TSA-approved standard security program and provide the following information, if available: a. Date and flight number; b. Passenger's full name and contact information; c. Passenger's seat number on the flight; d. Name and contact information for any crew members involved in the incident; and e. The circumstances related to the refusal to comply.” App. 156.

I don't dispute COVID-19 is deadly in a small percentage of humans, but the virus does not infect infrastructure and thus can't possibly pose a grave threat to transportation security. Also it's notable that in its arguments below, TSA didn't address any of the 223 scientific studies, medical articles, and videos discrediting the notion that masks prevent virus transmission and don't harm our health. <https://lucas.travel/masksarebad>.

During a national emergency, TSA has statutory power to coordinate and provide notice about threats to transportation. But a disease is not a "threat to transportation." COVID-19 does not shut down airplane engines. Trains do not stop running if they encounter COVID-19. A disease is a threat to human beings, not transportation.

TSA has authority to issue security directives necessary to protect all modes of transportation. But labeling a Health Directive a "Security Directive" is not permitted. Transportation does not need protection from a virus. There's a reason Congress assigned TSA a narrow, specific mission: Veering off into spheres unrelated to security makes our nation's transportation system more vulnerable to attack.

TSA's attempt to define "security" as including stopping a virus can't be upheld. No person heading to the doctor would say "I have an appointment at the security office." Or that "for my security, I am going to take this new medication, start exercising more, and eating better." TSA by regulation limits its ability to issue Security Directives to when additional *security measures* are necessary. In no way does a mask constitute a "security measure."

The fact the Department of Homeland Security has declared a national emergency is of no relevance here. First, an "emergency" indicates a short duration, not nearly

two years. Second, TSA may coordinate with other agencies to ensure the emergency doesn't negatively impact the *security* of transportation. TSA's authority, even during a supposed "emergency," is still quite limited.

The agency's contention below that "TSA's efforts to protect passengers from a deadly disease fit comfortably within" the definition of security is laughable when reviewing the types of security measures Congress allows TSA to target. 49 USC § 114;⁷ § 44903⁸. Never before has TSA issued a Health Directive as is the case here with the mask mandate. This novel interpretation warrants no *Chevron* deference.

TSA admits that more than 11,000 of its employees⁹ – all of whom must wear masks – have tested positive for COVID-19 (App. 205) but fails to answer my question: "If masks are effective, why have so many TSA workers tested positive?"

⁷ These include security screening operations for passenger air transportation; hiring and training personnel to provide security screening; receive, assess, and distribute intelligence information related to transportation security; serve as the primary liaison for transportation security to the intelligence and law enforcement communities; identify and undertake research and development activities necessary to enhance transportation security; ensure the adequacy of security measures for the transportation of cargo; require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel; use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and development, interpretation, promotion, and oversight of a unified effort regarding risk-based, risk-reducing security policies.

⁸ These include protect passengers and property on an aircraft against an act of criminal violence or aircraft piracy; require a uniform procedure for searching and detaining passengers and property; authorize an individual who carries out air transportation security duties to carry firearms; discipline of employees for infractions of airport access control requirements; work with airport operators and air carriers to implement and strengthen existing controls to eliminate airport access control weaknesses; and order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

⁹ Since about half of those infected with COVID-19 don't have symptoms and might not realize they are infected, health authorities indicate that the real prevalence of the virus is typically at least double the number of cases confirmed by testing. In this case, TSA admits more than 11,000 of its workers have tested positive for coronavirus (17% of its employees). This means that some 22,000 TSA workers, or more than a third of its workforce, has likely had coronavirus. Yet they all have had to wear masks for close to a year and a half. How can the Court seriously consider TSA's argument that masks protect

The Court should stay TSA's Health Directives and Emergency Amendment.

E. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates, issued at the direction of CDC, exceed CDC's statutory authority under the Public Health Service Act.

Because TSA's directives were issued at the instruction of CDC, the Court has to take note of the illegality of CDC's action. Congress never gave CDC the staggering amount of power it claims, a fact this Court forcefully opined on recently in reviewing the agency's Eviction Moratorium. The Court resoundingly rejected CDC's position that it has immense authority under the PHSA to ban evictions to supposedly reduce the transmission of COVID-19:

"It would be one thing if Congress had specifically authorized the action that the CDC has taken. But that has not happened. Instead, the CDC has imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination. It strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts. ... the sheer scope of the CDC's claimed authority under [PHSA § 264](a) would counsel against the Government's interpretation. We expect Congress to speak clearly when authorizing an agency to exercise powers of 'vast 'economic and political significance.' ... That is exactly the kind of power that the CDC claims here. ... the Government's read of § [264](a) would give the CDC a breathtaking amount of authority. It is hard to see what measures this interpretation would place outside the CDC's reach..." *Alabama Ass'n of Realtors*.

Just like the Eviction Moratorium, the FTMM was issued by CDC claiming non-existent authority under 42 USC § 264(a). Because CDC has no authority to adopt a nationwide mask mandate, and TSA's four orders challenged here radiate from the CDC order, this Court must follow its own lead and immediately stay enforcement of the FTMM. "[O]ur system does not permit agencies to act unlawfully even in pursuit

transportation security when more than a third of its own maskwearing workforce has presumably been infected?

of desirable ends. ... [(e)ven the Government’s belief that its action ‘was necessary to avert a national catastrophe’ could not overcome a lack of congressional authorization). It is up to Congress, not the CDC, to decide whether the public interest merits further action here.” *Id.*

Other courts also strongly signaled they disagree with CDC’s broad reading of its power under the PHSA. In the 11th Circuit, the dissenting judge on a 2-1 panel concluded CDC exceeded its authority by ordering a nationwide Eviction Moratorium due to COVID-19. And the two judges who denied a preliminary injunction wrote: “We have doubts about the district court’s ruling on the first factor: whether the plaintiffs are likely to succeed on the merits. ... the second sentence of § 264(a) appears to clarify any ambiguity about the scope of the CDC’s power under the first.” *Brown v. HHS*, No. 20-14210 (11th Cir. July 14, 2021).

CDC’s Conditional Sailing Order directed at cruiseships was enjoined by a district court (a decision upheld by the 11th Circuit) because it exceeds CDC’s statutory authority and the agency failed to follow the APA, *inter alia*. *State of Florida v. Becerra*, No. 8:21-cv-839 (M.D. Fla. June 18, 2021); CDC’s motion to stay injunction denied, No. 21-12243 (11th Cir. July 23, 2021). The same legal conclusions should be applied here to stay the mask mandate.

In arguments below, TSA falsely claimed CDC’s part of the FTMM, which TSA is enforcing, “was based on robust scientific evidence that the wearing of masks would help to prevent the spread of COVID-19...” That’s quite ludicrous considering TSA didn’t provide the Court of Appeals an iota of evidence – attached to its opposition in or the administrative record – proving that masks reduce the spread of a virus.

Whereas I have offered 223 documents posted to <https://lucas.travel/masksarebad> showing the opposite.¹⁰ Notably TSA does not dispute the accuracy or validity of any of these materials.

TSA's Health Directives were only put into place because of CDC's demand. It follows that if the CDC order is unlawful, so are the TSA mandates. TSA's attempt to get around this Court's landmark CDC Eviction Moratorium case by asserting that "sanitation" includes covering human faces is a farce. The Court made it clear CDC's authority under the PHS Act is severely limited. "It would be one thing if Congress had specifically authorized the action that the CDC has taken. But that has not happened. Instead, the CDC has imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination." *Alabama Ass'n of Realtors*.

In no way has Congress vested CDC or TSA with authority to take action through requiring masking. Surgeons wear masks to protect *themselves* from splashes and sprays while operating, not as "a conventional sanitation measure" to stop the spread of viruses. See several studies showing fewer transmitted illnesses in mask-free operating rooms at <https://lucas.travel/masksarebad>.

As this Court acknowledged in the eviction case, Congress never gave CDC the staggering amount of power it now claims. Just like the Eviction Moratorium, the

¹⁰ I don't submit all 223 documents into evidence separately because the Court would be overwhelmed with some 2,000 pages of material showing that scientists have known for decades that masks don't prevent transmission of respiratory viruses and actually cause harm to human health. I submit in the appendix just one of these studies – "Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?" published in the International Journal of Environmental Research & Public Health in April 2021 –to illustrate the findings of many of the others. App. 215-256.

FTMM was issued by CDC claiming nonexistent authority under the PHSA, 42 USC § 264. Unlike the Eviction Moratorium, which Congress did authorize for two short periods of time, Congress has *never* enacted into law a mandate that travelers wear masks.

CDC's mask orders, which form the basis for TSA's transportation mask mandate, suffer from the same legal defect as the Eviction Moratorium. Specifically, the mask mandate is a power not mentioned in any statute nor substantially similar to a power mentioned in statute. And even if Congress meant to give the CDC broader powers than mentioned in law, that would be an unconstitutional delegation of its power. “[C]oncerns over separation of powers principles cast doubt over the Mandate’s assertion of virtually unlimited power to control individual conduct under the guise of a workplace regulation. As Judge Duncan points out, the major questions doctrine confirms that the Mandate exceeds the bounds of OSHA’s statutory authority.” *BST Holdings*.

Before this Court acted to stay the Eviction Moratorium, at least four federal district courts vacated it as illegal and/or unconstitutional, and so did the U.S. Court of Appeals for the Sixth Circuit.¹¹ Because § 361 of the PHSA (42 USC § 264) contains no authority to adopt a nationwide mask mandate for the transportation (or any other) sector, this Court must grant my application for a stay.

¹¹ *Tiger Lily v. HUD*, No. 2:20-cv-2692, 2021 WL 1171887 (W.D. Tenn. Mar. 15, 2021); *Tiger Lily v. HUD*, 992 F.3d 518, 520 (6th Cir. 2021); *Alabama Ass’n of Realtors v. HHS*, No. 20-cv-3377, D.D.C. May 5, 2021); *Skyworks v. CDC*, No. 5:20-cv-2407 (N.D. Ohio March 10, 2021); and *Terkel v. CDC*, No. 6:20-cv-564, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021).

The PHSA authorizes CDC to promulgate regulations to “prevent the introduction, transmission, or spread of communicable diseases” into the United States or among the states. 42 USC § 264(a). The next sentence permits CDC to “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 [its] judgment may be necessary.” *Id.* Sanitation of animals or articles found to be infected or contaminated in no way allows TSA to order all transportation passengers and employees – nearly all of whom aren’t infected with COVID-19 – to don face coverings.

CDC’s regulation implementing PHSA § 361 permits the agency’s director, upon “determin[ation] that the measures taken by health authorities of any State or possession ... are insufficient to prevent the spread of any of the communicable diseases,” to “take such measures to prevent such spread of the diseases as he/she deems reasonably necessary, including inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of animals or articles believed to be sources of infection.” 42 CFR. § 70.2.

CDC’s FTMM Order did not contain the required determination that the measures taken by health authorities of any specific state or territory are insufficient to prevent the spread of any communicable diseases. It only issued a broad generalized claim – without supporting evidence – that “Any state or territory without sufficient mask-wearing requirements for transportation systems within its jurisdiction has not

taken adequate measures to prevent the spread of COVID–19 from such state or territory to any other state or territory.” App. 177-182. There are 44 states that disagree with that assertion. App. 198.

Like TSA, CDC is not entitled to *Chevron* deference when considering the FTMM. This Court in *Alabama Ass’n of Realtors* agreed with the district court’s judgment that no portion of PHSA § 361 authorized CDC to prohibit landlords from evicting tenants during a pandemic, interfering with state eviction laws. Likewise, no portion of § 361 authorizes CDC and TSA to make every American using any form of public transportation wear a face mask. No court during this pandemic has concurred with CDC’s incredibly broad and erroneous reading of PHSA § 361. CDC’s

“interpretation goes too far. The first sentence of § 264(a) is the starting point in assessing the scope of the Secretary’s delegated authority. But it is not the ending point. While it is true that Congress granted the Secretary broad authority to protect the public health, it also prescribed clear means by which the Secretary could achieve that purpose. ... An overly expansive reading of the statute that extends a nearly unlimited grant of legislative power to the Secretary would raise serious constitutional concerns, as other courts have found. ... Congress did not express a clear intent to grant the Secretary such sweeping authority.” *Alabama Ass’n of Realtors*.

If this Court allows CDC and TSA to force masks over the mouths and noses of all transportation passengers and workers, the two agencies’ sweeping view of their domain would, if left unchecked, allow them to adopt future regulations governing nearly all aspects of national life in the name of public health. If TSA is allowed to become the health police, the agency could ban anyone who coughs or sneezes from boarding a flight. It could demand every passenger run three miles on a treadmill before entering the security checkpoint to make up for the health consequences of sitting in a cramped airplane for numerous hours.

“[I]f CDC promulgates regulations the director finds ‘necessary to prevent’ the interstate or international transmission of a disease, the enforcement measures must resemble or remain akin to ‘inspection, fumigation, disinfection, sanitation, pest extermination, [or the] destruction of infected animals or articles.’” *State of Florida*. Just like regulating what cruiseships must do before sailing again, forcing humans to wear masks is not allowed under the PHSA (42 USC § 264) or TSA’s governing laws. Notably the FTMM applies to all travelers and workers, regardless of whether they are vaccinated, have naturally immunity, or are presently infected with coronavirus.

“Congress directed the actions set forth in Section 361 to certain animals or articles, those so infected as to be a dangerous source of infection to people. On the face of the statute, the agency must direct other measures to specific targets ‘found’ to be sources of infection – not to amorphous disease spread but, for example, to actually infected animals, or at least those likely to be...” *Skyworks v. CDC*, No. 5:20-cv-2407 (N.D. Ohio March 10, 2021).

The PHSA authorizes CDC to combat the spread of disease through a range of measures, but these measures plainly do not encompass a nationwide mask mandate on all forms of public transportation effecting tens of millions of Americans every day. The Court should stay TSA’s Health Directives and Emergency Amendment.

F. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates run afoul of the 10th Amendment.

The FTMM violates the 10th Amendment because TSA’s directives apply to intrastate travel, including taking a rideshare car or transit bus just one mile, during which there is no nexus to interstate commerce. TSA’s directives are in direct contradiction to the mask polices of 44 states. App. 198. TSA can’t overrule state mask rules

such as those such in several states that *prohibit* any public entity from requiring face coverings. *Id.* President Biden criticizes no-mask policies such as those adopted by Florida, however Florida is currently “reporting the lowest amount of coronavirus cases per capita in the nation. ... At the same time Florida reported the lowest amount of new cases in the country per capita, coronavirus cases are surging in many states where strict lockdown [and mask] orders were issued by Democratic governors.” App. 199-200.

CDC’s eviction “moratorium intrudes into an area that is the particular domain of state law ... ‘Our precedents require Congress to enact exceedingly clear language if it wishes to significantly alter the balance between federal and state power...’” *Alabama Ass’n of Realtors*. Likewise this Court must find that the FTMM intrudes into areas (intrastate transport and public health) that are the particular domain of state law. The “Mandate raises serious constitutional concerns that either make it more likely that the petitioners will succeed on the merits, or at least counsel against adopting OSHA’s broad reading of § 655(c) as a matter of statutory interpretation.” *BST Holdings*.

There is no language in the U.S. Code indicating Congress’ intent to invade the traditionally state-operated realms of intrastate transportation and public health by forcing all passengers and workers to wear a mask. The Court requires “a clear indication” from Congress that it meant to “override[] the usual constitutional balance of federal and state powers” before interpreting a statute “in a way that intrudes on the police power of the States.” *Bond v. United States*, 572 U.S. 844, 858, 860 (2014).

Congressional intent has been clear throughout the pandemic: It has left decisionmaking about masks, lockdowns, business closures and restrictions, school shutdowns, limits on the size of public gatherings, and other mitigation measures up to the states.

“The Constitution creates a Federal Government of enumerated powers. See Art. I, § 8. As James Madison wrote: ‘The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.’ ... if we were to accept the Government’s arguments, we are hard pressed to posit any activity by an individual that [the Federal Government] is without power to regulate. ... To uphold the Government’s contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.” *United States v. Lopez*, 514 U.S. 549 (1995).

If I use public transportation within Missouri to visit a friend, that’s a purely non-economic intrastate activity not subject to federal regulation pursuant to the 10th Amendment. The

“Mandate likely exceeds the federal government’s authority under the Commerce Clause because it regulates noneconomic inactivity that falls squarely within the States’ police power. A person’s choice to remain unvaccinated and forgo regular testing is noneconomic inactivity. Cf. *NFIB v. Sebelius*, 567 U.S. 519, 522 (2012) (Roberts, C.J., concurring); see also *Id.* at 652–53 (Scalia, J., dissenting). And to mandate that a person receive a vaccine or undergo testing falls squarely within the States’ police power. *Zucht v. King*, 260 U.S. 174, 176 (1922) (noting that precedent had long ‘settled that it is within the police power of a state to provide for compulsory vaccination’); *Jacobson v. Massachusetts*, 197 U.S. 11, 25–26 (1905) (similar).”

Furthermore, the FTMM requires states and their political subdivisions that operate transit systems, airports, train stations, etc. to enforce federal orders mandating masks – even when those federal orders directly conflict with state law such as here in Missouri.

“The power of the Federal Government would be augmented immeasurably if it were able to impress into its service – and at no cost to itself – the police officers of the 50 States. ... [T]he Federal Government may not compel the

States to implement, by legislation or executive action, federal regulatory programs..." *Printz v. United States*, 521 U.S. 898, 919-920 (1997).

"[T]his Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations." *FERC v. Mississippi*, 456 U.S. 742, 761-762 (1982).

TSA's Health Directives apply not only to travelers, but all employees working in the transportation sector – most of whom never cross state lines and many of whom work for state governments and their subdivisions. But "The Federal Government ... may not compel the States to enact or administer a federal regulatory program." *New York v. United States*, 505 U.S. 144, 188 (1992).

"It is an essential attribute of the States' retained sovereignty that they remain independent and autonomous within their proper sphere of authority. ... even when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness. ... The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with my constitutional system of dual sovereignty." *Printz*.

TSA has no authority to overrule the mask policies of all but six states by imposing a national mask mandate for all forms of public transportation except driving your own motor vehicle – especially when there's no evidence that masks mandates reduce COVID-19 transmission. Recently "States with statewide mask mandates in place are reporting higher coronavirus cases per capita than Florida." App. 201-204. Illinois, one of only six states to presently have a mask requirement, reported an increase in coronavirus cases of 45% over the last two weeks. The five other mask-mandate states have an infection rate much higher than Florida. *Id.*

Although the federal government has some authority to regulate intrastate economic activity that has a substantial effect on interstate commerce, this Court has held the 10th Amendment prohibits the federal government from regulating noneconomic intrastate activity. If I use public transportation such as a bus or train to visit a friend in Missouri this is a purely noneconomic intrastate activity not subject to federal regulation. TSA has no constitutional authority to override that state policy by telling me to wear a mask when I travel within the state.

“[T]he Framers rejected the concept of a central government that would act upon and through the States, and instead designed a system in which the State and Federal Governments would exercise concurrent authority over the people.” *Printz*.

“The Commerce Clause power may be expansive, but it does not grant Congress the power to regulate noneconomic inactivity traditionally within the States’ police power. *See Sebelius*, 567 U.S. at 554 (Roberts, C.J., concurring) (‘People, for reasons of their own, often fail to do things that would be good for them or good for society. Those failures – joined with the similar failures of others – can readily have a substantial effect on interstate commerce. Under the Government’s logic, that authorizes Congress to use its commerce power to compel citizens to act as the Government would have them act.’); *see also Bond v. United States*, 572 U.S. 844, 854 (2014) (‘The States have broad authority to enact legislation for the public good – what we have often called a ‘police power.’ . . . The Federal Government, by contrast, has no such authority...’ (citations omitted)). Indeed, the courts ‘always have rejected readings of the Commerce Clause ... that would permit Congress to exercise a police power.’ *United States v. Lopez*, 514 U.S. 549, 584 (1995) (Thomas, J., concurring). In sum, the Mandate would far exceed current constitutional authority.” *BST Holdings*.

“Whether Congress could enact such a sweeping mandate under its interstate commerce power would pose a hard question. ... Whether OSHA can do so does not. *Id.* (Duncan, J., concurring).

Just like regulation of the landlord-tenant relationship and vaccine requirements are historically the province of the states, so is regulation of other public-health rules

and intrastate transportation. It is an ordinary rule of statutory construction that if Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quotation marks and citation omitted); *Solid Waste Agency v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172–73 (2001). There is no “unmistakably clear” language in any statute indicating Congress’ intent for TSA to invade the traditionally state-operated arenas of public health and intrastate transportation by forcing all people to wear a mask while traveling or working in the transportation industry.

Importantly for this 10th Amendment analysis, the FTMM requires states and their political subdivisions who operate transit systems and hubs such as airports and train stations to enforce federal orders mandating masks – even when those federal orders directly conflict with state law. The Constitution does not permit commandeering the states to enforce policies established by the federal government.

TSA’s FTMM regulates not only travelers, but all employees working in the transportation sector – most of whom never cross state lines and many of whom work for state governments and their subdivisions: Employees must wear a mask while on the premises of a transportation hub unless they are only person in the work area. It offends the Constitution to imagine the federal government fining a state commuter-rail operator \$118,826 per day for failing to ensure its train maintenance workers wear masks in violation of state law. TSA’s mandatory obligation imposed on all state-operated transit systems and transportation hubs to enforce the FTMM plainly

runs afoul of the constitutional rule that the federal government may not compel the states to administer a federal mandate.

There is no question that the decision to impose a nationwide mask mandate on all forms of transportation is one of vast economic and political significance. Mask mandates have been the subject of “earnest and profound debate across the country.” *Gonzales v. Oregon*, 546 U.S. 243, 267 (2006). There have been statewide mask mandates put into place at some point during the pandemic by 40 states. App. 198. However, nearly every state long ago ended that requirement. There remains only six states that requires people cover their faces in public. *Id.* Going farther, several states *prohibit* any governmental agency from requiring any person be muzzled. *Id.*

“[T]he Tenth Amendment affirms the undeniable notion that under our Constitution, the Federal Government is one of enumerated, hence limited, powers. ... Accordingly, the Federal Government may act only where the Constitution authorizes it to do so. ... The Constitution, in addition to delegating certain enumerated powers to Congress, places whole areas outside the reach of Congress' regulatory authority.” *Printz* at 936-937 (Thomas, J., concurring).

Unlike TSA, the states are the appropriate authorities – as both a constitutional and practical matter – to determine whether imposing mask mandates is necessary to mitigate COVID-19. The Court should stay TSA’s Health Directives and Emergency Amendment.

G. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the constitutional guarantee of freedom to travel.

TSA’s mask directives restrict the free movement of disabled Americans such as myself who can’t wear face masks. The right to travel includes more than the ability to drive one’s own car. “The constitutional right to travel from one State to another,

and necessarily to use the highways *and other instrumentalities of interstate commerce* in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.” *United States v. Guest*, 383 U.S. 745, 757 (1966) (emphasis added).

The FTMM violates the constitutional freedom to travel without undue governmental interference. “It is a familiar and basic principle, recently reaffirmed in *NAACP v. Alabama*, 377 U.S. 288, 307 ... that ‘a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.’” *Aptheker v. Secretary of State*, 378 U.S. 500 (1964). “[T]he ‘constitutional right to travel from one State to another’ is firmly embedded in our jurisprudence. ... the right is so important that it is ‘assertable against private interference as well as governmental action ... a virtually unconditional personal right, guaranteed by the Constitution to me all.’” *Saenz v. Roe*, 526 U.S. 489, 498 (1999).

The Court consistently applies strict scrutiny to restrictions on the right to interstate travel. It has long “recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

Congress affirmed the constitutional right to fly for disabled Americans by enshrining it into statute:

“A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board ... before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.” 49 USC § 40103.

There’s no evidence that TSA’s prohibitions on disabled Americans who can’t wear masks have been approved by the transportation secretary or the compliance board.

My constitutional right to freedom of movement can’t be restricted when there is no evidence that airplanes or other modes of transit have contributed to the spread of COVID-19 and there are less restrictive rules that could be adopted to minimize the risk to public health such as using CDC systems called “Do Not Board” and “Look-out” to alert airlines to bar passengers who have tested positive for a communicable disease. There’s no evidence that TSA and/or CDC are using Do Not Board and Look-out to stop passengers who have tested positive for COVID-19 from embarking. Targeting travelers who are a genuine threat to public health – those who are infected – can be done without infringing on the freedom to travel for everyone else.

My free movement isn’t restricted to using highways. The large distances covered rapidly by airplanes aren’t feasible by ground transportation. To drive from Warsaw, Missouri, to Colorado Springs would take about 10 grueling hours each way, not counting stops to eat, get gas, use the bathroom, and sleep. I could not do that trip in one day. So that would mean four days of driving to and from Colorado Springs rather than a few hours to fly.

“To make one choose between flying to one’s destination and exercising one’s constitutional right appears to us, as to the Eighth Circuit, *United States v. Kroll*, 481 F.2d 884, 886 (8th Cir. 1973), in many situations a form of coercion, however subtle. ... While it may be argued there are often other forms of trans-

portation available, it would work a considerable hardship on many air travelers to be forced to utilize an alternate form of transportation, assuming one exists at all.” *United States v. Albarado*, 495 F.2d 799 (2nd Cir. 1974).

In arguments below, TSA oversimplifies the constitutional right to travel by stating caselaw only applies to “measures that prohibited individuals from moving from state to state.” But even with this narrow view, the FTMM prohibits millions of disabled Americans from moving freely from state to state because we rely on public transportation such as planes, trains, and buses and can’t get mask exemptions, enormously restricting our mobility. The FTMM is a deprivation of fundamental rights under the Constitution blocking my freedom of movement. “At the very least, even if the statutory language were susceptible to OSHA’s broad reading – which it is not – these serious constitutional concerns would counsel this court’s rejection of that reading. *Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018).” *BST Holdings*.

TSA wrongly claimed I focus on “only one mode of transportation.” But the FTMM affects *every* mode of transit except driving your own car. TSA’s mask mandate compels me to choose between my health or exercising my right to travel. Such coercion is constitutionally impermissible. “It might be suggested that a prospective airline passenger will not actually be deprived of his right to travel because there are alternative means of travel available. We do not find this argument persuasive ‘since, in many situations, flying may be the only practical means of transportation.’” *United States v. Kroll*, 481 F.2d 884 (8th Cir. 1973).

As early as the Articles of Confederation, Congress recognized freedom of movement (Article 4), though the right was thought to be so fundamental during the draft-

ing of the Constitution as not needing explicit enumeration. This Court has repeatedly frowned upon restrictions of constitutional rights during the COVID-19 pandemic. The FTMM violates the long-standing constitutional freedom to travel without undue governmental interference. When the government deprives a person of his/her freedom to travel without due process of law, it violates the Bill of Rights.

“This freedom of movement is the very essence of our free society, setting us apart. Like the right of assembly and the right of association, it often makes all other rights meaningful – knowing, studying, arguing, exploring, conversing, observing, and even thinking. Once the right to travel is curtailed, all other rights suffer...” *Aptheker* (Douglas, J., concurring).

“Even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.” *Id.*

Abridged liberty cannot be merely compensated with cash, especially in this case where it is highly unlikely that there is any avenue in which monetary damages could be pursued by myself or any of the other tens of millions of individuals subject to TSA’s *ultra vires* enforcement directives. This is unchanged even if the rule implicates only a modest or slight liberty interest. The question is whether the harm is irreparable, not whether it is severe.

In this year’s *Tandon* case, the constitutional problem was California’s emergency pandemic orders permitting, for example, several hundred people to shop at a big-box store but a much smaller number to gather at places of worship. The Court found this offended the First Amendment. Likewise, the Constitution is offended here when the

federal government doesn't enforce mask orders across the nation for uncountable number of activities that are not protected by the Constitution, but does enforce mask wearing on interstate and international travelers, an activity that IS protected by the Constitution. If going to nonconstitutionally protected activities such as a rock concert with 20,000 other fans or a college football game with more than 100,000 other people unmasked is permitted by the federal government, then exercises of constitutionally protected rights such as flying from one state to another must likewise be permitted.

“The right of ‘free ingress and regress to and from’ neighboring States, which was expressly mentioned in the text of the Articles of Confederation, may simply have been ‘conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.’” *Saenz* at 501. The Court should stay TSA’s Health Directives and Emergency Amendment.

H. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the Fifth Amendment right to due process.

“No person shall ... be deprived of life, liberty, or property, without due process of law.” U.S. Const., Amend. 5. Travelers, including myself, have a liberty interest in not being forced to wear something that I don’t want to wear to block my breathing – a function essential for human life – or alternatively being barred from all modes of public transportation.

The FTMM deprives travelers of due process by assigning determinations on mask-exemption requests to private companies such as airlines with no opportunity

to appeal a denial to a neutral federal decisionmaker. TSA's Health Directives purport to allow the disabled to get mask exemptions, but the reality is the government and airlines have made it nearly impossible. I have qualified disabilities but can't get exemptions. I have experienced numerous denials when requesting mask exemptions from airlines (App. 11 *et seq.*) – and there's no procedure to appeal to TSA or any other federal agency.

“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment. ... Freedom of movement is basic in our scheme of values. See *Crandall v. Nevada*, 6 Wall. 35, 44; *Williams v. Fears*, 179 U.S. 270, 274; *Edwards v. California*, 314 U.S. 160. ... Since we start with an exercise by an American citizen of an activity included in constitutional protection, we will not readily infer that Congress gave the Secretary ... unbridled discretion to grant or withhold it.” *Kent v. Dulles*, 357 U.S. 116 (1958).

If TSA mandates masks and claims to allow disability exceptions, TSA itself constitutionally must provide due process in the form of a rapid pre-deprivation hearing to determine whether an airline wrongly applied the Health Directives in denying a disabled person transportation. Saying I can file a DOT complaint and wait years for the agency to do anything is not going to help me make my next flight.

The Court recently spoke forcefully to the issue of pandemic restrictions that violate constitutional rights. An American is “irreparably harmed by the loss of [constitutionally protected] rights ‘for even minimal periods of time’; the State has not shown that ‘public health would be imperiled’ by employing less restrictive measures.” *Tandon*. The Court should stay TSA's Health Directives and Emergency Amendment.

I. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the Air Carrier Access Act.

TSA's mask mandate blatantly discriminates against Americans with medical conditions who can't wear masks in violation of the ACAA. "In providing air transportation, an air carrier ... may not discriminate against an otherwise qualified individual on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities. (2) the individual has a record of such an impairment. (3) the individual is regarded as having such an impairment." 49 USC § 41705(a). TSA may not issue a directive that is contrary to statute.

Numerous DOT regulations illustrate how the FTMM is illegal. DOT, violating its own regulations, has allowed airlines to prohibit all passengers with disabilities who can't wear face masks from flying and/or impose numerous onerous requirements to obtain an exemption. App. 185-192.

TSA's discrimination against the disabled is extremely difficult to write about for me, and its numerous false claims below that the FTMM doesn't unlawfully bar those with medical conditions who can't wear masks from traveling are insulting. The Health Directives purport to allow the disabled to get mask exemptions, but the reality is TSA and the airlines have made it nearly impossible. TSA failed in the Court of Appeals to contradict that the FTMM violates the ACAA in at least eight ways. TSA instead quoted the numerous illegal items in the FTMM, which itself is *ultra vires*.

TSA's contention that I "may request an exemption from the relevant airline" is disingenuous because I've already done so many times and been refused. Documentation of M.S., Mr. Seklecki, and Mr. Wall's health problems have been provided to airlines, yet refusals still abound. *See, e.g.,* my Veterans Administration medical records at App. 71-101.

It's likewise deceitful for TSA to argue that I can file an ACCA complaint with the Department of Transportation if denied a mask exemption. Lucas Wall is suing DOT in the Middle District of Florida¹² and has told me the department hasn't resolved the thousands of complaints it's received against airline mask denials, including several he's made himself.

The Court of Appeals' decision ignores that health experts strongly advise that tens of millions of Americans with a variety of medical conditions can't safely wear a mask. App. 208-256.

Because of TSA and CDC's FTMM directives, DOT – the agency that is supposed to enforce the ACAA – has allowed airlines to prohibit all passengers with disabilities who can't wear face masks from flying and/or impose numerous onerous requirements to obtain an exemption that violate the ACAA and its accompanying regulations. Under the CDC Order, a person with a disability who can't safely wear a mask is supposed to be exempt. However, the CDC Order goes on to place numerous restrictions on obtaining a mask waiver that violate the ACAA:

"Operators of conveyances or transportation hubs may impose requirements, or conditions for carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party,

¹² *Wall v. Centers for Disease Control & Prevention*, No. 6:21-cv-975 (M.D. Fla.)

medical documentation by a licensed medical provider, and/or other information as determined by the operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19. ... Operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.” *Id.*

TSA’s Health Directive for U.S. air carriers includes similar illegal language regarding mask exceptions. Here’s an excerpt of TSA Health Directive SD 1544-21-02B with illegal sections highlighted in bold underline and corresponding DOT regulations placed in brackets:

“Aircraft operators **may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask [1], including medical consultation by a third party [2], medical documentation by a licensed medical provider [3], and/or other information as determined by the aircraft operator [4], as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19 [5].** ... Aircraft operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as **scheduling travel at less crowded times or on less crowded conveyances [6], or seating or otherwise situating the individual in a less crowded section of the conveyance [7]** or airport. Aircraft operators may further require that persons seeking exemption from the requirement to wear a mask **request an accommodation in advance [8].**” App. 136.

Regulations TSA’s Health Directives and Emergency Amendment violate:

1. “[Y]ou must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.” 14 CFR § 382.19(a).
2. Since airlines may not require a medical certificate for a passenger unless he/she has a communicable disease (14 CFR § 382.23(a)), they may also not require a third-party medical consultation. “[Y]ou may require that a passenger *with a medical certificate* undergo additional medical review by you if there

is a legitimate medical reason for believing that there has been a significant adverse change in the passenger's condition since the issuance of the medical certificate..." 14 CFR § 382.23(d) (emphasis added).

3. "Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation." 14 CFR § 382.23(a). "You may also require a medical certificate for a passenger if he or she *has* a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight." 14 CFR § 382.23(c)(1) (emphasis added). This requirement does not include speculation or presumption that a person might have a communicable disease such as COVID-19; evidence is required that the passenger *has* a communicable disease, e.g. has tested positive for coronavirus.
4. Airlines are prohibited from requiring that a passenger wear a face covering or refuse him/her transportation unless they determine that the passenger "has" a communicable disease and poses a "direct threat" to other passengers and the flight crew. 14 CFR § 382.21. TSA's Health Directive illegally assumes every single traveler is infected with COVID-19, even those who are fully vaccinated and/or have natural immunity. This violates the regulation that "In determining whether an individual poses a direct threat, you must make an *individualized assessment*." 14 CFR § 382.19(c)(1) (emphasis added).
5. No provision of the ACAA or its accompanying regulations permits TSA to allow airlines to require that passengers submit a negative test for any communicable disease. Mandating disabled flyers needing a mask exemption submit an

expensive COVID-19 test before checking in but not requiring the same of non-disabled travelers is illegal discrimination. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1).

6. “[Y]ou must not limit the number of passengers with a disability who travel on a flight.” 14 CFR § 382.17.
7. “[Y]ou must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA or applicable foreign government safety requirements.” 14 CFR § 382.87(a).
8. “As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.” 14 CFR § 382.25.

It’s especially troubling that DOT, the agency assigned by Congress to protect the rights of disabled flyers by enforcing the ACAA, has totally abdicated its responsibility. DOT has neglected its statutory duty to enforce the ACAA. The Office of Aviation Consumer Protection (“OACP”), a unit within DOT’s Office of the General Counsel, issued a Notice of Enforcement Policy “Accommodation by Carriers of Persons with Disabilities Who Are Unable to Wear or Safely Wear Masks While on Commercial Aircraft” on Feb. 5, 2021, “to remind U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the

public health risks associated with the Coronavirus Disease 2019 (COVID-19).” App. 185-192.

“OACP will exercise its prosecutorial discretion and provide airlines 45 days from the date of this notice to be in compliance with their obligation under the Air Carrier Access Act (“ACAA”) and the Department’s implementing regulation in 14 CFR Part 382 (“Part 382”) to provide reasonable accommodations to persons with disabilities who are unable to wear or safely wear masks, so long as the airlines demonstrate that they began the process of compliance as soon as this notice was issued.” *Id.*

The 45-day deadline was March 22, 2021, but it appears every commercial airline in the nation continues to violate the ACAA because TSA has told them in its Health Directives and Emergency Amendment that it’s okay. OACP’s Notice of Enforcement Policy did not advise airlines that the CDC and TSA mandates allowing carriers to impose additional requirements (such as requesting a mask exemption in advance, submitting to a third-party medical consultation, submitting a medical certificate, and requiring a negative COVID-19 test) are illegal. Yet OACP told airlines they could not ban all disabled passengers who can’t wear masks, as most airlines did from Summer 2020 to the FTMM’s effective date of Feb. 1, 2021:

“The CDC and other medical authorities recognize that individuals with certain medical conditions may have trouble breathing or other difficulties such as being unable to remove the mask without assistance if required to wear a mask that fits closely over the nose and mouth. ... It would be a violation of the ACAA to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not to have an exemption for ... individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others.” *Id.*

“The ACAA prohibits U.S. and foreign air carriers from denying air transportation to or otherwise discriminating in the provision of air transportation against a person with a disability by reason of the disability. When a policy or practice adopted by a carrier has the effect of denying service to or otherwise discriminating against passengers because of their disabilities, the Department’s disability regulations in Part 382 require the airline to modify the policy

or practice as necessary to provide nondiscriminatory service to the passengers with disabilities ...” *Id.*

It is shocking the degree to which TSA, CDC, and DOT are allowing airlines to illegally discriminate against passengers with disabilities by enforcing the FTMM and making it virtually impossible to get a mask exemption. The Court should stay TSA’s Health Directives and Emergency Amendment.

J. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates were issued without notice and comment required by the Administrative Procedure Act.

TSA’s Health Directives were issued without following APA procedures including notice and comment. “Legislative rules have the ‘force and effect of law’ and may be promulgated only after public notice and comment. *INS v. Chadha*, 462 U.S. 919, 986...” *Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 250 (D.C. Cir. 2014). A court must “hold unlawful and set aside agency action ... found to be ... without observance of procedure required by law.” 5 USC § 706(2)(D).

TSA claims that if it determines a security directive must be issued immediately, notice and comment are waived. Because the FTMM is not a security policy, the mask mandate does not fall under this exemption. COVID-19 began in December 2019 and was declared a global pandemic in March 2020. TSA had nearly 11 months to put the FTMM through APA’s required notice-and-comment procedures,¹³ but failed to do so.

¹³ Had TSA put its mask directives through the required APA notice-and-comment period, I would have submitted the following concerns: (1) data shows states without mask mandates suffered fewer deaths per capita than states that imposed such requirements; (2) the FTMM is out of step with the current policies of nearly every state plus numerous businesses who don’t require their customers cover their faces; (3) requiring masks in the transportation sector leads to widespread chaos in the skies and on the ground, endangering aviation and transit safety; (4) the FTMM unlawfully discriminates against travelers who can’t wear a face covering due to a disability; (5) the gargantuan amount

“The conditional sailing order is a rule ... The APA therefore obligates CDC to treat the conditional sailing order as a rule and to provide notice and comment. 5 U.S.C. § 553(b). To satisfy its notice-and-comment obligations under the APA, ‘an agency must consider and respond to significant comments received during the period for public comment.’ *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015). Therefore, the conditional sailing order violates the APA... Precedent demonstrates how infrequently the [good cause] exception should receive acceptance. *See, e.g., Am. Fed’n of Gov’t Emp., AFL-CIO v. Block*, 655 F.2d 1153, 1158 (D.C. Cir. 1981) ([A]dministrative agencies should remain conscious that such emergency situations are indeed rare.’); *State of Florida*.

The FTMM is an “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court.” 5 USC § 704. It represents the consummation of CDC and TSA’s decision-making process with respect to requiring masks in the entire U.S. transportation sector. And it affects my legal rights and obligations because it prevents me from flying and using any other modes of public transportation because I can’t wear a mask.

The FTMM is a rule within the meaning of the APA because it is “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” 5 USC § 551(4). CDC and TSA issued the FTMM without engaging in the notice-and-comment process. 5 USC § 553. Good cause does not excuse CDC’s failure to comply with the notice-and-comment procedures. 5 USC § 553(b)(3)(B).

of scientific and medical evidence showing that masks have proven to be totally ineffective in reducing COVID-19 spread and deaths (*see* 223 scientific studies, medical articles, and videos at <https://lucas.travel/masksarebad>); (6) scientists have known for a long time that masks aren’t effective in reducing transmission of respiratory viruses (*Id.*); (7) masks pose serious health risks to humans forced to wear them (*Id.*); (8) many experts consider forcing kids to wear masks child abuse; (9) masks have contributed to a surge in serious crime; (10) masks contribute to the huge problem of racism in America; (11) masks are damaging the environment (*Id.*); (12) unlike masks, vaccines are extremely effective in reducing COVID-19 infections and deaths; (13) people who have recovered from COVID-19 have long-lasting immunity; and (14) airplane cabins pose little risk for coronavirus spread and there have been few, if any, reports of coronavirus transmission on aircraft.

The policies were rushed into effect only 12 days after President Biden took office. But the World Health Organization declared COVID-19 a pandemic March 11, 2020 – meaning CDC and TSA had nearly 11 months to put the FTMM through the required notice-and-comment procedures before adopting them as final rules. But they failed to do so. Moreover, the FTMM has now been in effect for 10 months, including two extensions ordered by TSA and a third announced by the president two days ago. Yet the agencies still haven't submitted it for public comment; they just keep renewing it every few months without hearing how devastating it is for the disabled in particular. "The Mandate's stated impetus – a purported 'emergency' that the entire globe has now endured for nearly two years, and which OSHA itself spent nearly two months responding to – is unavailing as well. And its promulgation grossly exceeds OSHA's statutory authority." *BST Holdings*.

"Violation of the conditional sailing order triggers a serious consequence... The conditional sailing order is a rule ... The APA therefore obligates CDC to ... provide notice and comment. ... CDC lacked 'good cause' to evade the statutory duty of notice and comment." *State of Florida*. The Court should stay TSA's Health Directives and Emergency Amendment.

K. I have a substantial likelihood of success on the merits of my claim that the challenged mandates must be vacated because they are arbitrary and capricious in violation of the APA.

TSA's mandate forcing me to wear a mask (even though my medical conditions prohibit it) as a condition of using any form of public transportation is the perfect example of arbitrary and capricious executive policies that the law demands be

stopped. A court must “hold unlawful and set aside agency action ... found to be ... arbitrary, capricious, [or] an abuse of discretion.” 5 USC § 706(2)(A).

CDC’s “conditional sailing order likely is by definition capricious. ... An agency decision issued without adherence to its own regulations must be overturned as arbitrary and capricious...” *State of Florida*. Likewise, the FTMM is by definition capricious for failing to consider vaccination, natural immunity, and disability status, among other factors. The FTMM “therefore is patently not a regulation ‘narrowly drawn to prevent the supposed evil,’ cf. *Cantwell v. Connecticut*, 310 U.S. 307.” *Aptheker*.

The FTMM impermissibly establishes an irrebuttable presumption that every single person traveling anywhere in the United States is infected with COVID-19 and therefore must wear a mask to supposedly prevent transmission of the virus. (Scientific research actually shows that masks do nothing to reduce coronavirus spread and are harmful to humans. <https://lucas.travel/masksarebad>.) TSA claims that every single traveler – even those who are fully vaccinated and/or have natural immunity – are deemed to be a direct threat to transportation security. This conclusion is beyond absurd and is scientifically impossible.

“[R]ather than a delicately handled scalpel, the Mandate is a one-size-fits-all sledgehammer that makes hardly any attempt to account for differences in workplaces (and workers) that have more than a little bearing on workers’ varying degrees of susceptibility to the supposedly ‘grave danger’ the Mandate purports to address. ... it is generally ‘arbitrary or capricious’ to ‘depart from a prior policy *sub silentio*,’ agencies must typically provide a ‘detailed explanation’ for contradicting a prior policy... Such shortcomings are all hallmarks of unlawful agency actions.” *BST Holdings*.

CDC's FTMM Order, upon which TSA's Health Directives and Emergency Amendment are based, makes numerous false claims about the effectiveness of face coverings including that

“Masks help prevent people who have COVID–19, including those who are pre-symptomatic or asymptomatic, from spreading the virus to others. ... Masks also provide personal protection to the wearer by reducing inhalation of these droplets, i.e., they reduce wearers' exposure through filtration. ... Appropriately worn masks reduce the spread of COVID–19 – particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19. ... Requiring a properly worn mask is a reasonable and necessary measure to prevent the introduction, transmission, and spread of COVID–19 into the United States and among the states and territories under 42 USC 264(a) and 42 CFR 71.32(b).” App. 178.

CDC's FTMM Order ignores the science showing that people who have recovered from coronavirus have long-lasting natural immunity: “CDC recommends that people who have recovered from COVID–19 continue to take precautions to protect themselves and others, including wearing masks; therefore, this mask requirement also applies to people who have recovered from COVID–19.” *Id.*

CDC's FTMM Order is so broad it appears to require passengers on ferries, cruiseships, and long-distance trains to wear masks even within their own private cabins, completely segregated from other people. *Id.*

TSA's Health Directives are so onerous they apply to people who are not traveling interstate, employees working at facilities and on conveyances that only serve intrastate travelers, and people at a transportation hubs for purposes other than traveling interstate (i.e. working, buying tickets for future travel, waiting on a train platform for a family member to arrive, etc.).

The FTMM is exactly the kind of policy Congress has told the courts to vacate as arbitrary and capricious. 5 USC § 706(2)(A). The Court should stay TSA's Health Directives and Emergency Amendment.

L. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate the Food, Drug, & Cosmetic Act.

TSA's mask mandate must be stayed because it violates federal law prohibiting the mandatory use of any medical device approved under an Emergency Use Authorization ("EUA") by the Food & Drug Administration ("FDA"). Individuals to whom any EUA product is offered must be informed "of the option to accept *or refuse administration of the product...*" 21 USC § 360bbb-3(e)(1)(A)(ii)(III) (emphasis added). TSA can't force travelers to use EUA products such as masks, according to the FDCA. TSA may only *recommend* masks and advise passengers if they refuse to wear a mask, the consequence *might* be a higher risk for contracting COVID-19.

When courts review the legal interpretations of an agency such as TSA regarding its compliance with statutes it does not administer, "such review can be more stringent: Courts sometimes review such matters *de novo*, or without any deference at all to the agency's interpretation." *Freeman v. DirecTV*, 457 F.3d 1001, 1004 (9th Cir. 2006).

By supplying surgical masks to passengers at its airport checkpoints, TSA is a distributor of FDA EUA medical devices and is subject to the FDCA restrictions that any person may refuse administration of the product. But if a passenger refuses the

offer of a surgical mask from a TSA worker, he is denied passage through the checkpoint and deprived of the ability to board a flight. By distributing EUA masks, TSA is carrying out an activity “for which an authorization ... is issued” under the FDCA.

The FTMM is illegal because it forces Americans to use a medical device (face masks), most of which are approved by FDA under EUAs. TSA can't force travelers to use EUA products including masks. There's good reason for the law prohibiting forced use of EUA medical devices. Requirements for EUA products are waived for, among other things, “current good manufacturing practice otherwise applicable to the manufacture, processing, packing ... of products subject to regulation under this chapter...” 21 USC § 360bbb-3(e)(3)(A). “Nothing in this section provides the Secretary any authority to require any person to carry out any activity that becomes lawful pursuant to an authorization under this section...” 21 USC § 360bbb-3(l). This is consistent with HHS regulations requiring that participants in trials of experimental medical devices must be informed that “participation is voluntary, refusal to participate will involve no penalty...” 45 CFR § 46.116(a)(8).

The law is crystal clear: TSA has no authority to require any passenger wear a mask authorized under EUA. But most masks being used by Americans to comply with the FTMM meet the legal definition of an EUA “eligible product” that is “intended for use to prevent ... a disease...” 21 USC § 360bbb-3(a). FDA regulates most face masks under EUAs. FDA states on its website:

“On April 18, 2020, in response to concerns relating to insufficient supply and availability of face masks, [FDA] issued an [EUA] authorizing the use of face masks for use by members of the general public... A face mask is a device ... that covers the user's nose and mouth and may or may not meet fluid barrier or filtration efficiency levels. It includes cloth face coverings as a subset. ...

Face masks are regulated by FDA when they meet the definition of a ‘device’ under section 201(h) of the Act. Generally, face masks fall within this definition when they are intended for a medical purpose. ... Face masks are authorized under this EUA when they are intended for use as source control, by members of the general public ... to cover their noses and mouths, in accordance with CDC recommendations, to help prevent the spread of SARS-CoV-2 during the COVID-19 pandemic.”

The HHS secretary authorized EUAs for COVID-19 countermeasures (85 Fed. Reg. 17,335) including respiratory devices (85 Fed. Reg. 13,907). FDA published the EUA for face masks July 14, 2020. 85 Fed. Reg. 42,410. Another mask EUA was published Nov. 20, 2020. 85 Fed. Reg. 74,352. HHS Secretary Xavier Becerra renewed the public-health emergency for COVID-19 effective Oct. 18, 2021, allowing EUAs for masks and other devices to continue. App. 193. FDA’s website confirms my argument that face masks are worthless. Masks must not be

“labeled in such a manner that would misrepresent the product’s intended use; for example, the labeling must not state or imply that the product is intended for antimicrobial or antiviral protection or related uses or is for use such as infection prevention or reduction... No printed matter, including advertising or promotional materials, relating to the use of the authorized face mask *may represent or suggest that such product is safe or effective for the prevention or treatment of patients during the COVID-19 pandemic.*”

The instruction manual for a 3M N95 respirator mask, which is among the small number of masks that are fully FDA approved, makes clear its wearing still has risks: “Misuse may result in sickness or death. ... [It] cannot eliminate the risk of contracting infection, illness, or disease... Individuals with a compromised respiratory system, such as asthma or emphysema, should consult a physician and must complete a medical evaluation prior to use.” App. 206-207.

Despite the lack of data that masks are effective, FDA issued an umbrella EUA for 41 types of surgical masks, many of which are used by passengers to comply with

the FTMM. Notably five types of masks have been withdrawn from the EUA after FDA found them to be defective. FDA has also revoked the EUA for respirator masks made in China for being faulty. CDC's National Institute for Occupational Safety & Health ("NIOSH") found many masks made in China "authorized under the April 3, 2020, EUA did not meet the expected performance standards." An astounding 167 respirator mask brands from China had their EUAs revoked by FDA. Another 54 were previously revoked. FDA revokes EUAs when "appropriate to protect the public health or safety." Surgical masks (typically light blue in color) made in China are also not authorized by FDA.

Although these 221 respirator mask brands (plus all surgical masks) manufactured in China may no longer be legally sold in the United States, there are likely tens of millions of these face coverings still being used by passengers due to the FTMM. So not only are quality masks worthless in TSA's goal of reducing transmission of COVID-19, but the vast majority sold in the United States are actually *defective*, according to FDA. "The 'may be effective' standard for EUAs provides for a lower level of evidence than the 'effectiveness' standard that FDA uses for product approvals." Even a well-informed consumer would find it nearly impossible to understand what types and brands of face masks have been authorized and which – if any – are regarded as safe to use for extended periods of time by NIOSH. The administrative record shows no indication these issues were considered.

When a mask manufacturer applies for an EUA, it must agree it may not "misrepresent the product or create an undue risk in light of the public health emergency.

For example, the labeling must not include any express or implied claims for: ... antimicrobial or antiviral protection or related uses, (3) infection prevention, infection reduction, or related uses, or (4) viral filtration efficiency.”

Because the FTMM forces transportation passengers and workers to use emergency medical devices, the Court should stay TSA’s Health Directives and Emergency Amendment.

M. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate Occupational Health & Safety Administration regulations for transportation workers.

The U.S. Department of Labor’s Occupational Health & Safety Administration (“OSHA”) states “Surgical masks are not considered respirators by OSHA ... surgical masks do not seal tightly to the wearer’s face, nor do they provide a reliable level of protection from inhaling smaller airborne particles.”

TSA ignores that the FTMM applies to transportation employees as well as passengers. Its Health Directives don’t comply with OSHA’s extensive rules regulating maskwearing in the workplace. 29 CFR § 1910.134. The fact OSHA stringently regulates employee masking shows the severe dangers the practice imposes. TSA has no authority to impose those dangers on transit workers or passengers.

OSHA’s standards apply to employees. There’s no evidence TSA is ensuring all transportation employers comply with the requirements of 29 CFR § 1910.134. Also, OSHA does not permit employers (such as airlines, bus companies, etc.) to mandate masks for customers, further invalidating the FTMM.

Due to the dangers of obstructing a person's breathing, OSHA requires that a Respirator Medical Evaluation Questionnaire be completed by anyone who will be required to wear a mask. If any employer demands someone wear a mask, OSHA requires it "Must provide respirators, training, and medical evaluations at no cost..." But there's no evidence that TSA is making sure transit operators provide training and medical evaluations to their workers and passengers before forcing them to block their oxygen intake.

"All oxygen-deficient atmospheres (less than 19.5% O₂ by volume) [such as airplane cabins] shall be considered IDLH," according to OSHA. IDLH stands for "immediately dangerous to life or health." The percentage of oxygen on an airplane pressurized at 8,000 feet is equivalent to 15.1% oxygen at sea level. While wearing a mask in such an oxygen-deficient atmosphere as a plane cabin, there is a risk of hypoxia for people with existing respiratory difficulties, among the many factors the administrative record shows TSA failed to consider before rushing its Health Directives and Emergency Amendment into place.

Lack of oxygen explains why the airlines are having thousands of customers and flight attendants who become agitated or violent and need to remove their masks. These people are experiencing hypoxemia due to oxygen deprivation from having their nose and mouth covered.

OSHA requires that before any human be required to don a mask, a company must: 1) provide a medical evaluation to determine person's ability to use a respirator, before fit testing and use; 2) identify a physician or other licensed health care

professional to perform medical evaluations using a medical questionnaire or an initial medical examination that obtains the same information as the medical questionnaire; and 3) must obtain a written recommendation regarding the employee's ability to use the medical device. TSA's mask mandates don't provide for any of this.

OSHA requires companies mandating masks to "provide effective training to respirator users, including: why the respirator is necessary and how improper fit, use, or maintenance can compromise the protective effect of the respirator; limitations and capabilities of the respirator; use in emergency situations; how to inspect, put on and remove, use and check the seals; procedures for maintenance and storage; recognition of medical signs and symptoms that may limit or prevent effective use; and general requirements of this standard." TSA doesn't heed this.

Because the FTMM fails to meet any OSHA mask standards, the Court should stay TSA's Health Directives and Emergency Amendment.

N. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates violate several international treaties the U.S. has ratified.

TSA's mask requirements break several provisions of international law, starting with the International Covenant on Civil & Political Rights ("ICCPR"). Treaty Doc. 95-20 (ratified by the Senate April 2, 1992). The protection of the rights of the disabled is of international concern. "[I]n accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic,

social and cultural rights...” *Id.*

The Nuremberg Code principles are incorporated into treaty. “[N]o one shall be subjected without his free consent to medical or scientific experimentation.” ICCPR Art. 7.

“No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” ICCPR Art. 9. There is no law enacted by Congress that authorizes TSA to require airline passengers to wear masks, nor is there a law enacted by Congress allowing airlines to discriminate against the disabled. In fact, the ACAA prohibits such discrimination. 49 USC § 41705.

International human-rights law does not recognize a “right to transportation” *per se*. Rather, it guarantees the right to liberty of movement: “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement ... 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law... 4. No one shall be arbitrarily deprived of the right to enter his own country.” ICCPR Art. 12.

By banning the disabled who can’t don masks from flying, TSA violates our rights under international law to liberty of movement, freedom to leave any country, and ability to enter our own country. Congress has not passed any law allowing TSA to restrict a person’s movement based on their inability (or unwillingness) to impede their breathing.

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy ... 2. Everyone has the right to the protection of the law against such interference or

attacks.” ICCPR Art. 17. But TSA allows airlines to impose numerous onerous requirements for the disabled to obtain a mask exemption, arbitrarily and unlawfully interfering with our privacy by forcing us to disclose sensitive medical information to airline employees who are not our physicians. I have a right under international law for this Court to protect me against such interference and attacks on my privacy.

Next, let’s look at the Convention on International Civil Aviation (“CICA”),¹⁴ which the United States ratified Aug. 9, 1946.

“Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary procedures dealing with: ... such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.” CICA Art. 37.

“Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard.” CICA Art. 38.

The International Civil Aviation Organization (“ICAO”) “shall enjoy in the territory of each contracting State such legal capacity as may be necessary for the performance of its functions. Full judicial personality shall be granted wherever compatible with the constitution and laws of the State concerned.” CICA Art. 47.

Pursuant to CICA Art. 37, ICAO has adopted, *inter alia*, Annex 9 – Facilitation to the Chicago Convention, which contains provisions on facilitation of air transport,

¹⁴ This treaty is also known as the “Chicago Convention”

namely Standards and Recommended Practices, including provisions on facilitation of the transport of passengers requiring special assistance. The 15th Edition of Annex 9 to CICA became effective Oct. 23, 2017, and became applicable Feb. 23, 2018. Annex 9 to CICA is binding in this country as part of the treaty.

Annex 9 defines “person with disabilities” as “Any person whose mobility is reduced due to a physical incapacity (sensory or locomotor), an intellectual deficiency, age, illness, or any other cause of disability when using transport and whose situation needs special attention and the adaptation to the person’s needs of the services made available to all passengers.”

“Contracting States shall take the necessary steps to ensure that persons with disabilities have equivalent access to air services.” CICA Annex 9 § 8.34.

“[P]ersons with disabilities should be permitted to travel without the requirement for a medical clearance. Aircraft operators should only be permitted to require persons with disabilities to obtain a medical clearance in cases of a medical condition where it is not clear that they are fit to travel and could compromise their safety or well-being or that of other passengers.” CICA Annex 9 § 8.39.

Because the FTMM violates America’s obligations under international law, the Court should stay TSA’s Health Directives and Emergency Amendment.

O. I have a substantial likelihood of success on the merits of my claim that the FTMM must be vacated because the challenged mandates can’t survive strict scrutiny.

“Strict scrutiny is a searching examination, and it is the government that bears the burden” of proof. *Fisher v. University of Texas*, 570 U.S. 297, 310 (2013). Specifically, the government must establish that a mandate is “justified by a compelling

governmental interest and ... narrowly tailored to advance that interest.” *Church of the Lukumi Babalu Aye v. Hialeah*, 508 U.S. 520, 531-532 (1993). The FTMM fails strict scrutiny because there are far less restrictive options available to advance the federal government’s asserted interest in combatting the spread of COVID-19.

Strict scrutiny must apply in this case because TSA, through enforcement of the unlawful FTMM, disparately impacts the right to due process and the freedom of movement compared to analogous activities that are not constitutionally protected. If a person may go see a movie, eat in a restaurant, shop in a crowded mall, and so forth without a mask, then he must also be permitted to travel without covering his face – especially when the person (such as myself) has a medical condition that prevents him from safely wearing a mask.

“In cases implicating this form of ‘strict scrutiny,’ courts nearly always face an individual’s claim of constitutional right pitted against the government’s claim of special expertise in a matter of high importance involving public health or safety. It has never been enough for the State to insist on deference or demand that individual rights give way to collective interests. Of course we are not scientists, but neither may we abandon the field when government officials with experts in tow seek to infringe a constitutionally protected liberty. The whole point of strict scrutiny is to test the government’s assertions, and our precedents make plain that it has always been a demanding and rarely satisfied standard. ... Even in times of crisis – perhaps especially in times of crisis – we have a duty to hold governments to the Constitution.” *South Bay*, 141 S.Ct. 716 (Gorsuch, Thomas, and Alito, JJ., concurring).

CDC and TSA have never rationally explained why they believe sitting next to someone for two hours in a movie theater unmasked is any different than sitting next to someone on a plane, train, or bus for two or more hours. There is no way the agencies can satisfy narrow tailoring.

“We adhere to the view that the ‘Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States.’ ... But

the Constitution also entrusts the protection of the people's rights to the Judiciary..." *South Bay* (Roberts, C.J., concurring).

In the instant matter, we have CDC and TSA requiring masks in no sector of the nation except transportation, without showing a single scientific study identifying transit as highly vulnerable to coronavirus spread. The Court doesn't care for those sorts of distinctions, especially when constitutional rights such as due process and the freedom to travel are denied when numerous other nonconstitutionally protected activities are permitted without mask wearing.

"[T]he government has the burden to establish that the challenged law satisfies strict scrutiny. ... [N]arrow tailoring requires the government to show that measures less restrictive of the [constitutionally protected] activity could not address its interest in reducing the spread of COVID. Where the government permits other activities to proceed with precautions, it must show that the [constitutionally protected] exercise at issue is more dangerous than those activities even when the same precautions are applied. Otherwise, precautions that suffice for other activities suffice for [constitutionally protected] exercise too." *Tandon*.

In this matter, CDC and TSA have measures available to them that are far less restrictive than mandating masks be worn in the entire national transportation network, especially systems that have been established to stop passengers with a communicable disease from traveling such as the "Do Not Board" and "Lookout" lists.

The FTMM fails narrow tailoring because to the extent TSA seeks to reduce sickness, hospitalizations, and deaths, there are far less restrictive means available than a blanket mandate that everyone wear masks, whose effectiveness are greatly disputed by scientists and doctors. <https://lucas.travel/masksarebad>.

Caps on attendance at houses of worship in New York could not survive strict scrutiny because the State "offered no evidence that applicants ... contributed to the

spread of COVID-19,” and there were “many other less restrictive rules that could be adopted to minimize the risk to those attending religious services.” *Roman Catholic Diocese*.

Although the virus is still circulating at low levels in the United States – as it likely always will -- the public-health system is not under any strain. States such as Florida and Missouri that have never required masks are seeing low rates of COVID-19 infection compared to other states and localities that do mandate face coverings. App. 199-203. Mask decisions must be left up to states and localities. The Court should stay TSA’s Health Directives and Emergency Amendment.

P. I’m suffering irreparable harm of being banned or severely restricted from the nation’s entire public-transportation system due to TSA’s FTMM enforcement because I medically can’t wear a face mask. The government’s violation of my constitutional and statutory rights will continue to cause irreparable harm absent a stay.

I will without a doubt suffer continual irreparable injury if the requested relief is not granted. In its Nov. 17 one-sentence ruling (App. 9) on my Emergency Motion for Stay or Preliminary Injunction Pending Review, the Court of Appeals failed to consider the seriousness of the irreparable injuries I am suffering. Put simply, a “violation of a constitutional right constitutes irreparable injury...” *Gordon v. Holder*, 721 F.3d 638 (D.C. Cir. 2013). And failure “to provide notice and comment ... establishes irreparable injury. ... the harm flowing from a procedural violation can be irreparable.” *State of Florida*. This is unchanged even if the rule implicates only a modest or slight liberty interest. The question is whether the harm is irreparable, not whether it is severe.

The Court frowns on pandemic restrictions that violate constitutional rights. An American is “irreparably harmed by the loss of [constitutionally protected] rights ‘for even minimal periods of time’; the State has not shown that ‘public health would be imperiled’ by employing less restrictive measures.” *Tandon*, 141 S.Ct. 1294.

Being forced to miss Christmas with my son would constitute irreparable harm. “I don’t get to see him often, and it’s critically important we get to spend this holiday together. ... I was previously booked from Kansas City to Colorado Springs Nov. 18 to spend Thanksgiving with my son but had to cancel the ticket because American Airlines is unlawfully denying mask exemptions to passengers with disabilities and TSA isn’t doing anything about it. ... It was crushing to miss such an important holiday with my son.” App. 12.

When considering this prong, “it is not so much the magnitude but the irreparability that counts.” *Enter. Int’l v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir.1985) (quoting *Canal Authority v. Callaway*, 489 F.2d 567, 575 (5th Cir. 1974)). Here I have both an enormous magnitude of harm plus irreparability. If the Court of Appeals eventually rules in my favor and vacates the Health Directives and Emergency Amendment, there’s no way I can go back in time to spend a holiday with my teenage boy.

Justice Gorsuch wrote in a concurring opinion in *Roman Catholic Diocese* that government is not free to disregard the Constitution in times of crisis: “Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical.”

“It is clear that a denial of the petitioners’ proposed stay would do them irreparable harm. For one, the Mandate threatens to substantially burden the liberty interests of reluctant individual recipients put to a choice between their job(s) and their job(s). For the individual petitioners, the loss of constitutional freedoms ‘for even minimal periods of time ... unquestionably constitutes irreparable injury.’ *Elrod v. Burns*, 427 U.S. 347, 373 (1976).” *BST Holdings*.

The Court must revisit the Court of Appeals’ erroneous holding and instead should conclude that the FTMM too broadly and indiscriminately restricts the right to travel – especially for people with disabilities who can’t wear a mask – and thereby abridges the liberty guaranteed by the Constitution. It is the Court’s duty to enjoin enforcement of the mandate that was issued beyond TSA’s statutory and constitutional authority.

My injuries can’t be recovered from TSA because the APA doesn’t permit monetary relief: “A person suffering legal wrong because of agency action ... is entitled to judicial review thereof. An action in a court of the United States seeking relief *other than money damages* and stating a claim that an agency ... acted or failed to act in an official capacity or under color of legal authority shall not be dismissed...” 5 USC § 702 (emphasis added).

The sovereign immunity defense has been withdrawn only with respect to actions seeking specific relief *other than money damages*, such as a stay. *Bowen v. Massachusetts*, 487 U.S. 879 (1988). Therefore, I have suffered irreparable injury. The Court should stay TSA’s Health Directives and Emergency Amendment.

Q. The equities weigh strongly in favor of a stay. The injuries I (and tens of millions of similarly situated disabled Americans) are suffering by being excluded from all forms of public transportation across the entire country outweigh the harm a stay would inflict on TSA.

The injuries I'm suffering because of TSA's FTMM enforcement outweigh the harm the requested interim relief would inflict on the agency. Whereas I have been denied the ability to use airline tickets I have paid for and been deprived of my constitutional rights to due process and freedom to travel, the government would suffer no harm if the Court grants a stay. The relief requested would actually match the federal government's hands-off mask policy in every other realm of society and the no-mask rules of 44 states. App. 198.

The balance of equities factor focuses on the "effect on each party of the granting or withholding of the requested relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). TSA can't have an interest in taking actions that are outside of its statutory and/or constitutional authority. The agency therefore cannot claim to have any cognizable "injury" as a result of the issuance of a stay halting enforcement nationwide of the FTMM. Staying the Health Directives and Emergency Amendment would restore the transportation sector to the status quo that existed before these *ultra vires* measures were put into place by TSA in February.

A "stay will do OSHA no harm whatsoever. Any interest OSHA may claim in enforcing an unlawful (and likely unconstitutional) [Mandate] is illegitimate. Moreover, any abstract 'harm' a stay might cause the Agency pales in comparison and importance to the harms the absence of a stay threatens to cause countless individuals..." *BST Holdings*.

TSA admits more than 11,000 of its employees have been infected with COVID-19. App. 205. But TSA workers are forced to don face coverings. If masks are effective, why have so many TSA workers tested positive? The Court should stay TSA's Health Directives and Emergency Amendment.

R. Entry of a preliminary injunction stopping TSA from enforcing the FTMM would serve the public interest.

A stay is warranted because “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *Am. Bev. Ass’n v. City and Cty. of S.F.*, 916 F.3d 749, 758 (9th Cir. 2019) (en banc). Vaccines against COVID-19 are now available to every American age 5 and older who wants one. “[I]t is too late for the State to defend extreme measures with claims of temporary exigency, if it ever could.” *South Bay United Pentecostal Church v. Newsom*, 141 S.Ct. 716, 720 (2021) (Gorsuch, J.).

TSA has produced no evidence showing that face masks are effective in reducing COVID-19, especially now that most Americans are fully vaccinated. In fact, masking has been totally ineffective in reducing coronavirus infections and deaths. <https://lucas.travel/masksarebad>. “The public interest is also served by maintaining our constitutional structure and maintaining the liberty of individuals to make intensely personal decisions according to their own convictions – even, or perhaps *particularly*, when those decisions frustrate government officials.” *BST Holdings* (emphasis original).

It’s in the public interest to prevent discrimination against travelers with medical conditions who can’t wear masks. The policy of the United States is that passengers

with disabilities shall not be discriminated against. 49 USC § 41705. There is “no public interest in the perpetuation of unlawful agency action.” *Shawnee Tribe v. Mnuchin*, 984 F.3d 94, 102 (D.C. Cir. 2021); *see also State v. Biden*, 10 F.4th 538 (5th Cir. 2021); *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). A stay that “maintains the separation of powers and ensures that a major new policy undergoes notice and comment” is also in the public interest. *Texas v. United States*, 787 F.3d 733, 768 (5th Cir. 2015). Issuing a stay will also preserve proper federalism, where it is the primary province of the states to regulate public health and safety. *See Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905).

In weighing the public interest, the Court needs to take into account that airplanes are among the safest places you can be during the pandemic due to high-efficiency filters that bring fresh air into the cabin every 3-4 minutes. Aircraft cabins have more sterile air than many hospital operating rooms. Most importantly, there have not been any reported outbreaks of COVID-19 at airports or on board aircraft.

“Not only is there no evidence that the applicants have contributed to the spread of COVID-19 but there are many other less restrictive rules that could be adopted to minimize the risk to public interests. Finally, it has not been shown that granting the applications will harm the public. As noted, the State has not claimed that attendance at the applicants’ services has resulted in the spread of the disease. And the State has not shown that public health would be imperiled if less restrictive measures were imposed.” *Roman Catholic Diocese*.

It’s in the public interest to end the FTMM. Protecting Americans’ Fifth Amendment rights to due process and the liberty to travel – not to mention the states’ 10th Amendment protection against being made to enforce federal orders contrary to their own laws – is in the public interest.

“COVID-19 no longer threatens the public’s health to the same extent presented at the start of the pandemic or when CDC issued the conditional sailing order. ... And Florida’s high likelihood of success on the merits ensures that a preliminary injunction would serve the public interest.” *State of Florida*.

“[T]his all assumes that COVID-19 poses any significant danger to workers to begin with; for the more than 78% of Americans aged 12 and older either fully or partially inoculated against it, the virus poses – the Administration assures us – little risk at all.) *See, e.g.,* 86 Fed. Reg. 61,402, 61,402–03 (‘COVID-19 vaccines authorized or approved by the [FDA] effectively protect vaccinated individuals against severe illness and death from COVID-19.’). ... The Mandate is staggeringly overbroad. ... one constant remains – the Mandate fails almost completely to address, or even respond to, much of this reality and common sense.” *BST Holdings*.

Because of the FTMM, tens of millions of Americans who can’t wear face coverings because of medical conditions are essentially banned from using all modes of public transportation nationwide for no rational reason. This can hardly be deemed to be in the public interest. Embracing the theory that a nationwide mask mandate is still necessary to prevent an imminent peril to public health would require this Court “to exhibit a naiveté from which ordinary citizens are free.” *Department of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019) (citation omitted).

To the extent that legitimate public-health concerns surrounding COVID-19 resurface locally, this Court enjoining enforcement of the FTMM would not stop the states from reinstating or extending their own mask mandates if they deemed it necessary and proper despite the scientific evidence to the contrary.

Also demonstrating the public interest is that regulation of public health is historically the province of the states, 44 of which do not require people to cover their nose and mouth. App. 198. And let’s not forget Congress decides what’s in the public

interest, not unelected bureaucrats at CDC and TSA. Congress has *never* enacted a federal mask mandate.

The Court has to consider that the federal mask mandate negatively impacts transportation security because it has created chaos in the sky and on the ground with several thousand reports of unruly passenger and crew behavior as a direct result of the mask mandate. Airline executives recognize it's in the public interest to improve transportation security by ending the mask mandate.

“The US government can help reduce the incidence of unruly air passenger behavior by doing away with the requirement that travelers wear face coverings, says the chief executive of Spirit Airlines,” Flight Global reported June 23. <https://bit.ly/FG062321>. “That’s got to be the next step – when facial [covering requirements] are relaxed on airplanes,’ CEO Ted Christie says during the Routes Americas conference ... ‘That is going to take a lot of steam out of things. ... The masks make everyone uncomfortable, and it does drive a lot of friction.’”

The CEO of Frontier Airlines also spoke out against the FTMM because of the safety risks it creates: “Barry Biffle agrees: face coverings are a prime contributor to a string of recent in-flight disruptions. ‘The reality is, a lot of people don’t want to wear masks,’ says Biffle, who also spoke at the event. ‘You don’t have to wear a mask here, you don’t have to wear [masks] at Walmart, but yet you’ve got to do it on a plane.’ ‘People are agitated,’ he adds.” *Id.*

It its entirely hypothetical – and without scientific support – to claim (as TSA did below) that staying the mask mandate would “thus expos[e] every passenger on pub-

lic transportation to a heightened risk of spreading and contracting a highly communicable and deadly disease.” The Court should ignore TSA’s grim-reaper statistics about COVID-19.¹⁵ TSA’s so-called “facts” about coronavirus have nothing to do with the issue at bar. This Court has made clear that regardless of how devastating an event an agency is responding to, it may not exercise authority beyond what Congress gave it.

TSA’s contention that other passengers wearing masks somehow protect my “health and safety (and that of every other passengers)” is hilarious given that the agency has provided not a scintilla of evidence that masks prevent the spread of a respiratory virus. Protecting disabled Americans from discrimination in the nation’s transportation system, however, is in the public interest.

Again TSA cites no evidence to support its claim that its Health Directives somehow “protect the public from unsafe air operations.” Nor can the Court believe its scandalous assertion that “Petitioner is not entitled to put fellow passengers at risk of contracting COVID-19...” TSA presents the Court no evidence that I am infected with coronavirus or that not wearing a mask would in any way put anybody else at higher risk. The only “robust scientific research” shows masks don’t work and damage my health. <https://lucas.travel/masksarebad>.

¹⁵ The death counts quoted by TSA to inflame the Court are highly questionable as most people who die “with” COVID-19 infection are counted as having died “due to” COVID-19, when in fact their death was actually attributed to a pre-existing condition. But that is an issue for another debate.

California engaged in similar fearmongering in *South Bay*, claiming that “the relief plaintiffs seek from this Court would imperil public health.” The Court must reject such erroneous claims that a stay of the FTMM would harm public health.

As justices of this Court have recognized, government “actors have been moving the goalposts on pandemic-related sacrifices for months, adopting new benchmarks that always seem to put restoration of liberty just around the corner.” *South Bay*, 141 S. Ct. at 720 (Statement of Gorsuch, J.). It is time for the FTMM to end. The Court should stay TSA’s Health Directives and Emergency Amendment.

IX. CONCLUSION

The Court of Appeals erred in refusing to grant me a stay to halt enforcement of the FTMM until a final judgment is entered and this Court disposes of a petition for a writ of certiorari. The task of protecting travelers from overzealous government mandates that are issued in excess of statutory and regulatory authority as well as violate my constitutional rights from government officials is in the hands of this Court.

Equitable principles favor a nationwide stay of TSA’s Health Directives and Emergency Amendment as “the scope of injunctive relief is dictated by the extent of the violation established, not by the geographical extent of the plaintiff class.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, the FTMM is effective nationwide. Thus, its violation is nationwide, and the stay should be too. A nationwide stay, in particular, would promote the public interest of equal treatment under the law for the disabled and be consistent with basic administrative law principles, *Nat’l Mining Ass’n v.*

U.S. Army Corps of Eng'rs, 145 F.3d 1399, 1408-10 (D.C. Cir. 1998); equitable jurisprudence, *Califano* at 702; and the uniform enforcement of federal law, *see Texas v. United States*, 787 F.3d 733, 768-69 (5th Cir. 2015). It would make little sense if this Court, having found that the FTMM is likely unconstitutional and/or unlawful, merely enjoined its application only to me while allowing TSA to continue enforcing the *ultra vires* mask mandate against the tens of millions of other Americans who use and/or work in the transportation sector every day.

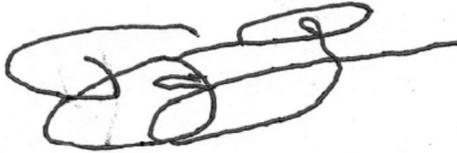
Pursuant to 28 USC § 1651, for the numerous reasons set forth above, I ask the Court to grant my application for emergency interim relief to order TSA to stop enforcing the FTMM nationwide.

WHEREFORE, I request this Court issue an order granting the following relief:

1. TSA's three Health Directives and one Emergency Amendment challenged in this Petition for Review are hereby STAYED pending a final ruling in the Court of Appeals and disposition of a petition for a writ of certiorari by this Court;
2. TSA and all of its officers, agents, servants, employees, contractors, and attorneys are hereby ENJOINED from enforcing the Federal Transportation Mask Mandate nationwide;
3. TSA is ORDERED to remove all signs from all airports stating masks are required and to scrub its website of any mention of face coverings; and
4. Because all airlines and other transportation providers nationwide who are subject to the FTMM's enforcement provisions are in active concert or participation with the enjoined federal agency in enforcing the mask mandate, all

airlines and other transportation providers nationwide are also hereby EN-
JOINED from requiring that any passenger wear a face covering unless such
a such a restriction is imposed by valid state or local law.

Respectfully submitted this 4th day of December 2021.

A handwritten signature in black ink, appearing to read 'Anthony Eades', written over a horizontal line.

Anthony Eades, applicant
19499 Cedar Gate Dr.
Warsaw, MO 65355
Telephone: 813-786-8960
E-Mail: teades2603@live.com

Petitioner's Exhibit 2

No. 21A_____

EADES v. TRANSPORTATION SECURITY ADMINISTRATION**APPENDIX – TABLE OF CONTENTS**

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A

PETITION FOR REVIEW & COURT ORDER

2021. [86 Fed. Reg. 7205](#) (Jan. 26, 2021). Under the president's order, the Department of Homeland Security issued Determination 21-130 on Jan. 27 directing TSA to enforce a requirement that all passengers using any form of public transportation nationwide don face coverings. The Centers for Disease Control & Prevention ("CDC"), with no statutory or regulatory authority, issued an order "Requirement for Persons to Wear Masks While on Conveyances & at Transportation Hubs," effective Feb. 1. [86 Fed. Reg. 8,025](#) (Feb. 3, 2021). TSA, also lacking statutory or regulatory authority, produced Security Directives 1542-21-01, 1544-21-02, and 1582/84-21-01 as well as Emergency Amendment 1546-21-01 dated Jan. 31, 2021, to enforce the CDC's *ultra vires* mask mandate. These four orders went into effect Feb. 1, 2021.

TSA's original four FTMM orders expired May 11, 2021. Again without any statutory or regulatory authority, TSA issued orders April 29, 2021, extending the FTMM enforcement until Sept. 13, 2021, by attaching the letter "A" to the original documents. TSA Security Directives 1542-21-01A, 1544-21-02A, and 1582/84-21-01A as well as Emergency Amendment 1546-21-01A.

When these orders were about to expire Sept. 13, TSA (again without any statutory or regulatory authority) issued another batch of orders Aug. 20, 2021, extending its FTMM enforcement until Jan. 18, 2022, by substituting the letter "B" for the letter "A." These are the orders challenged in this petition: TSA Security Directives 1542-21-01B, 1544-21-02B, and 1582/84-21-01B as well as Emergency Amendment 1546-21-01B. Exs. 1-5.

The four challenged orders require, *inter alia*, that aircraft, transit bus, school bus, intercity bus, intercity rail, commuter rail, subway and other heavy rail, light rail, tram, streetcar, rideshare car, ferry, other commercial conveyance, and transportation hub operators: 1) mandate all passengers wear masks at all times unless outdoors; and 2) report noncompliance by passengers to TSA. The administration claims authority to levy fines starting at \$500 for passengers who don't muzzle themselves.

II. JURISDICTION & STANDING

This Court has jurisdiction to review the four TSA orders:

“a person disclosing a substantial interest in an order issued by the ... Transportation Security Administration with respect to security duties and powers designated to be carried out by the Administrator of the Transportation Security Administration ... in whole or in part under this part, part B, or subsection (l) or (s) of section 114 may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued.” [49 USC § 46110\(a\)](#).

I have standing to contest the four TSA mask orders because I have “a substantial interest” due to my medical conditions making it impossible for me to tolerate covering my face. TSA’s mask orders exclude tens of millions of Americans with medical conditions who can’t safely wear face coverings from using any mode of the nation’s public-transportation system in violation of the Air Carrier Access Act; Americans with Disabilities Act; Rehabilitation Act; Food, Drug, & Cosmetic Act;

and other federal laws and international treaties. They also violate my constitutional right to travel and the 10th Amendment.

I can't wear a mask because of my disabilities from being wounded in 2003 in Iraq while serving in the military. My upper-respiratory distress limits my ability to breathe. Without anything obstructing my oxygen intake, I have asthma that flares up with no notice. Because of my gunshot wound while fighting for our country, I have Traumatic Brain Injury and Severe Post-Traumatic Stress Disorder, which cause me to suffer severe anxiety and claustrophobia. When something is on my face, my anxiety level kicks into high gear.

I was denied the ability to fly by TSA and Southwest Airlines from Phoenix, Arizona, to Kansas City, Missouri, on March 14, 2021, solely because I can't wear a face covering. I was thrown off a flight before takeoff because I pulled my mask from my face so I could get some breaths. The Federal Aviation Administration was going to charge me, however the investigation did not find enough evidence to fine me. But TSA rescinded my Pre-Check privileges for a full year because it claims I restricted the flight crew from properly doing their jobs. All of this just so I could breathe.

After this horrible harassment, I do not currently have any future flights booked because I won't fly until this Court strikes down the FTMM. TSA has essentially banned me from using the nation's aviation system because I'm unable to cover my face. TSA's orders interfere with my inalienable right to breathe. It's okay if the

federal government wants to **recommend** maskwearing (even though face coverings have proven to be ineffective at stopping COVID-19 spread), but TSA lacks any legal authority to **require** muzzling.

I have jurisdictional standing because I am a resident of Missouri.

This Court has authority “to affirm, amend, modify, or set aside any part of the order and may order the ... Transportation Security Administration ... to conduct further proceedings. After reasonable notice to the ... Administrator of the Transportation Security Administration ... the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists.” [49 USC § 46110\(c\)](#).

This petition is timely as the orders were issued Aug. 20, 2021, and the 60-day deadline to file is today (Oct. 19).

III. STATEMENT OF THE ISSUES

Congress created TSA after the terrorist attacks of Sept. 11, 2001. Aviation & Transportation Security Act, P.L. 107–71, [115 Stat. 597](#), codified at [49 USC § 114](#). TSA’s function is limited by law to address **security** threats. Congress has never given the agency power to regulate the public health and welfare. TSA’s statutory mission is restricted to “be responsible for **security** in all modes of transportation...” [49 USC § 114\(d\)](#) (emphasis added). Wearing face masks has nothing whatsoever to do with transportation security.

In addition to [49 USC § 114](#), TSA also cites as authority for the four challenged orders [49 USC § 44903](#) and [49 CFR § 1542.303](#). None of these give TSA authority to require passengers to wear masks to possibly prevent the spread of a communicable disease such as COVID-19.²

First, TSA's statutory authority under § 44903 is limited to, as the title states, "Air transportation security." This includes protection against crimes on planes such as bombing and hijacking. "The Administrator shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy." [49 USC § 44903\(b\)](#). Other measures Congress authorized TSA to adopt under this section include "to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers"; "establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protection"; authorizing individuals who carry out air transportation security duties to carry firearms and make arrests; and "require screening or inspection of all individuals, goods, property, vehicles, and other equipment before entry into a secured area of an airport." None of these authorities

² There is an enormous dispute in the scientific and medical communities about whether face coverings actually reduce the spread of a respiratory virus such as COVID-19. Whereas there are numerous studies detailing how masks cause dozens of harms to human health. See <https://bit.ly/masksarebad> for a compilation of 223 scientific studies, medical articles, and videos showing that masks are totally ineffective in reducing viral transmission and damage our health in many ways.

come anywhere close to permitting TSA to deny passage through an airport passenger screening checkpoint to any person not wearing a face mask, require transportation providers enforce a mask mandate, or fine travelers who fail to obstruct their nose and mouth – a human’s only sources of oxygen, a fundamental necessity to sustain life.

Second, also of no help to TSA in establishing legal authority for the four orders enforcing the FTMM is [49 CFR § 1542.303](#). This regulation authorizes TSA to “issue an Information Circular to notify airport operators of security concerns” and issue mandatory security directives when “additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation.” No reasonable person could interpret this regulation as giving TSA power to deem a face mask a “security measure” to “respond to ... a specific threat against civil aviation.”

WHEREFORE, I request the Court set these three “Security Directives” and one Emergency Amendment aside in their entirety and permanently enjoin TSA from requiring masks be worn on any form of transportation.

Respectfully submitted this 19th day of October 2021.

Anthony Eades

Anthony Eades, petitioner
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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3362

Anthony Eades

Petitioner

v.

Transportation Security Administration

Respondent

Petition for Review of an Order of the Transportation Security Administration
(1542-21-01B)
(1544-21-02B)
(1582/84-21-01B)
(1546-21-01B)

JUDGMENT

Before GRUENDER, KELLY and KOBES, Circuit Judges.

The motion for a stay pending appeal has been considered and is denied. The government's motion to transfer this petition for review to the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. sec. 2112 is granted. The petition for review is hereby transferred.

November 17, 2021

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

B

DECLARATION OF ANTHONY EADES & SUPPORTING EXHIBITS

6. I was previously booked from Kansas City to Colorado Springs Nov. 18 to spend Thanksgiving with my son but had to cancel the ticket because American Airlines is unlawfully denying mask exemptions to passengers with disabilities and TSA isn't doing anything about it. *See* attachments. It was crushing to miss such an important holiday with my son.
7. I submitted a mask-exemption demand to American, but it e-mailed me twice Nov. 8 to deny my request unless I agreed to submit to numerous illegal procedures including submitting a medical certificate from my doctor, negative COVID-19 test, and consultation with a third-party medical vendor. *See* attachments. These procedures are all prohibited by Air Carrier Access Act regulations. *See* 14 CFR Part 382.
8. I know from my personal experience and that of other disabled Americans that mask exemptions are virtually impossible to receive from airlines, and there is no process to appeal the denial to TSA or any other federal agency.
9. I had to cancel the Nov. 18 flight because American refused to grant me a mask exemption, and TSA is doing nothing to enforce the disability exemption allowance.
10. I won't be able to take my rescheduled Dec. 21 flight to see my son for Christmas if the FTMM isn't stayed because airlines refuse to grant mask exemptions and there's no procedure for me to appeal to TSA. I cannot fly muzzled due to my health.

11. I submitted several mask-exemption requests to various airlines recently including JetBlue Airways and Southwest Airlines. My demands have always been denied – and those two airlines even canceled my tickets without my permission just because I asked for a mask exemption due to my medical conditions. *See attachments.*
12. Due to my military injury of a gunshot wound to the chest, asthma, and breathing difficulties, it is unbearable and sometimes impossible to maintain normal breathing. I can't tolerate wearing a face mask. Covering my nose and mouth brings back my severe Post-Traumatic Stress Disorder from being in Iraq, in the way of after I was shot, I was not able to breathe due to where I was shot. So my PTSD affects me and prevents me from properly wearing the mask. *See attached Veterans Administration medical records.*
13. Were it not for TSA's discriminatory mask policies, I would be traveling on about six more flights this year. But my freedom of movement has been unconstitutionally restricted by TSA.
14. I was denied the ability to fly by TSA and Southwest Airlines from Phoenix, Arizona, to Kansas City, Missouri, on March 14, 2021, solely because I can't wear a face covering. I was removed from a flight right before takeoff because I removed my mask so I could get some breaths.

15. The Federal Aviation Administration investigated the incident, but did not find enough evidence to fine me. But TSA suspended my Pre-Check privileges for a year because it claims I restricted the flight crew from properly doing their jobs. All of this just so I could breathe.
16. No American – especially a Purple Heart Veteran – should lose the ability to travel for doing nothing more than breathing.
17. I signed up for TSA’s Pre-Check program in 2016 and was approved. I was issued Pre-Check Membership # TT*****6X.
18. As a Pre-Check member, I’ve been able to use expedited security lanes at TSA airport checkpoints for the past five years.
19. Even though TSA suspended my Pre-Check benefits for breathing, I paid \$85 on May 24, 2021, to renew my membership for five years so I could again use the expedited security lanes when my suspension ended or the FTMM was struck down by a court or repealed. *See* attached receipt.
20. TSA immediately approved my Pre-Check renewal May 27, 2021. *See* attached letter.
21. I filed this Petition for Review seeking to vacate TSA’s enforcement of the FTMM on Oct. 19, 2021, in the U.S. Court of Appeals for the Eighth Circuit. My petition was then transferred to the D.C. Circuit after my Emergency Motion for Stay or Preliminary Injunction was denied.

22. Only three weeks after I sued TSA, I received a letter from the agency stating “As a result of recurrent checks and based on a comprehensive background check, TSA was unable to determine that you pose a sufficiently low risk to transportation and national security to continue to be eligible for expedited airport security screening through the TSA Pre-Check Application Program. As a result, TSA has determined that you are no longer eligible to participate in the TSA Pre-Check Application Program.” *See* attached letter.
23. The letter was signed by Julie Carrigan, acting division director, National Transportation Vetting Center.
24. This action represents illegal retaliation against me for suing TSA to stop the FTMM. I have not flown since the March 14 incident with Southwest Airlines because I can’t wear a mask. I have not been arrested or charged with any crimes. The only thing I have done to attract TSA’s attention since my Pre-Check membership was reapproved May 27 was file this lawsuit.
25. I filed with the District of Columbia Circuit on Nov. 24 a Motion to Compel Respondent to Restore My TSA Pre-Check Membership & for Respondent to Show Cause Why It Should Not Be Sanctioned and/or Held in Contempt for Court for Illegal Retaliation. Doc. 1,924,220. That motion is pending.
26. I am not the only person suing TSA that the agency has illegally retaliated against. Just two days after filing a similar Petition for Review against the

mask mandate, TSA placed Michael Faris, a petitioner in *Faris v. Transportation Security Administration*, D.C. Circuit Case No. 21-1221 (originally Sixth Circuit Case No. 21-3951), on its terrorist watchlist and subjected him to Secondary Security Screening Selection at the airport in Ontario, California. *See* attachments.

27. Just days after media coverage and the agency filing a secret document in the Sixth Circuit, TSA removed Mr. Faris from the terrorist watchlist. *See* attachments.

28. I have each time I flew during the COVID-19 pandemic had every TSA officer and airline employee rudely demand I put on my mask after I try to explain to them my medical conditions. Because of the FTMM, they believe they must muzzle every passenger including those wounded while defending America's freedoms in the armed forces. Now I don't have the freedom to travel, to due process, or my 10th Amendment reserved rights that I served in the military to defend.

29. TSA is treating me, a wounded warrior, as a second-class citizen because I can't cover my nose and mouth.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on Dec. 4, 2021.

A handwritten signature in black ink, appearing to be 'Anthony Eades', written over a horizontal line.

Anthony Eades, applicant

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Face coverings and travel requirements

A face covering is required by U.S. federal law when indoors at the airport and on board American Airlines flights, re... rules do not apply to children under 2. Passengers who may be exempt from wearing a face covering due to a disabi

[Read about face coverings](#)



There are new requirements to enter the U.S. based on citizenship / residence and vaccination status. All travelers ei... their contact information within 72 hours before departure. [Read about travel requirements](#)

We collect your personal data in accordance with applicable laws and regulations, including certain data related to... during the pandemic. For more information about how we process your data, please see our privacy policy at [aa.coi](#)

Depart Kansas City, MO to Colorado Springs, CO

Thursday, November 18, 2021

Lowest Fare	Flexible	<	Tue, Nov 16 \$ 99	Wed, Nov 17 \$ 99	Thu, Nov 18 \$ 99	Fri, Nov 19 \$ 99
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Sort by:

Total travel time

Main Cabin

MCI → COS
7:38 PM → 11:36 PM 4h 58m [1 stop](#)

MCI - DFW ■ AA 1618 ■ 319-Airbus A319

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Travel updates



Health and testing requirements

The U.S. and countries around the world have a range of travel restrictions and testing requirements due to COVID-19. You may not be allowed to travel to certain destinations or may be required to self-quarantine when you arrive.

Travel requirements are updated often, so we recommend checking the latest entry requirements before your trip.

[Travel and health restrictions by destination](#) 

When you check-in for your trip you'll be asked to confirm you've been free of COVID-19 symptoms for the past 10 days.

U.S. entry requirements

Starting November 8, 2021, the U.S. government is changing requirements to enter the U.S. based on citizenship / residence and vaccination status. All travelers 2 and older entering the U.S. must provide a negative COVID-19 test and their contact information within 72 hours of departure. Travelers must also sign an attestation form confirming they meet U.S. entry requirements or will not be allowed to board the plane.

[How U.S. travel requirements apply to you](#)

[Vaccine and testing requirements](#)

[Attestation forms](#)

[Contact tracing](#)

Face coverings

U.S. federal law requires that you wear a face covering at all times while indoors at the airport and on board your flight, regardless of vaccination status. If you refuse to wear one, you may be denied boarding and future travel on American. You may also face penalties under **federal law**.

These rules do not apply to children under 2, or if you have a disability that prevents you from wearing a face covering and meet the exemption requirements.

Visit the Centers for Disease Control and Prevention (CDC) website for more information about the mask requirement.

[Requirement for face masks on planes and in airports](#)

You should bring your own face covering to use while traveling. While limited quantities of face coverings may be available at the gate, they will not be available for every customer on every flight.

Acceptable face coverings

- A mask or 2 layered secured cloth that completely covers your nose and mouth and fits snugly to the sides of your face and under your chin
- Face shields worn with a face covering, but not in place of one

These are not acceptable as face coverings

- Balaclavas
- Bandanas
- Face covers with exhaust valves or vents
- Face covers made of mesh or lace type fabric
- Gaiters
- Scarves
- Ski masks

[CDC recommendations for face coverings](#)

During your flight

- Your face covering must be worn and visible at all times, including if you plan to sleep.
- You can briefly lower or remove your face covering while actively eating, drinking or taking oral medication, but it must be worn between bites and sips.
- If oxygen masks drop from an overhead compartment, remove your face covering before placing the oxygen mask over your nose and mouth.

These may not be used on board

For the safety of everyone on board, some types of recreational / personal protection equipment are not allowed for use on our planes or in flight:

- Face or full-body pods / tents
- Portable electronic air fresheners / purifiers
- Ozone generators

[Restricted items »](#)

[Mobility and medical devices »](#)

[Exemption for customers with disabilities*](#)

If you may be exempt because you have a disability that prevents you from safely wearing a mask as defined by the Americans with Disabilities Act (42 USC 12101 et. seq) you must contact us at least 72 hours before you plan to travel and travel with documentation confirming a negative COVID test or recovery.

Please note, making false claims of a disability or a health condition to obtain an exemption from wearing a face covering may result in denial of travel on American for the duration of the U.S. federal mask requirement.

Call Special Assistance: 800-237-7976

*This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability. It is not meant to cover persons for whom mask-wearing may only be difficult.

Travel flexibility

We're making travel easier by giving you even more flexibility and the freedom to make your own choices when you fly with us.

Here's what you can expect:

- No more change fees for all domestic, short-haul international and select long-haul international flying on Premium Cabin, Premium Economy and Main Cabin fares. Basic Economy fares bought on or after April 1, 2021 are non-refundable and non-changeable.
- Fly standby for free on earlier domestic flights, including Puerto Rico and the U.S. Virgin Islands, to the same destination on the same day.
- If you buy Basic Economy fares you may now buy extras like upgrades, seats, priority boarding and same-day flight changes.
- AAdvantage® elite members may apply their travel benefits on all tickets, including on Basic Economy fares.

[Domestic, short-haul international and select long-haul international flights](#)



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More flexibility for your travel

We're waiving change fees for more flexibility on certain tickets and travel dates.

[Flexible travel updates](#)

Face coverings and travel requirements

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[Read about face coverings](#)



There are new requirements to enter the U.S. based on citizenship / residence and vaccination status. All travelers entering the U.S. must also provide their contact information within 72 hours before departure. [Read about travel requirements](#)

We collect your personal data in accordance with applicable laws and regulations, including certain data related to COVID-19 and your health status during the pandemic. For more information about how we process your data, please see our [privacy policy at aa.com/privacy](#)

Your trip summary



Depart Kansas City, MO to Colorado Springs, CO

Thursday, November 18, 2021

7:38 PM → 11:36 PM 4h 58m [1 stop](#) Main Cabin

MCI - DFW ■ AA 1618 ■ 319-Airbus A319



DFW - COS ■ AA 2347 ■ 738-Boeing 737



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Upgrade to First

One way (Flexible)

+\$ 302 per person

Total \$ 460.20 (all passengers)

[Upgrade](#)

Best way to travel

- Changes or refunds allowed
- Our largest, most comfortable seat
- 2 free checked bags*
- Priority security at participating airports
- Priority boarding

*On planes with both Business and First, you get 1 extra checked bag or 2 if you're AAdvantage® Executive Platinum or Platinum Pro.



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More flexibility for your travel

We're waiving change fees for more flexibility on certain tickets and travel dates.

[Flexible travel updates](#)

Face coverings and travel requirements

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There are new requirements to enter the U.S. based on citizenship / residence and vaccination status. All travelers entering the U.S. must also provide their contact information within 72 hours before departure. [Read about travel requirements](#)

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ONE WAY

Kansas City, MO to Colorado Springs, CO

Thursday, November 18, 2021

Your trip total
\$158.20

Limited-time: Earn up to a
\$250 statement credit

Plus, 40,000 bonus miles with this credit card

Price for all passengers
[Price and tax information](#)

Includes taxes and carrier imposed fees
[Bag and optional fees](#)

offer.
Terms apply.

Pay today:	\$158.20
Card statement credit:	- \$158.20
Total after statement credit:	\$0.00



[Learn more](#)

Passenger details

Enter names as printed on each passenger's government-issued photo ID. [TSA Secure Flight rules](#)

Read how we use and protect your personal information. [American Airlines privacy policy](#)

Passenger 1

(• Required)

First name •
Anthony

Last name •
Eades

Middle name

Loyalty program
AAdvantage

Loyalty number

Date of birth •

MM/DD/YYYY

Gender •
Male (M)

Country / region of residence •
United States

State of residence •
Missouri

As listed on your photo ID

Redress number ⓘ

Known Traveler number ⓘ

[Add another redress number](#)

[+ Add special assistance](#)

Trip contact

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PLAN TRAVEL TRAVEL INFORMATION ADVANTAGE



Choose your seat

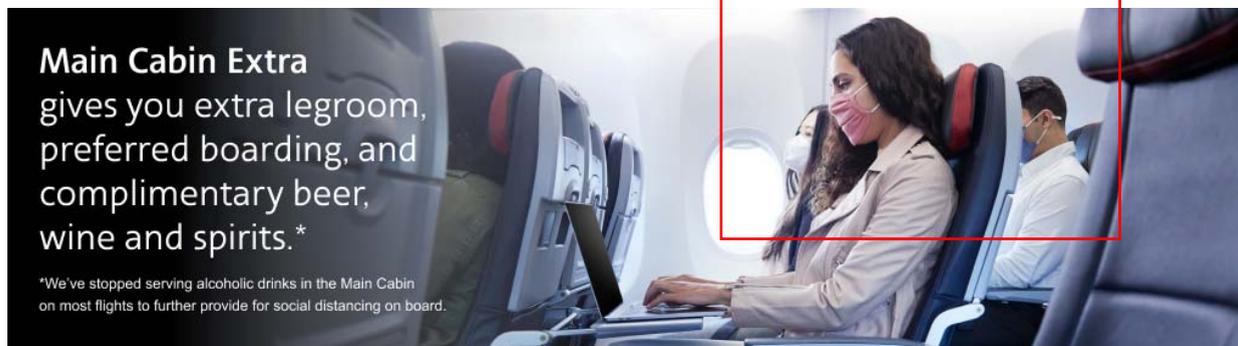
Face coverings and travel requirements

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MCI to DFW

Flight 1 of 2

DFW to COS

Flight 2 of 2

Kansas City, MO to Dallas/ Fort Worth, TX

AA 1618 ■ Airbus A319 ■ Travel time: 1h 49m

- Main Cabin Extra**
\$33 - \$37
 - Extra legroom (up to 6 inches)
 - Preferred boarding with

- Preferred**
\$19 - \$27
 - Standard legroom
 - Favorable location

Available

Unavailable



Choose your seat

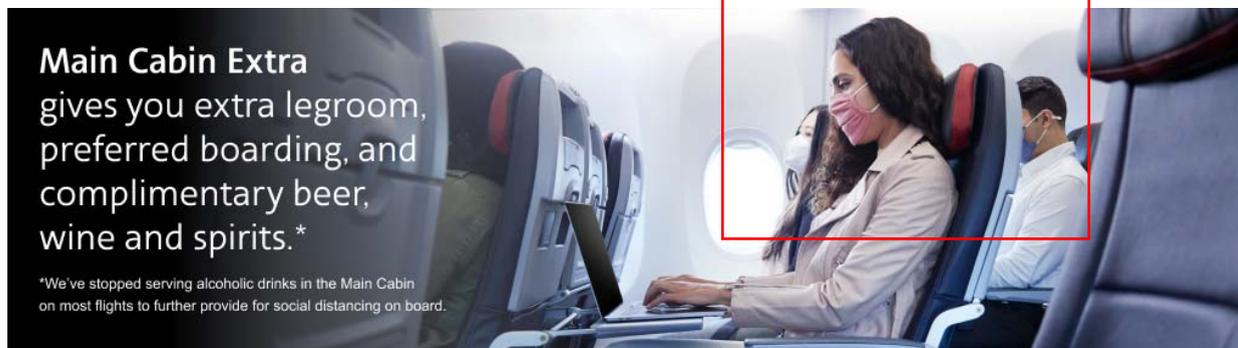
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Main Cabin Extra gives you extra legroom, preferred boarding, and complimentary beer, wine and spirits.*

*We've stopped serving alcoholic drinks in the Main Cabin on most flights to further provide for social distancing on board.

MCI to DFW
Flight 1 of 2

DFW to COS
Flight 2 of 2

Dallas/ Fort Worth, TX to Colorado Springs, CO

AA 2347 • Boeing 737-800 • Travel time: 2h 1m



Main Cabin Extra
\$26 - \$28
■ Extra legroom (up to 6 inches)
■ Preferred boarding with earlier overhead bin access



Preferred
\$13 - \$20
■ Standard legroom
■ Favorable location



Available



Unavailable

Anthony E.

--

--

Main Cabin

A B C D E F



Travel information AAdvantage

Your trip is booked

We'll email your confirmation shortly. Thanks for choosing American Airlines.

Your trip to Colorado Springs, CO

Your trip to Colorado Springs, CO

Record Locator: [REDACTED]

Trip name: **MCI/COS**

\$158.20

DEPART

MCI to COS

Thu, Nov 18, 2021

7:38 PM → 11:36 PM

\$158.20

View trip details, request upgrades, change seats and more.

Manage your trip

Passengers

Anthony Eades

Ticket number: [REDACTED]

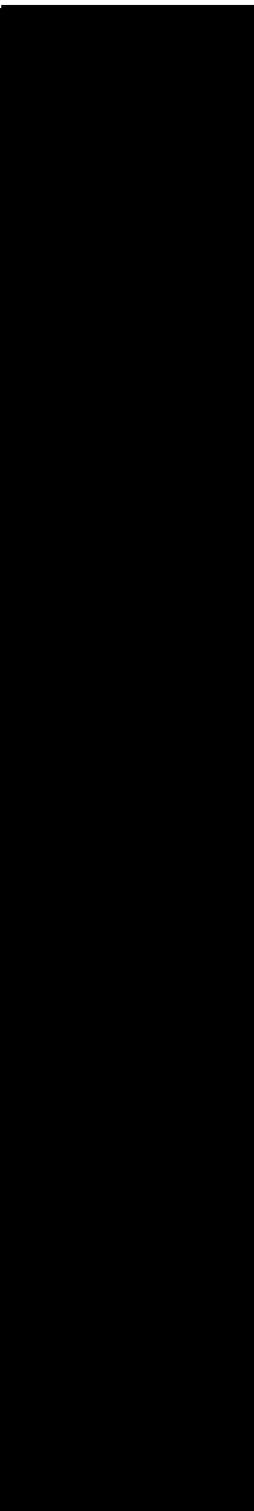
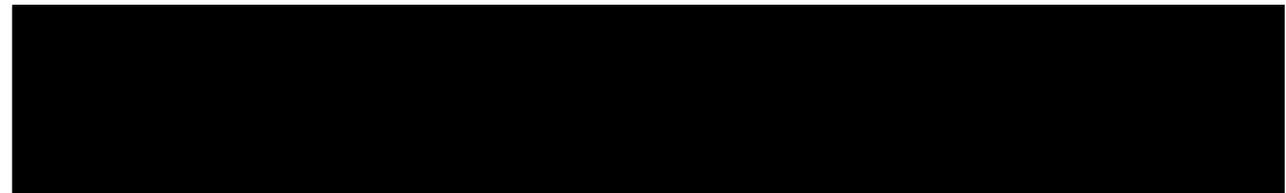
Status: Ticketed

You're just a click away



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American Airlines [aa.com](#) [Visit site](#) ...

Your trip confirmation (MCI - COS) Yahoo/Inbox ★

American Airlines <no-reply@notify.email.aa.com> Sun, Nov 7 at 8:53 PM ★

To: [REDACTED]

[REDACTED]

Issued: November 7, 2021

Your trip confirmation and receipt

Record Locator: [REDACTED]

We charged \$158.20 to your card ending in [REDACTED] for your ticket purchase.

A face covering is required while flying on American, except for children under 2 years old. You are also required to wear a face covering while in the airport before and after your flight. [Read more about travel requirements.](#)

You'll need your record locator to find your trip at the kiosk and when you call Reservations.

[Manage your trip](#)

Thursday, November 18, 2021

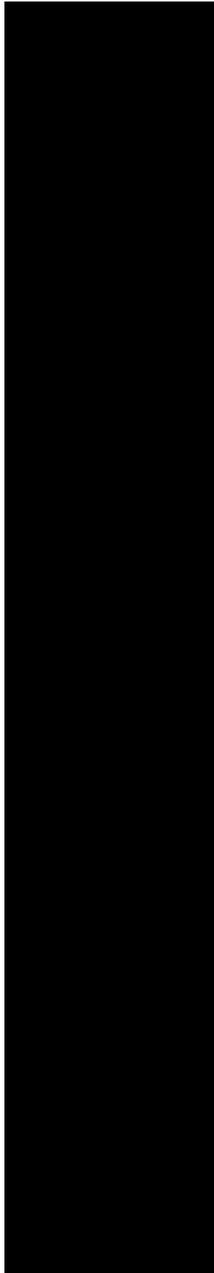
MCI	DFW	Seat: 25D
7:38 PM	9:27 PM	Class: Economy (Q)
Kansas City	Dallas/Fort Worth	Meals:
AA 1618		

DFW	COS	Seat: 28D
10:35 PM	11:36 PM	Class: Economy (Q)
Dallas/Fort Worth	Colorado Springs	Meals:
AA 2347		

Your payment

Credit Card (Visa ending [REDACTED])	\$158.20
Total paid	\$158.20

[Your purchase](#)



ANTHONY EADES

[Join the AAdvantage® Program](#)

New ticket	\$158.20
Ticket #: [REDACTED]	
[\$125.58 + Taxes and fees \$32.62]	

Total	\$158.20
--------------	-----------------

Total cost (all passengers)	\$158.20
------------------------------------	-----------------

Bag information

Checked bags

Online*		Airport	
1 st bag	2 nd bag	1 st bag	2 nd bag
\$30.00	\$40.00	\$30.00	\$40.00

Maximum dimensions: 62 inches or 158 centimeters calculated as (length + width + height)
Maximum weight: 50 pounds or 23 kilograms

Bag fees apply at each Check-in location. Additional allowances and/or discounts may apply. [Bag and optional fees](#)
If your flight is operated by a partner airline, see the [other airline's](#) website for carry-on and checked bag policies.

*Online payment available beginning 24 hours (and up to 4 hours) before departure.

Carry-on bags

1st carry-on: Includes purse, briefcase, laptop bag, or similar item that must fit under the seat in front of you.

2nd carry-on: Maximum dimensions not to exceed: 22" long x 14" wide x 9" tall (56 x 35 x 23 cm).

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PLAN TRAVEL INFORMATION ADVANTAGE



Your trip

Face coverings and travel requirements

A face covering is required by U.S. federal law when indoors at the airport and on board American Airlines flights, regardless of vaccination status. These rules do not apply to children under 2. Passengers who may be exempt from wearing a face covering due to a disability must contact us before travel.

[Read about face coverings](#)



There are new requirements to enter the U.S. based on citizenship / residence and vaccination status. All travelers entering the U.S. must also provide their contact information within 72 hours before departure.

[Read about travel requirements](#)

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Check in beginning 24 hours and up to 45 minutes before your flight (90 minutes for international).

Cancel trip

Change seats

Record locator: [REDACTED]
Trip name: **MCI/COS**

Issued: **Sunday, November 7, 2021**
Status: **Ticketed**

Change trip

You can review before you confirm

Depart

Kansas City, MO to Colorado Springs, CO



2021
Earn miles on every flight
 Join AAdvantage for free and start flying

Join
 Class Seats

1618 American
 Airlines
 Airbus A319

7:38 PM MCI 9:27 PM DFW 1h 49m Economy [25D](#)

On time

Estimated 7:38 PM Estimated 9:27 PM

Terminal: C Terminal: --
 Gate: -- Gate: --
 Baggage: --

[Get alerts for this flight](#)

Stop: Dallas/Fort Worth (DFW)

2347 American
 Airlines
 Boeing 737-800

10:35 PM DFW 11:36 PM COS 2h 1m Economy [28D](#)

On time

Estimated 10:35 PM Estimated 11:36 PM

Terminal: -- Terminal: --
 Gate: -- Gate: --
 Baggage: --

[Get alerts for this flight](#)

Move to First Class

Book for as low as

+ \$109* per person

[Buy Now](#)

Best way to travel

- Our largest, most comfortable seat
- 2 free checked bags**
- Priority security at participating airports
- Priority boarding





Contact American

How can we help you?

Send us your comment, question or suggestion, or make a request. We'll be in touch as soon as we can.

(• Required)

Topic •

Subject •

Contact information

Title

First name •

Last name •

Suffix

Country / region •

Address •

Address 2

City •

State •

Postal code •

AAdvantage® number

Primary phone •

Secondary phone

Primary email •

Confirm primary email •

Type of assistance needed

Assistance type •

(Select all that apply.)

Connection assistance for customers with cognitive disability

Wheelchair

Portable oxygen concentrators (POCs)

Medical devices

Other special assistance needs

Describe other special assistance needs •

mask exemption

Characters remaining: 1486

Flight information

Is assistance needed related to your flight?

Yes No

Confirmation / Record locator •

[REDACTED]

Flight number •

1618

Flight date •

11/18/2021



From •

MCI



To •

COS



Your message

Comments

I need a mask exemption due to my medical conditions

Characters remaining: 1448

Cancel

Submit

Mask-Exemption Demand KBWHVX

From: Tony Eades [REDACTED]

To: sac@aa.com

Date: Monday, November 8, 2021, 01:22 AM

Dear American Airlines Special Assistance Coordinator:

I write concerning my upcoming reservation [REDACTED]: Kansas City to Colorado Springs via Dallas on Nov. 18, 2021.

I submitted a mask-exemption demand on your website, however there was no place for me to attach my medical records from the Veterans Administration and objections regarding the illegality of your mask-exemption process. Those documents are attached. I look forward to a prompt response.

Tony Eades
Purple Heart Veteran
Warsaw, Missouri



1B1 -- American MED.pdf
208.3kB



1B3 -- AA Mask Notes Tony.pdf
889.3kB



1C -- Tony Medical File.pdf
291.7kB

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Travel updates



Health and testing requirements

The U.S. and countries around the world have a range of travel restrictions and testing requirements due to COVID-19. You may not be allowed to travel to certain destinations or may be required to self-quarantine when you arrive.

Travel requirements are updated often, so we recommend checking the latest entry requirements before your trip.

[Travel and health restrictions by destination](#) 

When you check-in for your trip you'll be asked to confirm you've been free of COVID-19 symptoms for the past 10 days.

U.S. entry requirements

Starting November 8, 2021, the U.S. government is changing requirements to enter the U.S. based on citizenship / residence and vaccination status. All travelers 2 and older entering the U.S. must provide a negative COVID-19 test and their contact information within 72 hours of departure. Travelers must also sign an attestation form confirming they meet U.S. entry requirements or will not be allowed to board the plane.

[How U.S. travel requirements apply to you](#)

[Vaccine and testing requirements](#)

[Attestation forms](#)

[Contact tracing](#)

Face coverings

* 1

U.S. federal law requires that you wear a face covering at all times while indoors at the airport and on board your flight, regardless of vaccination status. If you refuse to wear one, you may be denied boarding and future travel on American. You may also face penalties under federal law. * 1

These rules do not apply to children under 2, or if you have a disability that prevents you from wearing a face covering and meet the exemption requirements.

Visit the Centers for Disease Control and Prevention (CDC) website for more information about the mask requirement.

[Requirement for face masks on planes and in airports](#)

You should bring your own face covering to use while traveling. While limited quantities of face coverings may be available at the gate, they will not be available for every customer on every flight.

Acceptable face coverings

- A mask or 2 layered secured cloth that completely covers your nose and mouth and fits snugly to the sides of your face and under your chin
- Face shields worn with a face covering, but not in place of one

These are not acceptable as face coverings

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- Bandanas
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- Scarves
- Ski masks

[CDC recommendations for face coverings](#)

During your flight

- Your face covering must be worn and visible at all times, including if you plan to sleep.
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- If oxygen masks drop from an overhead compartment, remove your face covering before placing the oxygen mask over your nose and mouth.

These may not be used on board

For the safety of everyone on board, some types of recreational / personal protection equipment are not allowed for use on our planes or in flight:

- Face or full-body pods / tents
- Portable electronic air fresheners / purifiers
- Ozone generators

[Restricted items »](#)

[Mobility and medical devices »](#)

[Exemption for customers with disabilities*](#)

If you may be exempt because you have a disability that prevents you from safely wearing a mask as defined by the Americans with Disabilities Act (42 USC 12101 et. seq) **you must contact us at least 72 hours before you plan to travel** * 2 and **travel with documentation confirming a negative COVID test or recovery.** * 3

Please note, making false claims of a disability or a health condition to obtain an exemption from wearing a face covering may result in denial of travel on American for the duration of the U.S. federal mask requirement.

Call Special Assistance: 800-237-7976

*This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability. It is not meant to cover persons for whom mask-wearing may only be difficult.

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- If you buy Basic Economy fares you may now buy extras like upgrades, seats, priority boarding and same-day flight changes.
- AAdvantage® elite members may apply their travel benefits on all tickets, including on Basic Economy fares.

[Domestic, short-haul international and select long-haul international flights](#)

Anthony Eades
Mask Exemption Request to American Airlines
Notes on Americans' Numerous Illegal Policies
MCI-DFW-COS Nov. 18, 2021

1. You falsely represent that “federal law” requires airline passengers wear face masks. But Congress has never enacted such a law. This is a fraudulent misrepresentation of the law. If you disagree with me, please provide the citation for the U.S. Code as to which statute requires airline passengers don face masks. Or if you believe there is duly promulgated regulation requiring such, please cite the Code of Federal regulations section.
2. An airline is not allowed to require passengers seeking mask exemptions to do so in advance. “As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.” 14 CFR § 382.25.
3. An airline may not require disabled passengers who seek a mask exemption to submit a negative COVID-19 test for each flight when nondisabled customers aren’t subject to this same requirement. No provision of the Air Carrier Access Act or its accompanying regulations promulgated by DOT (nor any other law enacted by Congress) permits airlines to require passengers submit a negative test for any communicable disease.
Mandating disabled flyers submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1). *See also* 49 USC § 41705.
4. An airline may not require a medical certificate from disabled passengers who ask for a mask exemption. “Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.” 14 CFR § 382.23(a). “You may ... require a medical certificate for a passenger if he or she **has** a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight.” 14 CFR § 382.23(c)(1) (emphasis added). This requirement does not include speculation that a person might have a communicable disease such as COVID-19; evidence is required that the passenger **has** a communicable disease, i.e. has tested positive for the coronavirus.
Requiring a medical certificate also violates the Convention on International Civil Aviation. You may not require passengers with disabilities needing a mask exemption to submit a medical clearance (letter from doctor). The United States has ratified CICA, which makes it binding treaty law upon all persons and corporations in our country. “[P]ersons with disabilities should be permitted to travel without the requirement for a medical clearance.” CICA Annex 9 § 8.39.
5. An airline may not refuse transportation solely on the basis of a passenger’s disability such as inability to wear a mask. “As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.” 14 CFR § 382.19(a).
6. Recipients of federal funds including airlines are prohibited from discriminating against the disabled. “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her

or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." 29 USC § 794(a).

7. Requiring Passengers Not Known to Have a Communicable Disease to Wear a Face Covering: Federal law bans airlines from requiring passengers who do not have a communicable disease to don a face mask. The ACAA, 49 USC § 41705, and its accompanying regulations, 14 CFR Part 382, spell out specific procedures for dealing with airline passengers who are known to have a communicable disease. Your mask policy violates these regulations by assuming that every passenger has a communicable disease such as COVID-19.

Airlines are prohibited from requiring that a passenger wear a face covering or refuse him/her transportation unless they determine that the passenger "has" a communicable disease and poses a "direct threat" to other passengers and the flight crew. 14 CFR § 382.23(c)(1). Your rules illegally assume every single traveler is infected with COVID-19. This violates the regulation that "In determining whether an individual poses a direct threat, you must make an individualized assessment." 14 CFR § 382.19(c)(1).

Your mask policy doesn't provide for making an "individualized assessment" of whether someone is known to have COVID-19 or another communicable disease. According to DOT, "If a person who seeks passage *has* an infection or disease that would be transmittable during the normal course of a flight, and that has been deemed so by a federal public health authority knowledgeable about the disease or infection, then the carrier may: ... Impose on the person a condition or requirement not imposed on other passengers (e.g., wearing a mask)." This is the only scenario airlines are permitted to force any passenger to don a face covering.

8. "You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act." 14 CFR § 382.11(a)(4).
9. You are prohibited by federal regulations from forcing a disabled passenger to disclose his/her medical conditions. "May I ask an individual what his or her disability is? Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. Generally, you may not make inquiries about an individual's disability or the nature or severity of the disability," according to DOT. Your mask policy constitutes invasion of privacy, which is illegal.
10. Refusing Transportation to Disabled Passengers Who Are Healthy & Don't Pose a Direct Threat to Anyone: Airlines may not refuse to transport a disabled person who can't wear a face mask when there's no evidence that person is positive for COVID-19 or any other communicable disease." [Y]ou must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal." 14 CFR § 382.19(c)(2).
11. Breach of Contract: I did not agree to wear a face mask when I bought my ticket. Any mask provisions in your Contract of Carriage are invalid as they violate federal law and international treaties.
12. Forcing Passengers to Wear Masks in Violation of the Food, Drug, & Cosmetic Act that Are Experimental Medical Devices Proven to Harm Human Health: You are violating the FDCA by not giving passengers our legal option to refuse administration of a Food & Drug Administration unauthorized or Emergency Use Authorization medical device (a face mask). 21 USC § 360bbb-3(e)(1)(A)(ii)(III). You may not provide illegal and/or EUA masks to your passengers without informing them use of the device is optional and they must give informed consent. This constitutes reckless endangerment.

13. **Practicing Medicine without a License:** You are prescribing all passengers to wear FDA unauthorized or EUA medical devices, but you do not have a license to practice medicine. Practicing medicine without a license is illegal in every state.
14. **Deceptive & Misleading Trade Practices:** You are deceiving your customers regarding mask rules, efficacy, and harms, and attempt to mislead us into believing face coverings are good for our health when the reality is they cause dozens of harm and create havoc in the sky due to oxygen deprivation. "Intent is not an element of either unfairness or deception," according to DOT. 85 Fed. Reg. 78,707 (Dec. 7, 2020). However, it's clear you have an intent to deceive passengers that face masks are effective in reducing COVID-19 spread, are authorized by FDA, etc.

You clearly misled customers that masks may be forced on passengers without their consent in violation of the FDCA. DOT defines an unfair trade practice by airlines as "demonstrating that the harm to consumers is (1) substantial; (2) not reasonably avoidable; and (3) not outweighed by offsetting benefits to consumers or competition." DOT defines a practice as "deceptive" by showing that: "(1) The practice actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the circumstances; (3) with respect to a material matter." 14 CFR § 399.79. Airlines have a statutory duty not to deceive and mislead their customers. 49 USC § 41712.
15. **Fraudulent Misrepresentation:** You provide FDA unauthorized or EUA face masks without disclosing that: 1) the masks (if authorized at all) are only designated for emergency use; 2) that there are "significant known and potential benefits and risks of such use" (or "the extent to which such benefits and risks are unknown"); or 3) flyers have the "option to accept or refuse administration of the product." 21 USC § 360bbb-3.

You also haven't told your passengers of the dozens of health risks of covering our sources of oxygen or that the scientific consensus is that masks are totally worthless in reducing COVID-19 spread. See 223 scientific studies, medical articles, and videos at <https://bit.ly/masksarebad>. Failing to disclose this information pursuant to the FDCA and your other legal obligations is a fraudulent misrepresentation.
16. **Nuisance:** You deprive passengers who can't or won't wear masks of our statutory right to use the public airspace. "A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals." 49 USC § 40103(a)(2). A public nuisance is when a person or corporation unreasonably interferes with a right that the general public shares in common.
17. **Infringement on the Constitutional Right to Travel:** You deprive disabled Americans and those who refuse to wear masks for health reasons of the ability to fly. In many cases, such as traveling from noncontinental states and territories to other states and territories, as well as going overseas, commercial airplanes are the only means of transportation. The Constitution protects against Americans' infringement on our freedom of movement by government actors and common carriers.
18. **You require passengers to wear masks without giving our free consent, deprive us of our freedom to travel for not wanting to obstruct our breathing, curtail the liberty of movement, prevent us from entering or exiting our country of citizenship, and unlawfully interfere with our privacy. The United**

States has ratified the International Covenant on Civil & Political Rights, which makes it binding treaty law upon all persons and corporations in our country.

“[N]o one shall be subjected without his free consent to medical or scientific experimentation.” ICCPR Art. 7. “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” ICCPR Art. 9. “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement ... 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law... 4. No one shall be arbitrarily deprived of the right to enter his own country.” ICCPR Art. 12. “1. No one shall be subjected to arbitrary or unlawful interference with his privacy ... 2. Everyone has the right to the protection of the law against such interference or attacks.” ICCPR Art. 17.

From: SAC <SAC@aa.com>
Sent: Monday, November 8, 2021 9:01 AM
To: 'teades2603@msn.com' <teades2603@msn.com>
Subject: American Airlines

Anthony Eades,

American provides limited exemptions from the federal mask mandate for customers with a disability who cannot wear a mask, or cannot safely wear a mask, because of their disability as defined by the Americans with Disabilities Act (ADA). In order to receive consideration for an exemption, an official, dated letter from a licensed medical provider must be provided at least 24 hours prior to the scheduled departure of your flight and must contain the following elements:

- Official letterhead from the medical provider with their license number, contact information and date
- Customers name
- Attestation that the customer has a medically diagnosed physical or mental disability that qualifies under the Americans with Disabilities Act (42 USC 12101 et. seq) and because of that disability cannot wear or safely wear a mask for the duration of travel
- Description of why the customer is unable to wear or safely wear a mask for the duration of travel
- Signature of the licensed medical provider

Once completed, letters should be emailed as an attachment to SAC@aa.com with the subject containing the letters NMOK, the record locator of the customer, initial date of travel and customers name.

If your request is approved, it will be conditional upon validation of a negative COVID test (either PCR or Antigen) taken within 72 hours of departure – this must be presented upon check-in at the airport. Additionally, the approval is only valid on requested reservation.

Please keep in mind that these exceptions are very narrow in definition and includes a person with a disability who cannot wear a mask for reasons related to the disability. Your medical provider may be contacted for additional information. Additionally, AA may consult with a third-party medical provider regarding the letter.

Thank you,

Carey
American Airlines Special Assistance Coordinator



American Airlines

From: SAC (sac@aa.com)

Date: Monday, November 8, 2021, 09:50 AM EST

Dear Anthony Eades,

American provides limited exemptions from the federal mask mandate for customers with a disability who cannot wear a mask, or cannot safely wear a mask, because of their disability as defined by the Americans with Disabilities Act (ADA). In order to receive consideration for an exemption, an official, dated letter from a licensed medical provider must be provided at least 24 hours prior to the scheduled departure of your flight and must contain the following elements:

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Thank you,
Lori M.
American Airlines Special Assistance Coordinator



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We're dedicated to your health and safety, and as part of our clean commitment, our goal is to ensure your well-being at every step of your trip.

Before you go:



Travel updates

Check the latest travel and health restrictions by destination so you know what to expect.



Touchless check-in

If you're checking a bag, find out if you're eligible for touchless check-in for a hands-free kiosk experience.

At the airport:



Face coverings

They're required in the airport and on your flight, except for children under 2 years old or if you have a disability that meets the exemption requirements.



Bag policies

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If you're checking a bag, find out if you're eligible for [touchless check-in](#) for a hands-free kiosk experience.

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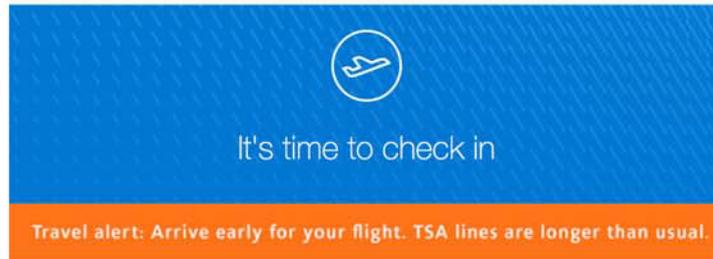
American Airlines <americanairlines@info.ms.aa.com> Unsubscribe To: [Redacted] Wed, Nov 17 at 9:25 PM

Thursday, November 18, 2021 at 07:38 PM

View on the web

American Airlines

Hello Traveler,



It's time to check in

Travel alert: Arrive early for your flight. TSA lines are longer than usual.

Record locator: KBWHVX

MCI to DFW

Thursday, November 18, 2021

07:38 PM → 09:27 PM
Kansas City, MO Dallas/Ft. Worth, TX
AA 1618

CHECK IN NOW

Important Information

- Please arrive at the airport 2 hours before your scheduled departure for domestic flights and 3 hours before your departure for international flights for TSA security screening.
- Due to COVID-19, new requirements are in place. Check if your destination has travel restrictions and bring a completed copy of travel documents if needed.
- A face covering is required by U.S. federal law at the airport and onboard American Airlines flights. In addition, passengers flying to the U.S. from another country, including U.S. citizens, must show proof of a negative COVID-19 test taken within 3 days of departure, or documentation of recovery. These rules do not apply to children under 2. Passengers who may be exempt from wearing a face covering due to a

under 2. Passengers who may be exempt from wearing a face covering due to a disability must contact us before travel. [Visit here for more about travel requirements.](#)

- There may be inflight product substitutions on American Airlines operated flights due to global supply chain issues. We apologize for any inconvenience this causes.



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SEARCH RESULTS

COMPLETED

5/24/2021 Identogo Idemia 05/21 Card 9875

\$85.00 \$2,362.97

Debit Purchase -visa Identogo-idemia Billerica Ma 05/21 Card 9875

Completed 5/24/2021

Transaction details

TYPE

Purchase

CARD USED

...9875

CATEGORY

Uncategorized

U.S. Department of Homeland Security
Springfield, Virginia 20598-6110



Transportation
Security
Administration

Mr. Tony N. Eades
19499 Cedar Gate Drive
Warsaw, MO 65355
United States

NOV 10 2021

Re: Determination of Ineligibility, TSA Pre✓® Application Program, KTN TT [REDACTED] 6X

Dear Mr. Eades:

On 27 May 2021, TSA found you eligible to participate in the TSA Pre✓® Application Program. As a participant previously found eligible for the TSA Pre✓® Application Program, you are subject to recurrent checks against various databases, including law enforcement, immigration, regulatory violation, and intelligence databases.

As a result of recurrent checks and based on a comprehensive background check, TSA was unable to determine that you pose a sufficiently low risk to transportation and national security to continue to be eligible for expedited airport security screening through the TSA Pre✓® Application Program. As a result, TSA has determined that you are no longer eligible to participate in the TSA Pre✓® Application Program. This eligibility determination for the TSA Pre✓® Application Program is within the sole discretion of TSA.

Although you have been found ineligible to continue your participation in the TSA Pre✓® Application Program, you will continue to be screened at airport security checkpoints according to TSA standard screening protocols.

This letter constitutes TSA's final decision.

Sincerely,

JULIE A CARRIGAN

Digitally signed by JULIE
A CARRIGAN
Date: 2021.11.09
16:23:03 -05'00'

Julie Carrigan
Acting Division Director
National Transportation Vetting Center

lucas.travel

TSA Adds to Terrorist Watchlist Kentucky Man Who Sued Agency 2 Days Ago over Mask Mandate – Quest for 243

8-10 minutes

Frequent Flyer Searched Extensively,

Denied Boarding United Flight after Fainting



Michael Faris at Ontario, California, airport today

Oct. 21, 2021

By LUCAS WALL

ONTARIO, California – The Transportation Security Administration appears to have placed a frequent flyer on its terrorist watchlist after he [filed suit Tuesday in the U.S. Court of Appeals for the 6th Circuit](#) in Cincinnati challenging the [Federal Transportation Mask Mandate](#).

Michael Faris, a helicopter maintenance supervisor, is trying to fly home today to Elizabethtown, Kentucky, from a work assignment near Ontario, California. When he tried to check in on the United Airlines mobile app, he received a message that his “reservation requires special handling. Please check in at an airport kiosk.” When he used a United kiosk at Ontario airport, it displayed a message to “Please collect the printed document and see a United representative for further assistance.”

It took United agents a long time on the phone to check Faris in, during which a TSA officer responded to the counter. He was then escorted to the security checkpoint, where she showed his mask-exemption letter from his physician. TSA officer Steven Pointer and supervisor Ramona Baker reluctantly allowed Faris into the screening area without a face covering.

TSA then put him through a lengthy process known as “Secondary Security Screening Selectee,” noted on his boarding pass by the code “SSSS.” During the extended search, he was patted down for more than five minutes and every item was removed from his carry-on bag. TSA officers even swabbed inside his wallet.



Faris' boarding pass marked "SSSS"

Three TSA officers walked Faris to the gate, where United was holding the airplane bound for Denver for him. A United agent told him he had to put on a mask before stepping into

the jetway, ignoring his [medical exemption](#). While walking down the jetbridge, Faris, who suffers from Generalized Anxiety Disorder, had a panic attack and fainted, collapsing to the floor. His elbow and knee were bruised.

The TSA officers responded and called 911, after which four airport police officers and four paramedics arrived. Meanwhile United closed the boarding door said Faris could not fly today because of his fainting episode. He had to rebook with another airline and is currently enduring a five-hour delay.

“It seems awfully suspicious that just two days ago I filed suit in the 6th Circuit against TSA, then all the sudden I was put on a terrorist watchlist,” Faris said while waiting for his new flight home to Louisville on via Dallas. “I’m in a little bit of pain from the fall, I’m mentally exhausted, and I feel betrayed and belittled – completely disrespected in the sense that TSA and the airlines are making me feel like I should not be a member of society because I suffer from a medical condition that precludes me from safely wearing a mask.”

When passing through TSA’s checkpoint today, one female officer belittled Faris by telling a colleague that he’s “a piece of work,” “give me a break,” and “not cool.” These remarks were captured on Faris’ phone at [Minute 36 of an audio recording of today’s incidents](#). Faris immediately filed a [complaint with the Department of Homeland Security](#), TSA’s parent agency.

Faris is part of a group of 12 disabled flyers and a former flight attendant from nine states and the District of Columbia who [filed six lawsuits Tuesday around the country](#) charging TSA with exceeding its legal authority by continuing to extend a requirement that all public-transportation passengers don face masks. Faris is the lead petitioner in the [6th Circuit case](#), which includes three others.

“TSA’s function is limited by law to address security threats. Congress has never given the agency power to regulate the public health and welfare,” the petitioners argue. “Wearing face masks has nothing whatsoever to do with transportation security.”

Faris has to fly every 12 days for work. He is medically exempt by a neurologist from wearing a mask, but airlines have consistently refused to grant him an exception because of the FTMM. Faris was injured on a United Airlines plane earlier this year when blocking his breathing caused him to faint during a flight. He smashed his face on a galley cart.

“As a person who has endured physical injury by the airlines due to these unconstitutional mandates, I am standing up for people like me,” Faris said. “We cannot allow TSA to continue down the path of discriminating against Americans with medical conditions who cannot wear a face covering.”

Fellow litigants denounced TSA’s actions blacklisting Faris for asserting his legal rights in

court and fear they also have been deemed potential terrorists.

“Our own government is being weaponized against us now simply for exercising our rights of redress, a fundamental constitutional protection,” said Kleantlis Andreadakis of Henrico County, Virginia, lead petitioner in the [4th Circuit case against TSA's mask mandate](#). “This is yet another example of how incompetent the Biden Administration is. It cannot control how any of its organizations behave. Let this be a warning to all Americans: This can happen to anyone. Stop being silent and stand up against this nonsense.”

Petitions for review of TSA's mask mandate were filed Tuesday: [Abadi v. Transportation Security Administration](#), case number pending (2nd Circuit); [Andreadakis v. Transportation Security Administration](#), No. 21-2173 (4th Circuit); [Marcus v. Transportation Security Administration](#), No. 21-60808 (5th Circuit); [Faris v. Transportation Security Administration](#), No. 21-3951 (6th Circuit); [Eades v. Transportation Security Administration](#), No. 21-3362 (8th Circuit); and [Wall v. Transportation Security Administration](#), No. 21-13619 (11th Circuit).

Lucas Wall, lead petitioner in the [11th Circuit case](#), said all 13 litigants plan to file emergency motions in the next week to get Faris removed from TSA's terrorist list and to make the agency disclose to the courts whether any others suing it have been blacklisted.

“TSA equating law-abiding Americans exercising their right to challenge an illegal and unconstitutional agency mandate in court to terrorists is deeply disturbing and represents unlawful retaliation,” Wall said. “TSA must immediately remove Michael and any other petitioner from its watchlist or we will seek court orders to stop this insanity.”

Michael Seklecki of Sanford, Florida, has a 4-year-old autistic son who needs to fly often to Massachusetts for specialized medical care. Seklecki can't wear a mask because of his anxiety disorder. Covering his face makes it very uncomfortable for him to breathe. His son, identified in court papers by his initials M.S., also can't tolerate having his breathing blocked.

“Because of the FTMM, airlines have given Mr. Seklecki and his son a hard time about getting mask exemptions, almost making them miss flights that would cause harm to M.S.'s medical care,” according to the [11th Circuit petition](#). “This is despite M.S.'s mask-exemption form signed by a licensed pediatrician.”

Seklecki called it appalling TSA is not only denying Americans with disabilities accommodations but is now vindictively going after anyone who sues it.

“This behavior by the government is totally despicable,” he said.

The FTMM represents the greatest systemic discrimination against the disabled since the Americans with Disabilities Act was passed in 1990. Petitioners argue TSA's mandate

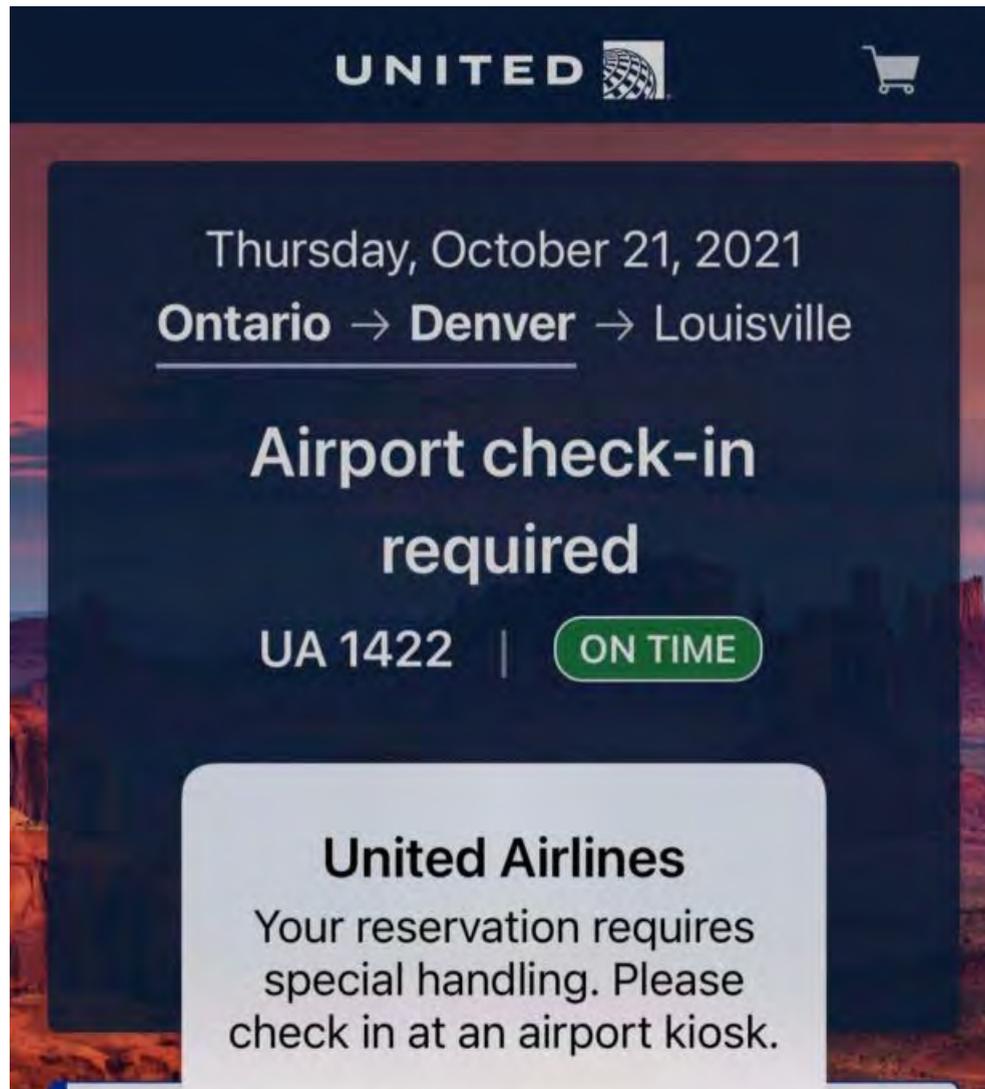
violates not only the ADA but also the Air Carrier Access Act; Rehabilitation Act; Food, Drug, & Cosmetic Act; their constitutional right to travel; and other federal laws and international treaties. By regulating intrastate transportation and commandeering state employees to enforce the mask mandate, TSA's orders also violate the 10th Amendment to the Constitution, according to the petitions.

Donate to our legal fund on GoFundMe: [Help End Federal Transportation Mask Mandate](#)

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Photo Gallery



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American Calls Police, Bans Disabled Man for Asking for Mask Exemption after Fainting – Quest for 243

8-10 minutes

Kentucky Frequent Flyer Blacklisted for

Suing TSA Tuesday over Mask Mandate

Oct. 22, 2021

By LUCAS WALL

ONTARIO, California – American Airlines appears to have banned a Kentucky frequent traveler who attempted to check in Thursday for a flight from Ontario to Louisville via Dallas after he asked for a mask exemption and noted he had fainted earlier that morning in the airport when forced to muzzle himself.

“I warned you that putting this mask on could possibly make me faint and you’re okay with that?” Michael Faris of Elizabethtown, Kentucky, asked the American check-in agent, who refused to disclose her name. Faris [captured the incident on video](#).

“I’m calling the police,” the American agent said in response to Faris’ mask-exemption request. “They’re going to come talk to you cause I’m done talking to you.”





American Agent calls the police on Michael Faris at ONT

Faris then said on the video: “This lady has basically said even after I told her that making me wear a mask makes me faint – I’ve already done it twice on these airlines – that she is okay and will not [check me in] until I put a mask on. But she’s okay with me being injured if that’s what it takes to [check me in]. It’s wrong.”

Earlier Thursday morning, Faris – who [sued the Transportation Security Administration](#) on Tuesday challenging the [Federal Transportation Mask Mandate](#) in the U.S. Court of Appeals for the 6th Circuit in Cincinnati, learned he [had been placed on TSA’s terrorist watch list](#) for filing the lawsuit. After enduring a lengthy special security screening, United Airlines made Faris put on a mask to board his flight to Louisville via Denver. He fainted in the jetway during a panic attack, scraping his elbow and knee. United refused to allow him on the flight because of his medical condition.

Faris booked a new flight for five hours later on American to fly home from his work assignment in California. When he tried to check in, he asked for a mask exemption. American’s agent told him no and ordered him to put a mask on even though American has no jurisdiction over airport property. Faris said he would put on a mask only when stepping into American’s airplane. The agent responded by calling American’s corporate security office.

“After finishing the conversation with the security department, she informed me that if I did not put the mask on immediately that she would not give me my boarding pass,” Faris said. “That’s when the agent said she didn’t have a problem with the possibility that I could be injured. I must wear the mask or I would not get my ticket.”

The customer-service agent became combative and called the police in the [incident recorded by Faris](#). He is [medically exempt by a neurologist from wearing a mask](#), but airlines have consistently refused to grant him an exception because of the FTMM.

As Ontario cops responded, Faris spoke with American supervisor Edward Norman III. Police stood by observing the conversation but told Faris he wasn’t doing anything wrong and American had no cause to summon them.

Norman informed Faris that his booking had been cancelled by American security with a note “do not rebook.” Norman then said because he knew that wearing a mask could cause Faris cause to faint again, he was not comfortable allowing him to rebook and

board another flight. Norman, American's legally designated Complaint Resolution Officer at ONT, said he was not willing to help Faris obtain a mask exemption, in what Faris asserts is a violation of the [Air Carrier Access Act](#), a federal law prohibiting airlines from discriminating against passengers with disabilities.

Faris was forced to go to LAX airport to take another airline home to Kentucky. During the COVID-19 pandemic, he has filed seven complaints against American's mask policies with the U.S. Department of Transportation. None have been resolved.

ONT airport is a public facility owned by the Ontario International Airport Authority, formed by the city of Ontario and San Bernardino County.

"The airlines do not own property at the airport. The lobby areas, jetbridges, and lounges are all leased from the airport owner," Faris said. "Airport facilities are taxpayer funded, meaning we have certain rights protected under the Americans with Disabilities Act. It's absurd that a private business like American Airlines thinks it has authority to control what a person with an anxiety disorder – or any other passenger – has to wear on his face in the common areas of an airport."

Faris described his experiences getting blacklisted by TSA, United, and American as mentally exhausting.

"There is no compassion, decency, or understanding from these agents," said Faris, who typically flies at least twice a month for his job as a helicopter maintenance supervisor. "I have a platinum frequent-flyer status with American Airlines. You would think that amount of loyalty would count for something. After today's events, it is clear that their customers mean nothing more to them than another couple dollars."

Faris is part of a group of 12 disabled flyers and a former flight attendant from nine states and the District of Columbia who [filed six lawsuits Tuesday around the country](#) charging TSA with exceeding its legal authority by continuing to extend a requirement that all public-transportation passengers don face masks. Faris is the lead petitioner in the 6th Circuit case, which also includes three Ohio residents.

"TSA's function is limited by law to address security threats. Congress has never given the agency power to regulate the public health and welfare," the petitioners argue. "Wearing face masks has nothing whatsoever to do with transportation security."

Faris has to fly every 12 days for work. He was injured on a United Airlines plane earlier this year when blocking his breathing caused him to faint during a flight. He smashed his face on a galley cart.

"As a person who has endured physical injury by the airlines due to these unconstitutional mandates, I am standing up for people like me," Faris said. "We cannot allow TSA to

continue down the path of discriminating against Americans with medical conditions who cannot wear a face covering.”

Fellow litigants denounced American’s action blacklisting Faris for doing nothing more than asking for a medical exemption from its mask mandate.

Charity of Anderson of Toledo, Ohio, who is part of Faris’ case before the 6th Circuit, described his experiences at ONT on Thursday as horrific.

“Is this where we are now in America?” she asked. “Open retaliation by the government and American Airlines against disabled people who sue for their rights to travel? Being labeled a threat for addressing grievances through legal channels?”

Tony Eades of Warsaw, Missouri, is involved in a [class-action lawsuit against seven airlines](#) regarding their illegal mask policies after he was thrown off a Southwest Airlines flight earlier this year for removing his mask so he could breathe. He suffers from asthma and Post-Traumatic Stress Disorder after being shot while serving in the military in Iraq. Eades is also the petitioner in the lawsuit filed Tuesday against TSA’s mask mandate with the [U.S. Court of Appeals for the 8th Circuit](#) in St. Louis.

“My experience wasn’t as bad as what Michael endured yesterday, but I do know how degrading it feels to be blocked from flying because of not medically being able to tolerate blocking my breathing,” Eades said. “It’s horrible to have the airlines make a scene over a disabled person who can’t muzzle.”

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Kentucky Man Suing TSA over Masks Asks Court to Remove Him from Terrorist Watchlist – Quest for 243

6-7 minutes

Motion for Injunction Argues TSA Illegally

Retaliated by Declaring Flyer a Security Threat

Oct. 27, 2021

By LUCAS WALL

CINCINNATI, Ohio – A Kentucky frequent flyer filed [an emergency motion for injunction](#) this morning asking the U.S. Court of Appeals for the 6th Circuit to order the Transportation Security Administration to remove him from its terrorist watchlist, which the agency apparently placed him on after he and three Ohioans [petitioned for review](#) last week of the [Federal Transportation Mask Mandate](#).

The Court of Appeals immediately [ordered TSA to file a response](#) no later than 10 a.m. Thursday. Michael Faris' next flight for his job is Saturday. His motion asks the court for a ruling by Friday.

“TSA’s action placing Mr. Faris ... on its terrorist watchlist for filing this lawsuit challenging the FTMM represents the absolute worst form of vengeance against citizens exercising our First Amendment right to petition the government for a redress of grievances,” according to the court filing. “Suing TSA does not constitute a threat of terrorism nor any other risk to transportation security that warrants placement on the watchlist.”

Two days after [filing a petition for review of TSA's mask orders](#) Oct. 19, Faris, a helicopter maintenance supervisor, had trouble checking in for his Oct. 21 flight home to Elizabethtown, Kentucky, from a work assignment near Ontario, California. After numerous phone calls, United Airlines [finally issued Faris boarding passes marked with “SSSS,”](#) meaning “Secondary Security Screening Selection.” Agents told Faris this meant he had likely be placed on a terrorist watchlist. He is [medically exempt by a neurologist](#) from wearing a mask, but airlines have consistently refused to grant him an exception

because of the FTMM.

Faris and his three fellow petitioners demand “an injunction mandating that Respondent Transportation Security Administration immediately remove Petitioner Michael Faris from its terrorist watchlist and/or any other database flagging him for Secondary Security Screening Selection” and an order “compelling TSA to disclose to petitioners and the Court within five days whether it has placed Petitioners Charity Anderson, Angela Byrd, and Michael Clark on its terrorist watchlist and/or any other database flagging them for SSSS.” They also ask the court to direct TSA to show cause why it should not be sanctioned and/or held in contempt.

“By retaliating against Mr. Faris and perhaps the other petitioners in this case, TSA violates our First Amendment right to petition,” the motion states. “Taking such serious an action as placing petitioner(s) on a terrorist watchlist for doing nothing more than challenging TSA’s orders in this legal proceeding in-fringes on this Court’s authority to protect litigants from reprisal by the Executive Branch.”

Byrd attempted to check in online for a Delta Air Lines flight Oct. 26. She received a strange message that “We’re sorry. We can’t validate your ticket.” Fearing she too had been placed on the terrorist watchlist by TSA in retaliation for filing the lawsuit, she canceled her trip as she did not want to arrive at the airport only to be informed Delta would not check her in due to her possible SSSS status.

Anderson has booked a work trip in the near future on Southwest Airlines. Her partner, Clark, and her three children are have plane tickets to tag along. Anderson and Clark also fear they have been blacklisted by TSA in retribution for filing this lawsuit.

It took United agents a long time on the phone to check Faris in for his Oct. 21 flight out of Ontario, during which a TSA officer responded to the counter. He was then escorted to the security checkpoint, where he showed his mask-exemption letter from his physician. TSA officer Steven Pointer and supervisor Ramona Baker reluctantly allowed Faris into the screening area without a face covering.

TSA then put him through the lengthy SSSS process. During the extended search, he was patted down for more than five minutes and every item was removed from his carry-on bag. TSA officers even swabbed inside his wallet.

Three TSA officers walked Faris to the gate, where United was holding the airplane bound for Denver for him. A United agent told him he had to put on a mask before stepping into the jetway, ignoring his [medical exemption](#). While walking down the jetbridge, Faris, who suffers from Generalized Anxiety Disorder, had a panic attack and fainted, collapsing to the floor. His elbow and knee were bruised.

United closed the boarding door said Faris could not fly because of his fainting episode.

He rebooked with American Airlines, who [refused to check him in after he asserted his Americans with Disabilities right](#) not to wear a mask in public areas of a taxpayer-funded airport. An American agent called the police on Faris for asserting his legal right to be free of discrimination.

Faris is part of a group of 13 disabled flyers and a former flight attendant from nine states and the District of Columbia who [filed six lawsuits Oct. 19 around the country](#) charging TSA with exceeding its legal authority by continuing to extend a requirement that all public-transportation passengers don face masks.

“TSA’s function is limited by law to address security threats. Congress has never given the agency power to regulate the public health and welfare,” the petitioners argue. “Wearing face masks has nothing whatsoever to do with transportation security.”

Donate to our legal fund on GoFundMe: [Help End Federal Transportation Mask Mandate](#)

Join our Facebook group: [Americans Against Mask Mandates](#)

View: [223 Studies, Articles, & Videos Describe How Masks Don’t Reduce COVID-19 Spread But Harm Human Health](#)

lucas.travel

TSA, after Secret Court Filing, Removes Mask Litigant from Terrorist Watchlist – Quest for 243

4-5 minutes

***Agency Quickly Reversed Course When
Kentucky Flyer Challenged Illegal Retaliation***



Michael Faris celebrating his victory over TSA in First Class

Oct. 31, 2021

By LUCAS WALL

LOUISVILLE, Kentucky – The Transportation Security Administration removed Friday a Kentucky frequent flyer it had [placed on a terrorist watchlist](#) last week after he [sued the agency](#) in the U.S. Court of Appeals for the 6th Circuit challenging the [Federal Transportation Mask Mandate](#).

Michael Faris of Elizabethtown, Kentucky, flew Saturday without hassle and mostly mask-free from Louisville to Ontario, California, via Denver only three days after [filing an emergency motion](#) with the 6th Circuit demanding he be removed from the watchlist. TSA had placed him on it within 48 hours of his filing suit against the agency Oct. 19 along with three disabled Ohioans who also can't wear masks due to medical conditions.

TSA [filed Thursday a declaration under seal](#) explaining in secret why it had deemed Faris a threat to transportation security because he sued to overturn the mask mandate. A three-judge panel of the 6th Circuit denied Friday the emergency motion seeking to enjoin TSA from forcing Faris and the other three petitioners to endure any additional security procedures when flying. However, only hours after the court published its order, Faris checked in online for Saturday's flights without incident, showing that TSA had removed him from the terrorist list.

"It's obvious TSA did not want to suffer public humiliation of having to admit to the court or the public that it declared me to be a potential terrorist because I dared to exercise my First Amendment right to petition against the illegal mask mandate," Faris said late Saturday after arriving in California, where he reports for work every 24 days as a helicopter maintenance supervisor. "Even though the judges denied my motion, I've clearly won this round as TSA rapidly did an about-face. No American should be labeled a potential terrorist for bringing a lawsuit against the government."

Faris vowed to continue seeking public release of the secret documents filed by TSA with the 6th Circuit, noting that even though he's now been removed from the watchlist, the agency's action still constitutes blatant illegal retaliation.

"I'm going to do everything I can to force TSA to explain on the public record why it blacklisted a frequent flyer for suing it," Faris said. "Until I brought this petition against TSA's mask mandate, I had flown multiple times a month for the past seven years without ever being selected for enhanced security screening. TSA should be ashamed of its conduct."





Michael Faris maskless at Louisville (SDF) Airport

Faris has a [medical exemption](#) from wearing a mask, but numerous times airlines and TSA have refused to honor it. He's part of a group of 13 disabled flyers plus a former flight attendant from nine states and the District of Columbia who [filed six lawsuits Oct. 19 around the country](#) charging TSA with exceeding its legal authority by continuing to extend a requirement that all public-transportation passengers don face masks.

"TSA's function is limited by law to address security threats. Congress has never given the agency power to regulate the public health and welfare," the petitioners argue. "Wearing face masks has nothing whatsoever to do with transportation security."

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View: [223 Studies, Articles, & Videos Describe How Masks Don't Reduce COVID-19 Spread But Harm Human Health](#)

[tsa.gov](https://www.tsa.gov)

Civil Rights | Transportation Security Administration

2 minutes

TSA security screening policies, procedures and practices must comply with all applicable civil liberties and civil rights laws, regulations, executive orders and policies and must not discriminate against travelers on the basis of race, color, national origin, sex, religion, age, disability, genetic information, sexual orientation and parental status.

The Disability and Multicultural Branches:

- Promote respect for civil rights and civil liberties in policy and training creation and implementation;
- Educate TSA personnel at headquarters and in the field on TSA's civil rights and liberties responsibilities to the public;
- Collaborate with organizations and advocacy groups through TSA's Disability and Multicultural Coalition to identify promising practices for TSA's nondiscriminatory delivery of security, custody, and customer-service programs and activities; and
- Investigate and resolve civil rights and civil liberties complaints filed by the public alleging discrimination in TSA's security screening activities at federalized airports.

The Disability Branch addresses disability-based complaints under Section 504 of the Rehabilitation Act. [See the Disabilities and Medical Conditions page for more information.](#)

The Multicultural Branch addresses complaints alleging discrimination on the bases of race, color, national origin, sex/gender (including gender identity, sexual orientation and parental status), religion, and age. [See the Multicultural page for more information.](#)

My HealthVet

Personal Information Report

*******CONFIDENTIAL*******

Produced by the VA Blue Button (v18.3)
23 Sep 2021 @ 1857

This summary is a copy of information from your My HealthVet Personal Health Record. Your summary may include:

- information that you entered (self reported)
- information from your VA health record
- your military service information from the department of defense (DoD)

Note: Your health care team may not have all of the information from your Personal Health Record unless you share it with them. Contact your health care team if you have questions about your health information.

Key: Double dashes (--) mean there is no information to display.

Name: EADES, ANTHONY NICHOLAS

Date of Birth:

MEDICAL CONFIDENTIAL

VA Medication History

Source:	VA
Last Updated:	18 Aug 2021 @ 2212
Sorted By:	Alphabetical Order then by Status
<p>Remember to share all information about your medications or updates with your VA health care team. Also, check information in your VA Allergies and your Self-Reported Allergies. This may let you know if you had a reaction to a medication you received.</p> <p>Please note that My HealtheVet does <u>NOT</u> show:</p> <ol style="list-style-type: none"> 1. medications, prescriptions and/or supplements your VA health care team entered into the non-VA medications list in your VA Medical Record 2. medications that are/were administrated in a clinic or Emergency Department (such as clinic medications) <p>If you cannot view prescription(s) that should be displayed, contact your local VA Pharmacy for information. The phone number for the VA Pharmacy can be found on the prescription label.</p> <p><u>Glossary of MHV Pharmacy Terms:</u> Active: Refill in Process=A refill request is being processed by the VA pharmacy. When a prescription is in the Refill in Process status, the Fill Date will show when the prescription will be ready for delivery via mail by a VA Mail Order Pharmacy. This term may be shown as a VA Prescription status of "Active: Susp" on other VA medication lists. Active: Submitted=The refill request has been received by My HealtheVet but has not been processed by the VA Pharmacy yet. Unknown=The status cannot be determined. Contact your VA care team when you need more of this VA prescription. A prescription stopped by a VA provider. It is no longer available to be filled. Transferred=A prescription moved to VA's new electronic health record. This prescription may also be described as "Discontinued" on medication lists from your healthcare team. Take your medications as prescribed by your healthcare team.</p> <p><u>Glossary of VA Pharmacy Terms:</u> Active=A prescription that can be filled at the local VA pharmacy. If this prescription is refillable, you may request a refill of this VA prescription. Active: On Hold=An active prescription that will not be filled until pharmacy resolves the issue. Contact your VA pharmacy when you need more of this VA prescription. Discontinued=A prescription stopped by a VA provider. It is no longer available to be filled. Contact your VA healthcare team when you need more of this VA prescription. Expired=A prescription which is too old to fill. This does not refer to the expiration date of the medication in the container. Contact your VA healthcare team when you need more of this VA prescription.</p>	

Medication:	ALBUTEROL 90MCG (CFC-F) 200D ORAL INHL		
Instructions:	INHALE 2 PUFFS BY ORAL INHALATION FOUR TIMES A DAY AS NEEDED FOR BREATHING. SHAKE WELL. RINSE MOUTHPIECE FREQUENTLY TO PREVENT CLOGGING.		
Status:	Active		
Refills Remaining:	2		
Last Filled On:	11 Mar 2021		
Initially Ordered On:	04 Mar 2021		
Quantity	Days Supply	Pharmacy	Prescription Number
Eades v. TSA			Appendix 72

MEDICAL CONFIDENTIAL

RELAXATION/ ANXIETY /STRESS /PTSD			
Status:	Discontinued		
Refills Remaining:	0		
Last Filled On:	07 Dec 2020		
Initially Ordered On:	12 Feb 2009		
Quantity	Days Supply	Pharmacy	Prescription Number
60	30	FLOYD K. LINDSTROM	20313596A

Medication: LORAZEPAM 1MG TAB			
Instructions: TAKE ONE TABLET BY MOUTH TWICE A DAY AS NEEDED FOR RELAXATION/ ANXIETY /STRESS /PTSD			
Status:	Discontinued		
Refills Remaining:	0		
Last Filled On:	02 Apr 2017		
Initially Ordered On:	12 Jan 2009		
Quantity	Days Supply	Pharmacy	Prescription Number
60	30	FLOYD K. LINDSTROM	20313596

Medication: LORAZEPAM 1MG TAB			
Instructions: TAKE ONE TABLET BY MOUTH TWICE A DAY AS NEEDED FOR STRESS / ANXIETY/ PTSD/			
Status:	Discontinued		
Refills Remaining:	0		
Last Filled On:	13 Jan 2009		
Initially Ordered On:	12 Jan 2009		
Quantity	Days Supply	Pharmacy	Prescription Number
20	10	FLOYD K. LINDSTROM	20313399

Medication: PROPRANOLOL HCL 40MG TAB			
Instructions: TAKE ONE TABLET BY MOUTH TWICE A DAY FOR IRRITABILITY/ PTSD/			
Status:	Discontinued		
Refills Remaining:	1		
Last Filled On:	27 Jan 2009		
Initially Ordered On:	18 Dec 2008		
Quantity	Days Supply	Pharmacy	Prescription Number
60	30	FLOYD K. LINDSTROM	3887130B

Medication: PROPRANOLOL HCL 40MG TAB			
Instructions: TAKE ONE TABLET BY MOUTH TWICE A DAY FOR IRRITABILITY/ PTSD/			
Status:	Discontinued		
Refills Remaining:	1		
Last Filled On:	15 Feb 2021		
Initially Ordered On:	25 Jan 2008		
Quantity	Days Supply	Pharmacy	Prescription Number
60	30	FLOYD K. LINDSTROM	3887130A

MEDICAL CONFIDENTIAL

Last Filled On:		18 Mar 2006	
Initially Ordered On:		17 Mar 2006	
Quantity	Days Supply	Pharmacy	Prescription Number
30	30	FLOYD K. LINDSTROM	20167943

[REDACTED]			

Medication:		CYPROHEPTADINE HCL 4MG TAB	
Instructions:		TAKE 1-2 TABLETS AT BEDTIME AS NEEDED FOR SLEEP AND FOR PTSD	
Status:		Discontinued	
Refills Remaining:		2	
Last Filled On:		04 Jun 2005	
Initially Ordered On:		27 May 2005	
Quantity	Days Supply	Pharmacy	Prescription Number
120	60	FLOYD K. LINDSTROM	20127500A

Medication:		CYPROHEPTADINE HCL 4MG TAB	
Instructions:		TAKE 1-2 TABLETS AT BEDTIME AS NEEDED FOR SLEEP AND FOR PTSD	
Status:		Discontinued	
Refills Remaining:		2	
Last Filled On:		15 Apr 2005	
Initially Ordered On:		15 Apr 2005	
Quantity	Days Supply	Pharmacy	Prescription Number
120	60	FLOYD K. LINDSTROM	20127500

[REDACTED]			

[REDACTED]			

MEDICAL CONFIDENTIAL

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Medication:	RISPERIDONE 2MG TAB				
Instructions:	TAKE ONE-HALF TABLET BY MOUTH TWO TIMES A DAY FOR PTSD				
Status:	Expired				
Refills Remaining:	1				
Last Filled On:	05 Dec 2019				
Initially Ordered On:	05 Dec 2019				
Quantity	Days Supply	Pharmacy	Prescription Number		
30	30	COLUMBIA-MO VAMC	34784867		

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

MEDICAL CONFIDENTIAL

VA Problem List

Source:	VA
Last Updated:	23 Sep 2021 @ 1851
Sorted By:	Date/Time Entered (Descending) then alphabetically by Problem
Your VA Problem List contains active health problems your VA providers are helping you to manage. This information is available thirty-six (36) hours after it has been entered. It may not contain active problems managed by non-VA health care providers. If you have any questions about your information, visit the FAQs or contact your VA health care team.	

[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]

Problem:	Posttraumatic stress disorder (SCT 47505003)	Date/Time Entered: 27 Dec 2016 @ 1200
Provider:	HOLDCROFT,CAROL J	
Location:	Rocky Mountain Regional VA Medical Center	
Status:	ACTIVE	
Comments:	--	

[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]

MEDICAL CONFIDENTIAL

[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]

Problem:	Posttraumatic stress disorder (ICD-9-CM 309.81)	Date/Time Entered: 03 Apr 2014 @ 1200
Provider:	BARFIELD,ARTHUR D	
Location:	Tampa FL VAMC	
Status:	ACTIVE	
Comments:	--	

Problem:	Asthma (ICD-9-CM 493.90)	Date/Time Entered: 16 Mar 2014 @ 1200
Provider:	GILLET,EDWARD	
Location:	Tampa FL VAMC	
Status:	ACTIVE	
Comments:	--	

[REDACTED]	[REDACTED]

Problem:	HX TBI,chronic HA,Gun shot injury (ICD-9-CM 799.9)	Date/Time Entered: 28 Mar 2013 @ 1200
Provider:	MOONJELI,SHIRLY S	
Location:	Tampa FL VAMC	
Status:	ACTIVE	
Comments:	--	

[REDACTED]	[REDACTED]

MEDICAL CONFIDENTIAL

Comments: --

Problem: Hx PTSD, [REDACTED], anxiety, [REDACTED]
[REDACTED]
799.9)

Date/Time Entered: 28 Mar 2013 @ 1200

Provider: MOONJELI,SHIRLY S

Location: Tampa FL VAMC

Status: ACTIVE

Comments: --

Problem: Posttraumatic stress disorder (ICD-9-CM 309.81)

Date/Time Entered: 27 May 2011 @ 1200

MEDICAL CONFIDENTIAL

MEDICAL CONFIDENTIAL

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

Problem:	Anxiety (ICD-9-CM 300.00)	Date/Time Entered: 21 Jan 2010 @ 1200
Provider:	OURANOS,HOSSEIN	
Location:	ST. LOUIS MO VAMC-JC DIVISION	
Status:	ACTIVE	
Comments:	--	

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Problem:	Upper Respiratory Infections (ICD-9-CM 465.9)	Date/Time Entered: 09 Dec 2009 @ 1200
Provider:	OURANOS,HOSSEIN	
Location:	ST. LOUIS MO VAMC-JC DIVISION	
Status:	ACTIVE	
Comments:	--	

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

MEDICAL CONFIDENTIAL

Location:	Rocky Mountain Regional VA Medical Center
Admitting Physician:	UROSEVICH,ZORAN
Discharge Date:	18 Apr 2007 @ 1200
Discharge Physician:	WANG,CYNTHIA S

Discharge Summary

[REDACTED]

[REDACTED]

PATIENT NAME: EADES,ANTHONY NICHOLAS

DISCHARGE DATE: 04/18/07.

DIAGNOSE(S): DSM IV MULTIAXIAL CLASSIFICATION

Axis I: 1. Posttraumatic stress disorder.

[REDACTED]

PROCEDURES AND/OR OPERATIONS PERFORMED: There were no procedures performed during this admission.

HISTORY OF PRESENT ILLNESS: The patient is a 25-year-old 100% service-connected male who is followed at the outpatient Colorado Springs [REDACTED] by Dr. Kielpikowski and Ms. Roxanne Crouse. The patient has a diagnosis of PTSD secondary to being shot in the abdomen in Iraq on August 7, 2003.

[REDACTED]

[REDACTED]

MEDICAL CONFIDENTIAL

[REDACTED]
He also endorses symptoms of PTSD including irritability, intrusive thoughts, and infrequent nightmares. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PAST MEDICAL HISTORY: The patient has a history of chronic lower back pain and knee pain as well as some intermittent chest wall pain secondary to the gunshot wound he suffered in August of 2003.

[REDACTED]

[REDACTED]

[REDACTED]

MEDICAL CONFIDENTIAL

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Psychiatric: On admission the patient endorsed multiple symptoms of PTSD as

[REDACTED]

[REDACTED]

In addition the patient was given Ativan 1 mg p.r.n. for anxiety

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] due to his severe PTSD symptoms.

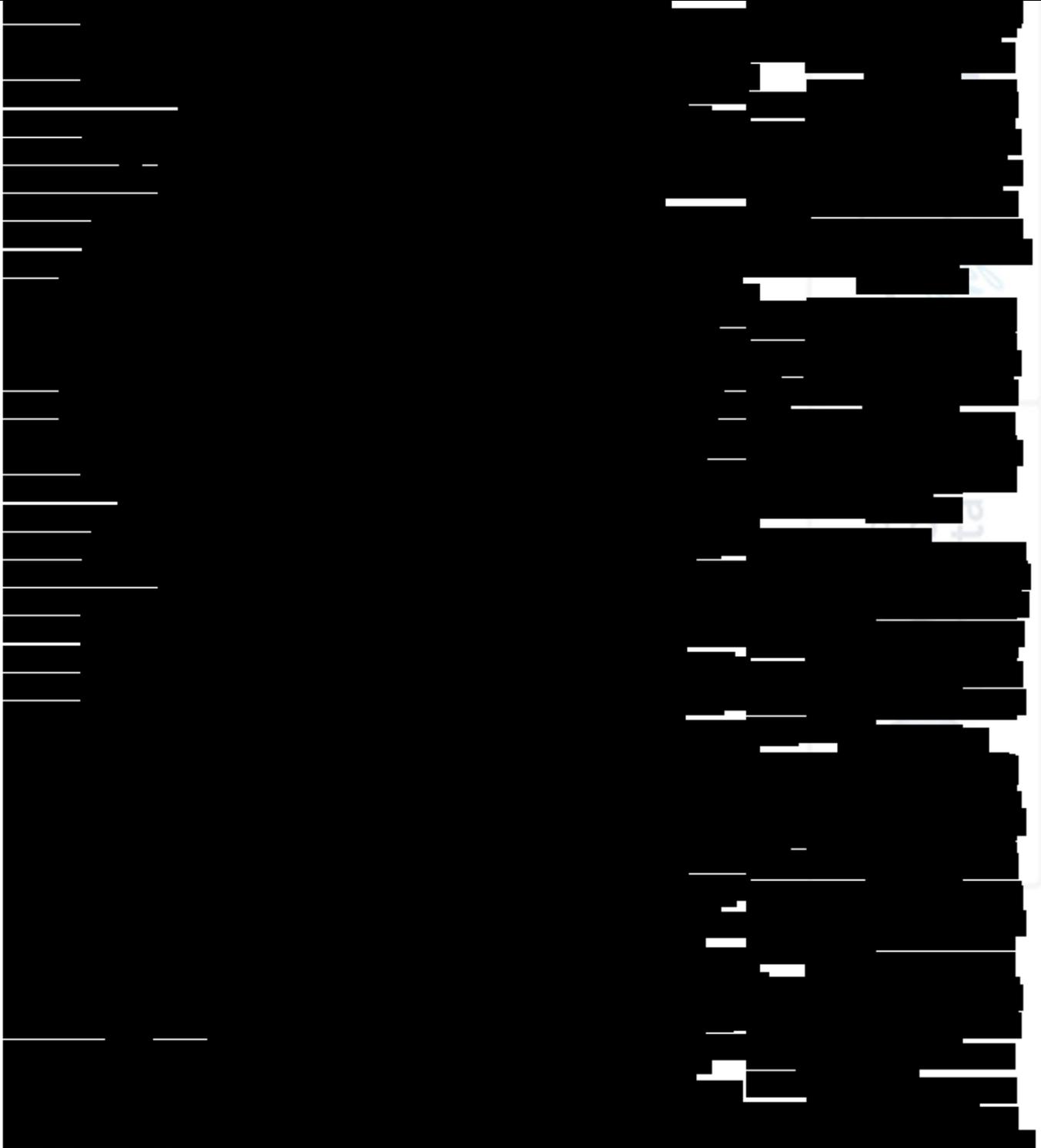
[REDACTED]

MEDICAL CONFIDENTIAL

OSI/DATE TRANSCRIBED: 227275/04/19/2007 14:00:50
OsiJobID/Rev: 1027319/0
\$END

/es/ CYNTHIA S WANG
MD
Signed: 04/20/2007 10:04

/es/ Z. Ron Urosevich, MD
Attending Psychiatrist
Cosigned: 04/20/2007 15:34



MEDICAL CONFIDENTIAL

DoD Military Service Information

Source: DoD

Last Updated: 23 Sep 2021 @ 1851

NOTES:

- 1) This report may not show your complete DoD Military Service Information. For more information go to the FAQ tab. Data prior to establishment of DEERS and full service reporting (c. 1980) may not appear.
- 2) It is normal for the begin/end dates in DoD records, adjusted by the Personnel Center after separation, to vary slightly from the DD-214.
- 3) No peacetime deployments will be displayed. For Gulf War I, only one period will be displayed even if you deployed more than once. No conflict prior to Gulf War I will be displayed. Kosovo, Bosnia, and Southern Watch data is incomplete and may not display.
- 4) For Guard/Reserve, periods of active duty may not display. No periods of Active duty service less than 30 days will display.

-- Regular Active Service

Service	Begin Date	End Date	Character of Service	Rank
Army	03/14/2000	12/19/2003	Honorable	PFC

-- Reserve/Guard Association Periods

Service	Begin Date	End Date	Character of Service	Rank
---------	------------	----------	----------------------	------

-- Reserve/Guard Activation Periods

Service	Begin Date	End Date	Activated Under (Title 10, 32, etc.)
---------	------------	----------	--------------------------------------

-- Deployment Periods

Service	Begin Date	End Date	Conflict	Location
Army	05/10/2003	12/19/2003	OEF/OIF	Iraq

-- DoD MOS/Occupation Codes

-- Note: Both Service and DoD Generic codes may not be present in all records

Service	Begin Date	Enl/Off	Type	Svc Occ Code	DoD Occ Code
Army	03/14/2000	Enlisted	Primary	13B10	041
Army	04/30/2000	Enlisted	Duty	13B10	041
Army	03/31/2002	Enlisted	Duty	13B1	041
Army	03/21/2003	Enlisted	Duty	13B10	041

-- Military/Combat Pay Details

Service	Begin Date	End Date	Military Pay Type	Location
Army	05/01/2003	12/19/2003	02	
Army	05/01/2003	12/19/2003	01	Kuwait

-- Separation Pay Details

Service	Begin Date	End Date	Separation Pay Type
---------	------------	----------	---------------------

```
-- Retirement Periods
Service      Begin Date  End Date    Retirement Type          Rank
-----
```

```
-- DoD Retirement Pay
Service      Begin Date  End Date    Dsblty %  Pay Stat  Term Rsn  Stop Pay Rsn
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```

Translations of Codes Used in this Section:

Service Occupation Codes

DoD Occupation Codes

041 Enlisted Artillery and Gunnery

Military Pay Type Code

01 Combat Zone Tax Exclusion (CZTE)
 02 Hostile Fire/Imminent Danger
 03 Hazardous Duty incentive

Separation Pay Type Code

01 Separation Pay
 02 Readjustment Pay
 03 Non-Disability Severance Pay
 04 Disability Severance Pay
 05 Discharge Gratuity
 06 Death Gratuity
 07 Special Separation Benefit
 08 Voluntary Separation Incentive Pay
 09 Voluntary Separation Pay (VSP)
 10 Contract Cancellation Pay and Allowances
 11 Separation Pay Recoupment
 12 Severance Pay Recoupment

Retirement Type Code

A Mandatory
 B Voluntary
 C Fleet Reserve
 D Temporary Disability Retirement List
 E Permanent Disability Retirement List
 F Title III
 G Special Act
 H Philippine Scouts
 Z Unknown

Retired Pay Status Code

1 Receiving retired pay
 2 Eligible, not receiving pay
 3 Eligible, not receiving direct SBP remittance
 4 Terminated
 5 Suspended

Retired Pay Termination Reason Code

C Pay condition terminated
 S Pay terminated for the reason reported in the Stop Payment Reason Code
 W Not terminated

Stop Payment Reason Code



[◀ Contact Us](#)

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Have specific feedback?

JetBlue is dedicated to providing award-winning service, and we want to know if your experience was less than fly.

Have specific feedback about your JetBlue experience? Please use the form below. Due to unusually high volume, responses may take up to 10 days.

Need immediate assistance? Please [contact us](#).

Have a post-travel accessibility-related concern? Please call us at 1-800-JETBLUE (538-2583) and ask to speak with a CRO. We are unable to address accessibility issues as quickly via email.

Your contact information

Full name

Anthony Eades

Email

teades2603@live.com





Topic

Accessibility-related (Pre-travel)

Comments

I'm flying MCO-DCA on Oct. 25 and need a mask exemption because of my medical conditions. I can't find any information on your website about how request an exemption, so I'm sending it here. You really should publish in a prominent spot on your website how to demand an exemption.

1500 character limit.

Confirmation code

IDHCIX

Optional. Speeds assistance with past or recently booked travel.

I'm traveling within 48 hours

[Send email](#)

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Thanks for submitting your request.

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FW: Thank you for contacting JetBlue. Case: 77354

From: Tony Eades (teades2603@live.com)

To: [REDACTED]

Date: Friday, October 15, 2021, 04:52 PM EDT

From: JetBlue <noreplycontactus@jetblue.com>
Sent: Friday, October 15, 2021 11:02 AM
To: teades2603@live.com
Subject: Thank you for contacting JetBlue. Case: 77354

Hello,

Thank you for sharing your concern. We will review your message in the order received and respond within the next 10 days. For current reservations, you can manage your booking online at <https://book.jetblue.com/B6.myb/landing.html#/landing>.

To contact JetBlue Vacations, JetBlue's Baggage team, or to request a receipt, visit www.jetblue.com/contact-us. For other general information, visit www.jetblue.com/help.

We know you have many choices and we appreciate every time you fly JetBlue.

Email sent in reply to this message will not be answered. If you have questions, please visit the [Help](http://jetblue.com) section at jetblue.com.

Hola,

Gracias por compartir su preocupación. Revisaremos su mensaje en el orden en que lo recibimos y responderemos en los próximos 10 días. Por favor, tenga en cuenta que esta bandeja de entrada sólo se monitorea para preocupaciones específicas.

Si nos está contactando por una razón diferente, por favor consulte la información de abajo para obtener ayuda. Para reservaciones vigentes, puede manejar su reservación en línea en <https://hola-book.jetblue.com/B6.myb/landing.html#/landing> o llamando al 1-800-JETBLUE.

Para comunicarse con JetBlue Vacations, el equipo de Equipaje de JetBlue, o para pedir un recibo, visite <https://hola.jetblue.com/contact-us>. Si desea obtener información general, visite <https://hola.jetblue.com/help>.

Usted es un cliente realmente valorado en JetBlue, esperamos su pronta respuesta.

Eades v. TSA

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Re: Thank you for contacting JetBlue. Case: 77354

From: [REDACTED]

To: specialservicerequest@jetblue.com

Cc: teades2603@live.com; roy.goldberg@stinson.com; robert@torricellalaw.com;
maurice@torricellalaw.com

Date: Sunday, October 24, 2021, 11:24 PM EDT

Dear Zoe:

I write on behalf of Anthony Eades. You have illegally denied Mr. Eades' mask-exemption request. Please consider the following and get back to us immediately. If you are unable to resolve the issue, please have your legal department respond.

>>> Customers with disabilities who cannot safely wear a mask because of a permanent disability as defined by the Americans with Disabilities Act (ADA), may contact us via phone or chat to apply for an exemption from this requirement. <<<

JetBlue is not allowed to require passengers seeking mask exemptions to do so in advance. "As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight." 14 CFR § 382.25.

Furthermore, JetBlue by federal law is NOT permitted to impose requirements or conditions on a person requesting an exemption from the mask requirement. "In providing air transportation, an air carrier ... may not discriminate against an otherwise qualified individual on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities. (2) the individual has a record of such an impairment. (3) the individual is regarded as having such an impairment." 49 USC § 41705(a).

>>> Exemptions will be limited on board each flight ... If approved we only allow two customer per reservation. <<<

This policy is illegal. "As a carrier, you must not limit the number of passengers with a disability who travel on a flight." 14 CFR § 382.17. "You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation..." 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

>>> and will require specific documentation submitted no less than five (5) days in advance of travel. <<

This policy also violates federal and international law. An airline may not require a medical certificate from disabled passengers who ask for a mask exemption. "Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation." 14 CFR § 382.23(a). "You may ... require a medical certificate for a passenger if he or she has a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight." 14 CFR § 382.23(c)(1) (emphasis added). This requirement does not include speculation that a person might have a communicable disease such as COVID-19; evidence is required that the passenger "has" a communicable disease.

Also, the United States has ratified the Convention on International Civil Aviation, which makes it binding treaty law upon all persons and corporations in our country. “[P]ersons with disabilities should be permitted to travel without the requirement for a medical clearance.” CICA Annex 9 § 8.39.

>>> For those customers who are permitted an exemption, they must provide printed or digital copies of submitted documentation and proof of negative PCR COVID-19 test results. <<<

JetBlue may not require disabled passengers who seek a mask exemption to submit a negative COVID-19 test for each flight when nondisabled customers aren’t subject to this same requirement. No provision of the Air Carrier Access Act or its accompanying regulations promulgated by DOT (nor any other law enacted by Congress) permits airlines to require passengers submit a negative test for any communicable disease. Mandating disabled flyers submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

>>> Additionally, they will be required to wear a face shield in place of the mask at all times, including at the airport, during the flight including boarding and deplaning.<<<

There is no provision of federal law that permits an airline to require a passenger to wear a face shield. Many mask-exempt passengers cannot tolerate having anything on their face. Shields, just like masks, are also totally worthless in reducing transmission of a respiratory virus such as COVID-19.

>>> If you meet the criteria as outline above, you may reply to this email and we will be pleased to provide you the self-service forms to inquire regarding an exemption <<<

You may not demand any forms from a passenger demanding a mask exemption. Again: “As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.” 14 CFR § 382.25.”

Zoe, you are advised that under the federal law prohibiting any person and/or corporation from conspiring to interfere with the civil rights of the disabled, you may be sued personally and be liable for potentially millions of dollars in damages to all disabled people you have denied mask exemptions to. 42 USC § 1985.

Please also be aware you may be held personally liable for neglecting to prevent interference with the civil rights of disabled passengers. 42 USC § 1986.

We have made note of your name as a possible defendant should this matter continue to require legal action in federal court.

We expect JetBlue to immediately change its mask policies to come into compliance with federal and international law. We look forward to your prompt response.

[REDACTED]

From: specialservicerequest@jetblue.com <specialservicerequest@jetblue.com>
Sent: Monday, October 18, 2021 1:35 PM
To: Teades2603@Live.Com
Subject: Thank you for contacting JetBlue. Case: 77354

Hello Anthony,

Thanks for choosing JetBlue. We confirm each customer on your reservation IDHCIX are requesting a mask exemption.

Customers with disabilities who cannot safely wear a mask because of a permanent disability as defined by the Americans with Disabilities Act (ADA), may contact us via phone or chat to apply for an exemption from this requirement. Exemptions will be limited on board each flight and will require specific documentation submitted no less than five (5) days in advance of travel. If approved we only allow two customer per reservation.

For those customers who are permitted an exemption, they must provide printed or digital copies of submitted documentation and proof of negative PCR COVID-19 test results. Additionally, they will be required to wear a face shield in place of the mask at all times, including at the airport, during the flight including boarding and deplaning.

If you meet the criteria as outline above, you may reply to this email and we will be pleased to provide you the self service forms to inquire regarding an exemption, or for immediate assistance, you may call 1-800 JETBLUE and request the form be emailed as well.

Thanks for choosing JetBlue for your travel needs.

Sincerely,

Zoe
JetBlue | Customer Support
Executive Offices

Re: Thank you for contacting JetBlue. Case: 77354

From: [REDACTED]

To: specialservicerequest@jetblue.com

Cc: teades2603@live.com; roy.goldberg@stinson.com; robert@torricellalaw.com; maurice@torricellalaw.com

Date: Monday, October 25, 2021, 04:04 AM EDT

Dear Drewann:

I write on behalf of Anthony Eades. I shall respond to your message denying his mask-exemption request point by point:

>>> Federal law requires masks to be worn by all travelers 2 years and older at all times throughout the flight including during boarding and deplaning, and in the airport. Any individual who fails to comply with this law may be subject to denied boarding, removal from the aircraft and/or penalties under federal law. <<<

1. It is a fraudulent misrepresentation to state that "federal law requires masks to be worn." Congress has never enacted any such law, nor has the Department of Transportation, Transportation Security Administration, Federal Aviation Administration, nor any other federal agency promulgated such a regulation into the Code of Federal Regulations. If you believe I am in error, please cite the statute number in the U.S. Code you refer to or the Code of Federal Regulations number.

>>> Customers with disabilities who cannot safely wear a mask because of a permanent disability as defined by the Americans with Disabilities Act (ADA), may contact us via phone or chat to apply for an exemption from this requirement. Exemptions will be limited on board each flight and will require specific documentation submitted no less than five (5) days in advance of travel. <<<

2. An airline is not allowed to require passengers seeking mask exemptions to do so in advance. "[Y]ou must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight." 14 CFR § 382.25.

3. Federal law prohibits JetBlue from limiting the number of mask-exempt passenger on a flight. "As a carrier, you must not limit the number of passengers with a disability who travel on a flight." 14 CFR § 382.17. "You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation..." 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

4. An airline may not require a medical certificate from disabled passengers who ask for a mask exemption. "Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation." 14 CFR § 382.23(a). "You may ... require a medical certificate for a passenger if he or she has a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight." 14 CFR § 382.23(c)(1). This requirement does not include speculation that a person might have a communicable disease such as COVID-19; evidence is required that the passenger "has" a communicable disease.

5. Demanding a medical certificate also violates intentional law. The United States has ratified the Convention on International Civil Aviation, which makes it binding treaty law upon all persons and corporations in our country. "[P]ersons with disabilities should be permitted to travel without the requirement for a medical clearance." CICA Annex 9 § 8.39.

6. Airlines by federal law are NOT permitted to impose certain requirements or conditions on a person requesting an exemption from the mask requirement. "In providing air transportation, an air carrier ... may not discriminate against an otherwise qualified individual on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities. (2) the individual has a record of such an impairment. (3) the individual is regarded as having such an impairment." 49 USC § 41705(a).

7. You are prohibited by federal regulations from forcing a disabled passenger to disclose his/her medical conditions. "May I ask an individual what his or her disability is? Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. Generally, you may not make inquiries about an individual's disability or the nature or severity of the disability," according to DOT. Your mask policy constitutes invasion of privacy, which is illegal.

>>> For those customers who are permitted an exemption, they must provide printed or digital copies of submitted documentation and proof of negative PCR COVID-19 test results. <<<

8. An airline may not require disabled passengers who seek a mask exemption to submit a negative COVID-19 test for each flight when nondisabled customers aren't subject to this same requirement. No provision of the Air Carrier Access Act or its accompanying regulations promulgated by DOT (nor any other law enacted by Congress) permits airlines to require passengers submit a negative test for any communicable disease. Mandating disabled flyers submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. "You must not discriminate

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against any qualified individual with a disability, by reason of such disability, in the provision of air transportation..." 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

9. Recipients of federal funds including airlines are prohibited from discriminating against the disabled. "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance..." 29 USC § 794(a).

>>> Additionally, they will be required to wear a face shield in place of the mask at all times, including at the airport, during the flight including boarding and deplaning. <<<

10. Congress has never enacted any law allowing airlines to force passengers to wear a face shield, nor has the Department of Transportation, Transportation Security Administration, Federal Aviation Administration, nor any other federal agency promulgated such a regulation into the Code of Federal Regulations. If you believe I am in error, please cite the statute number in the U.S. Code you refer to or the Code of Federal Regulations number regarding authorization for requiring a face shield.

Please also consider the following:

11. Fraudulent Misrepresentation: You provide Food & Drug Administration unauthorized or Emergency Use Authorization face masks without disclosing that: 1) the masks (if authorized at all) are only designated for emergency use; 2) that there are "significant known and potential benefits and risks of such use" (or "the extent to which such benefits and risks are unknown"); or 3) flyers have the "option to accept or refuse administration of the product." 21 USC § 360bbb-3. You also haven't told your passengers of the dozens of health risks of covering their sources of oxygen or that the scientific consensus is that masks are totally worthless in reducing COVID-19 spread. See 223 scientific studies, medical articles, and videos at <https://bit.ly/masksarebad>. Failing to disclose this information pursuant to the Food, Drug, & Cosmetic Act and your other legal obligations is a fraudulent misrepresentation.

12. Forcing Passengers to Wear Masks in Violation of the Food, Drug, & Cosmetic Act that Are Experimental Medical Devices Proven to Harm Human Health: You are violating the Food, Drug, & Cosmetic Act by not giving passengers our legal option to refuse administration of an FDA unauthorized or emergency medical device (a face mask). 21 USC § 360bbb-3(e)(1)(A)(ii)(III). You may not provide illegal and/or EUA masks to your passengers without informing them use of the device is optional and they must give informed consent. This constitutes reckless endangerment.

13. Requiring Passengers Not Known to Have a Communicable Disease to Wear a Face Covering: Federal law bans airlines from requiring passengers who do not have a communicable disease to don a face mask. The ACAA, 49 USC § 41705, and its accompanying regulations, 14 CFR Part 382, spell out specific procedures for dealing with airline passengers who are known to have a communicable disease. Your mask policy violates these regulations by assuming that every passenger has a communicable disease such as COVID-19. Airlines are prohibited from requiring that a passenger wear a face covering or refuse him/her transportation unless they determine that the passenger "has" a communicable disease and poses a "direct threat" to other passengers and the flight crew. 14 CFR Part 382. Your rules illegally assume every single traveler is infected with COVID-19. This violates the regulation that "In determining whether an individual poses a direct threat, you must make an individualized assessment." 14 CFR § 382.19(c)(1). Your mask policy doesn't provide for making an "individualized assessment" of whether someone is known to have COVID-19 or another communicable disease. According to DOT, "If a person who seeks passage has an infection or disease that would be transmittable during the normal course of a flight, and that has been deemed so by a federal public health authority knowledgeable about the disease or infection, then the carrier may: ... Impose on the person a condition or requirement not imposed on other passengers (e.g., wearing a mask)." This is the only scenario airlines are permitted to force any passenger to don a face covering.

14. Breach of Contract: Mr. Eades did not agree to wear a face mask when he bought his ticket. Any mask provisions in your Contract of Carriage are invalid as they violate federal law and international treaties.

15. Practicing Medicine without a License: JetBlue is prescribing all passengers to wear FDA unauthorized or EUA medical devices, but you do not have a license to practice medicine. Practicing medicine without a license is illegal in every state.

16. Deceptive & Misleading Trade Practices: You are deceiving your customers regarding mask rules, efficacy, and harms, and attempt to mislead us into believing face coverings are good for our health when the reality is they cause dozens of harm and create havoc in the sky due to oxygen deprivation. "Intent is not an element of either unfairness or deception," according to DOT. 85 Fed. Reg. 78,707 (Dec. 7, 2020). However, it's clear you have an intent to deceive passengers that face masks are effective in reducing COVID-19 spread, are authorized by FDA, etc. You clearly mislead customers that masks may be forced on passengers without their consent in violation of the Food, Drug, & Cosmetic Act. DOT defines an unfair trade practice by airlines as "demonstrating that the harm to consumers is (1) substantial; (2) not reasonably avoidable; and (3) not outweighed by offsetting benefits to consumers or competition." DOT defines a practice as "deceptive" by showing that: "(1) The practice actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the circumstances; (3) with respect to a material matter." These requirements are codified at 14 CFR § 399.79. Airlines have a statutory duty not to deceive and mislead their customers. 49 USC § 41712.

17. Nuisance: You deprive passengers who can't or don't want to wear masks of our statutory right to use the public airspace. 49 USC § 40103(a)(2). A public nuisance is when a person or corporation unreasonably interferes with a right that the

general public shares in common.

18. Infringement on the Constitutional Right to Travel: You deprive disabled Americans and those who refuse to wear masks for health reasons of the ability to fly. In many cases, such as traveling from noncontinental states and territories to other states and territories, as well as going overseas, commercial airplanes are the only means of transportation. The Constitution protects against Americans' infringement on our freedom of movement by government actors and common carriers.

19. Violation of International Covenant on Civil & Political Rights: You require passengers to wear masks without giving our free consent, deprive us of our freedom to travel for not wanting to obstruct our breathing, curtail the liberty of movement, prevent us from entering or exiting our country of citizenship, and unlawfully interfere with our privacy. The United States has ratified the International Covenant on Civil & Political Rights, which makes it binding treaty law upon all persons and corporations in our country. "[N]o one shall be subjected without his free consent to medical or scientific experimentation." ICCPR Art. 7. "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." ICCPR Art. 9. "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement ... 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law... 4. No one shall be arbitrarily deprived of the right to enter his own country." ICCPR Art. 12. "1. No one shall be subjected to arbitrary or unlawful interference with his privacy ... 2. Everyone has the right to the protection of the law against such interference or attacks." ICCPR Art. 1

If you are unable to approve Mr. Eades' exemption, please forward this message to your legal department and have one of your lawyers contact him ASAP. Thanks your help addressing JetBlue's illegal conduct.

Finally Drewann, you are advised that under the federal law prohibiting any person and/or corporation from conspiring to interfere with the civil rights of the disabled, you may be sued personally and be liable for potentially millions of dollars in damages to all disabled people you have denied mask exemptions to. 42 USC § 1985.

Please also be aware you may be held personally liable for neglecting to prevent interference with the civil rights of disabled passengers. 42 USC § 1986.

We have made note of your name as a possible defendant should this matter continue to require legal action in federal court.

Yours truly,

██████████

From: noreplycontactus@jetblue.com <noreplycontactus@jetblue.com>
Sent: Sunday, October 17, 2021 9:07 PM
To: Teades2603@Live.Com
Subject: Thank you for contacting JetBlue. Case: 77354

Hello Anthony,

Thank you for contacting JetBlue. We hope this letter finds you well.

Federal law requires masks to be worn by all travelers 2 years and older at all times throughout the flight including during boarding and deplaning, and in the airport. Any individual who fails to comply with this law may be subject to denied boarding, removal from the aircraft and/or penalties under federal law. If conditions on board a flight necessitate, masks should be removed to accommodate the placement and wearing of oxygen masks. Visit <https://www.jetblue.com/travel-alerts> and www.jetblue.com/safety for more details.

Customers with disabilities who cannot safely wear a mask because of a permanent disability as defined by the Americans with Disabilities Act (ADA), may contact us via phone or chat to apply for an exemption from this requirement. Exemptions will be limited on board each flight and will require specific documentation submitted no less than five (5) days in advance of travel.

For those customers who are permitted an exemption, they must provide printed or digital copies of submitted documentation and proof of negative PCR COVID-19 test results. Additionally, they will be required to wear a face shield in place of the mask at all times, including at the airport, during the flight including boarding and deplaning.

If you meet the criteria as outline above, you may reply to this email and we will be pleased to provide you the self service forms to inquire regarding an exemption, or for immediate assistance, you may call 1-800 JETBLUE and request the form be emailed as well.

Thanks for reaching out to JetBlue!

Sincerely,

Drewann
JetBlue | Customer Support

FW: Your itinerary has been cancelled.

Yahoo/Inbox



Tony Eades <teades2603@live.com>

To: [Redacted]



Fri, Oct 22 at 3:09 PM

From: JetBlue Reservations <jetblueairways@email.jetblue.com>
Sent: Friday, October 22, 2021 8:20 AM
To: teades2603@live.com
Subject: Your itinerary has been cancelled.

Thanks again for choosing JetBlue.



**Plans change.
Our gratitude doesn't.**

Thanks again for booking with JetBlue. We look forward to welcoming you on board when you're ready.

Please note: This is not your boarding pass.

IDHCIX

Your confirmation code is

Flights

MCO ▶ DCA



Orlando, FL
Terminal: A

Washington, DC

Date Mon, Oct 25

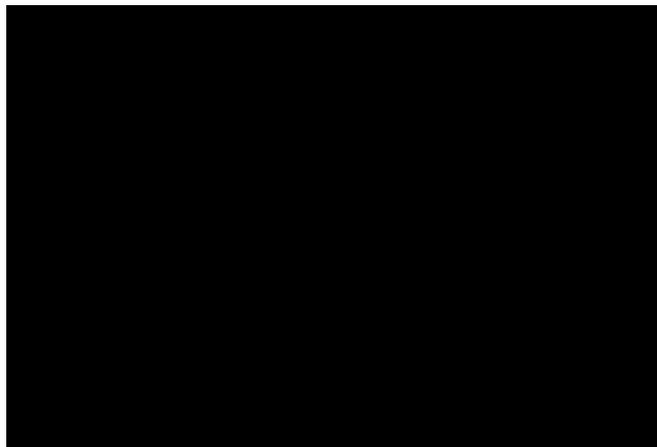
Departs 12:57pm

Arrives 3:06pm

Flight 2224

jetBlue

Traveler Details





TONY EADES

Frequent Flier: N/A

MCO - DCA:

Bags: Please check the manage trip section on jetblue.com for bag info.

Seat: N/A

[◀ Contact Us](#)

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Have specific feedback?

JetBlue is dedicated to providing award-winning service, and we want to know if your experience was less than fly.

Have specific feedback about your JetBlue experience? Please use the form below. Due to unusually high volume, responses may take up to 10 days.

Need immediate assistance? Please [contact us](#).

Have a post-travel accessibility-related concern? Please call us at 1-800-JETBLUE (538-2583) and ask to speak with a CRO. We are unable to address accessibility issues as quickly via email.

Your contact information

Full name

Tony Eades

Email

teades2603@live.com



Topic
Something else

Comments
I received an e-mail that I canceled my flight, but I did not cancel it. Reinstate the ticket please. You can't cancel my ticket because I requested a mask exemption.

1500 character limit.

Confirmation code
IDHCIX

Optional. Speeds assistance with past or recently booked travel.

I'm traveling within 48 hours

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FW: Thank you for contacting JetBlue. Case: 80353

From: Tony Eades (teades2603@live.com)

To: [REDACTED]

Date: Saturday, October 23, 2021, 01:28 AM EDT

From: JetBlue <noreplycontactus@jetblue.com>
Sent: Friday, October 22, 2021 9:23 PM
To: teades2603@live.com
Subject: Thank you for contacting JetBlue. Case: 80353

Hello,

Thank you for sharing your concern. We will review your message in the order received and respond within the next 10 days. For current reservations, you can manage your booking online at <https://book.jetblue.com/B6.myb/landing.html#/landing>.

To contact JetBlue Vacations, JetBlue's Baggage team, or to request a receipt, visit www.jetblue.com/contact-us. For other general information, visit www.jetblue.com/help.

We know you have many choices and we appreciate every time you fly JetBlue.

Email sent in reply to this message will not be answered. If you have questions, please visit the [Help](http://jetblue.com) section at jetblue.com.

Hola,

Gracias por compartir su preocupación. Revisaremos su mensaje en el orden en que lo recibimos y responderemos en los próximos 10 días. Por favor, tenga en cuenta que esta bandeja de entrada sólo se monitorea para preocupaciones específicas.

Si nos está contactando por una razón diferente, por favor consulte la información de abajo para obtener ayuda. Para reservaciones vigentes, puede manejar su reservación en línea en <https://hola-book.jetblue.com/B6.myb/landing.html#/landing> o llamando al 1-800-JETBLUE.

Para comunicarse con JetBlue Vacations, el equipo de Equipaje de JetBlue, o para pedir un recibo, visite <https://hola.jetblue.com/contact-us>. Si desea obtener información general, visite <https://hola.jetblue.com/help>.

Usted es un cliente realmente valorado en JetBlue, esperamos su pronta respuesta.

Eades v. TSA

Appendix 118

Involuntarily Cancellation of IDHCIX Tony Eades

From: [REDACTED]

To: specialservicerequest@jetblue.com

Cc: teades2603@live.com; roy.goldberg@stinson.com; robert@torricellalaw.com; maurice@torricellalaw.com

Date: Monday, October 25, 2021, 01:28 AM EDT

Dear JetBlue:

I write on behalf of Tony Eades in response to your Oct. 22 e-mail informing him that his ticket was involuntarily canceled. It appears you have placed Mr. Eades on JetBlue's no-fly list because he sued you for illegal discrimination in federal court and then requested a mask exemption. However, you provided no explanation for this decision and haven't responded to Mr. Eades' complaint filed Oct. 22. Documentation of his complaint is attached.

1. Your action constitutes illegal retaliation under the Air Carrier Access Act for Mr. Eades suing JetBlue and demanding a mask exemption. "You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act." 14 CFR § 382.11(a)(4).
2. You are advised that under the federal law prohibiting any corporation and/or its employees from conspiring to interfere with the civil rights of the disabled, JetBlue as a company and any staff members in your corporate security department who participated in this decision to cancel Mr. Eades' ticket without his consent because he is a plaintiff in a lawsuit against JetBlue and asked for a mask exception may be found liable for potentially millions of dollars in damages to Mr. Eades and all other disabled people you have denied mask exemptions to and/or illegally retaliated against for exercising rights under the Air Carrier Access Act. 42 USC § 1985.
3. Please also be aware that any employees participating in the decision to cancel Mr. Eades' ticket may be held personally liable for neglecting to prevent interference with the civil rights of disabled passengers. 42 USC § 1986.

Please respond whether you have placed Mr. Eades on your no-fly list and provide an explanation for this decision.

We expect JetBlue to immediately change its mask policies to come into compliance with federal and international law. We also expect JetBlue will immediately remove Mr. Eades from its no-fly list for asserting his rights under the Air Carrier Access Act in court. Failure to take prompt action will result in us filing a motion with the U.S. District Court in Orlando for JetBlue to be sanctioned and/or held in contempt of court for retaliating against Mr. Eades for suing and asking for a mask exemption.

We look forward to your prompt response.

Yours truly,

[REDACTED]



Tony Cx Complaint.pdf
340.5kB

Passenger Application for Exemption to Federal Mask Requirement on Southwest Airlines

Please complete the information below and submit to Southwest Airlines for review of a mask exception application. You are submitting the information below and as outlined in this Application for Exemption in order for Southwest to evaluate and process your request for an exemption from the federal mask mandate while flying with Southwest Airlines. Southwest Airlines may share this information with a third-party medical provider, the CDC and other government authorities, and our agents, vendors, and service providers for purposes of managing and fulfilling your travel reservations and assisting Southwest Airlines with the evaluation and processing of your application for an exemption.

Please check the box below that applies:

- XX • I am completing this form for myself.
- I am completing this form for the minor named herein. I am either the parent or guardian of the minor child and have the authority to and, by completing this form, hereby attest to the information provided below.

Passenger First Name: Tony

Passenger Middle Initial: _____

Passenger Last Name: Eades

Contact Email address: teades2603@live.com

Contact Phone number: _____

Reason for Mask Exception Request:

I am unable to wear a mask due to my medical conditions.

Is flight already booked? Yes XX No _____

If flight is already booked, please include the following information:

Date(s) of Travel: 10-18-21

City Pair: MCO-DCA

Confirmation Number (if flight already booked): 4DPPAQ

Does Passenger possess a WN Employee ID? No

If Passenger possesses a WN Employee ID, please include the following information:

WN Employee ID of Traveling Passenger: N/A

By submitting this request and signing below, I [name of passenger or authorized representative] [on behalf of _____] have read and understand the disclosures and requirements included above pertaining to my application to receive an exemption from the federal requirement to wear a mask while flying on Southwest Airlines, including, without limitation, Southwest’s collection, use, and sharing of information.

/s/ Tony Eades

Passenger Signature or Signature of Passenger Parent or Guardian

Tony Eades

Printed Name of Passenger or Parent or Guardian

Date: 10-16-21



FLIGHT | HOTEL | CAR | VACATIONS SPECIAL OF

Customers with Disabilities

Notice of Disability

Assistance in the Airport

Security Screening

Wheelchairs & Other Devices

Allergies

Cognitive Disabilities

Deaf or Hard of Hearing

Blind Or Low Vision

Medication

Trained Service Animals

Medical Oxygen

Portable Oxygen Concentrators

Non-Passenger Escort

Mask Exemptions

Your Rights

Exemption to Federal Mask Requirement on Southwest Airlines

* 1

Federal law requires each person, 2 years of age and older, to wear a mask at all times throughout the flight, including during boarding and deplaning. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.

Southwest Airlines will consider applications for exemptions from this mask requirement from Passengers with a disability who cannot wear a mask, or who cannot safely wear a mask because of the disability.

* 2

Per guidance from the U.S. Department of Transportation, airlines are permitted to impose certain requirements or conditions on a person requesting an exemption from the mask requirement.

Please comply with the following pre-travel steps:

* 3

At least seven (7) days prior to the Passenger's planned date of travel, a Passenger requesting a mask exemption for travel on Southwest Airlines must complete and submit the following via [Southwest.com>Contact Us>Send a Message.>Email Us: Comment/Question>Disability>Future Travel Assistance:](#)

1. A fully completed copy of [this form](#) executed by the Passenger making the request, or if the Passenger requesting a mask exemption is a minor child, the parent or guardian of such minor child; and

* 4

2. A signed letter from the requesting Passenger's Medical Physician on the Physician's letterhead stating that the Passenger with a disability has a recognized medical condition precluding the wearing or safe wearing of a mask because of their disability.

* 5

Once Southwest Airlines receives a mask exemption application in line with the above criteria, at Southwest's request to Passenger, Passenger may undergo a private medical screening (over the phone) with a third-party medical provider (Southwest Airlines' vendor StatMD).

* 6 * 7

If Southwest preliminarily approves a mask exemption after reviewing the Passenger's PDF document and the Medical Physician's letter and after receiving the third party medical provider's affirmation for travel, if required, Southwest will contact you at the phone number or email address provided below to discuss any need to change your travel dates and/or flights and remind you of the need to obtain a qualifying COVID negative viral test.

No later than 24 hours prior to the Passenger's scheduled departure(s), Passenger must provide evidence of Passenger's qualifying COVID negative viral test result. A qualifying COVID negative viral test result is defined as:

A physical or electronic documentation of a qualifying COVID negative viral test taken within three (3) calendar days preceding the Passenger's scheduled date of travel. A viral test means a viral detection test for current infection, which is a nucleic acid amplification test with observation approved or authorized by the relevant national authority for the detection of SARS-CoV-2.

Note: Roundtrip travel will require an additional qualifying COVID negative viral test result taken within three (3) calendar days preceding the Passenger's scheduled date of return travel and submitted no later than 24 hours prior to the Passenger's scheduled departure, unless the Passenger's return flight is within three (3) calendar days of the date of the initial negative COVID-19 departure test.

*** = These 7 items are illegal and/or fraudulent misrepresentation of the law -- see attachment

Tony Eades**Mask Exemption Request to Southwest Airlines****Notes on Southwest's Numerous Illegal Policies****MCO-DCA Oct. 18, 2021**

1. It is a fraudulent misrepresentation to state that "federal law" requires airline passengers wear masks. Congress has never enacted any such law, nor has the Department of Transportation, Transportation Security Administration, Federal Aviation Administration, nor any other federal agency promulgated such a regulation into the Code of Federal Regulations. If you believe I am in error, please cite the statute number in the U.S. Code you refer to or the Code of Federal Regulations number.

You also haven't told your passengers of the dozens of health risks of covering our sources of oxygen or that the scientific consensus is that masks are totally worthless in reducing COVID-19 spread. See 223 scientific studies, medical articles, and videos at <https://bit.ly/masksarebad>. Failing to disclose this information pursuant to the Food, Drug, & Cosmetic Act and your other legal obligations is a fraudulent misrepresentation.

2. Airlines by federal law are NOT permitted to impose certain requirements or conditions on a person requesting an exemption from the mask requirement. "In providing air transportation, an air carrier ... may not discriminate against an otherwise qualified individual on the following grounds: (1) the individual has a physical or mental impairment that substantially limits one or more major life activities. (2) the individual has a record of such an impairment. (3) the individual is regarded as having such an impairment." 49 USC § 41705(a).
3. An airline is not allowed to require passengers seeking mask exemptions to do so in advance. "May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight? As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight." 14 CFR § 382.25.
4. An airline may not require a medical certificate from disabled passengers who ask for a mask exemption. "Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation." 14 CFR § 382.23(a). "You may ... require a medical certificate for a passenger if he or she **has** a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight." 14 CFR § 382.23(c)(1) (emphasis added). This requirement does not include speculation that a person might have a communicable disease such as COVID-19; evidence is required that the passenger **has** a communicable disease, i.e. has tested positive for the coronavirus.

Demanding a medical certificate also violates intentional law. The United States has ratified the Convention on International Civil Aviation, which makes it binding treaty law upon all persons and corporations in our country. "[P]ersons with disabilities should be permitted to travel without the requirement for a medical clearance." CICA Annex 9 § 8.39.

5. An airline may not require disabled passengers needing a mask exemption to undergo a medical screening with your third-party vendor. Since airlines may not require a medical certificate for a passenger unless he/she has a communicable disease, you may also not require a third-party medical consultation. "As a carrier, you may require that a passenger with a medical certificate undergo additional medical review by you if there is a legitimate medical reason for believing that there has been

a significant adverse change in the passenger's condition since the issuance of the medical certificate ...” 14 CFR § 382.23(d).

6. An airline may not change a disabled passenger's travel dates and/or flights. Federal law prohibits banning mask-exempt passengers from flying if a plane is more than a certain percentage full. Your policy that you may change the travel dates of a passenger with a disability if a flight is more than 75% booked is illegal discrimination as this policy does not apply to any nondisabled travelers. “As a carrier, you must not limit the number of passengers with a disability who travel on a flight.” 14 CFR § 382.17. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

You also may not change the seat assignment of a mask-exempt passenger without his/her consent. You may not instruct gate agents and/or flight attendants to move a mask-exempt passenger to the back of the aircraft. “As a carrier, you must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA or applicable foreign government safety requirements.” 14 CFR § 382.87(a).

7. An airline may not require disabled passengers who seek a mask exemption to submit a negative COVID-19 test for each flight when nondisabled customers aren't subject to this same requirement. No provision of the Air Carrier Access Act or its accompanying regulations promulgated by DOT (nor any other law enacted by Congress) permits airlines to require passengers submit a negative test for any communicable disease. Mandating disabled flyers submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

8. An airline may not refuse transportation solely on the basis of a passenger's disability. “As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.” 14 CFR § 382.19(a).

9. Recipients of federal funds including airlines are prohibited from discriminating against the disabled. “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” 29 USC § 794(a).

10. Requiring Passengers Not Known to Have a Communicable Disease to Wear a Face Covering: Federal law bans airlines from requiring passengers who do not have a communicable disease to don a face mask. The ACAA, 49 USC § 41705, and its accompanying regulations, 14 CFR Part 382, spell out specific procedures for dealing with airline passengers who are known to have a communicable disease. Your mask policy violates these regulations by assuming that every passenger has a communicable disease such as COVID-19.

Airlines are prohibited from requiring that a passenger wear a face covering or refuse him/her transportation unless they determine that the passenger “has” a communicable disease and poses a “direct threat” to other passengers and the flight crew. 14 CFR § 382.23(c)(1). Your rules illegally assume every single traveler is infected with COVID-19. This violates the regulation that “In determining whether an individual poses a direct threat, you must make an individualized assessment.” 14 CFR § 382.19(c)(1). Your mask policy doesn't provide for making an “individualized assessment” of whether

someone is known to have COVID-19 or another communicable disease. According to DOT, "If a person who seeks passage has an infection or disease that would be transmittable during the normal course of a flight, and that has been deemed so by a federal public health authority knowledgeable about the disease or infection, then the carrier may: ... Impose on the person a condition or requirement not imposed on other passengers (e.g., wearing a mask)." This is the only scenario airlines are permitted to force any passenger to don a face covering.

11. "You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act." 14 CFR § 382.11(a)(4).
12. You are prohibited by federal regulations from forcing a disabled passenger to disclose his/her medical conditions. "May I ask an individual what his or her disability is? Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. Generally, you may not make inquiries about an individual's disability or the nature or severity of the disability," according to DOT. Your mask policy constitutes invasion of privacy, which is illegal.
13. Refusing Transportation to Disabled Passengers Who Are Healthy & Don't Pose a Direct Threat to Anyone: Airlines may not refuse to transport a disabled person who can't wear a face mask when there's no evidence that person is positive for COVID-19 or any other communicable disease." [Y]ou must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal." 14 CFR § 382.19(c)(2).
14. Breach of Contract: I did not agree to wear a face mask when I bought my ticket. Any mask provisions in your Contract of Carriage are invalid as they violate federal law and international treaties.
15. Forcing Passengers to Wear Masks in Violation of the Food, Drug, & Cosmetic Act that Are Experimental Medical Devices Proven to Harm Human Health: You are violating the FDCA by not giving passengers our legal option to refuse administration of an Food & Drug Administration unauthorized or Emergency Use Authorization medical device (a face mask). 21 USC § 360bbb-3(e)(1)(A)(ii)(III).
You provide FDA unauthorized or Emergency Use Authorization face masks without disclosing that: 1) the masks (if authorized at all) are only designated for emergency use; 2) that there are "significant known and potential benefits and risks of such use" (or "the extent to which such benefits and risks are unknown"); or 3) flyers have the "option to accept or refuse administration of the product." 21 USC § 360bbb-3. This constitutes reckless endangerment.
16. Practicing Medicine without a License: You are prescribing all passengers to wear FDA unauthorized or EUA medical devices, but you do not have a license to practice medicine. Practicing medicine without a license is illegal in every state.
17. Deceptive & Misleading Trade Practices: You are deceiving your customers regarding mask rules, efficacy, and harms, and attempt to mislead us into believing face coverings are good for our health when the reality is they cause dozens of harm and create havoc in the sky due to oxygen deprivation. "Intent is not an element of either unfairness or deception," according to DOT. 85 Fed. Reg. 78,707 (Dec. 7, 2020). However, it's clear you have an intent to deceive passengers that face masks are effective in reducing COVID-19 spread, are authorized by FDA, etc. You clearly mislead customers that masks may be forced on passengers without their consent in violation of the Food, Drug, & Cosmetic Act.

DOT defines an unfair trade practice by airlines as “demonstrating that the harm to consumers is (1) substantial; (2) not reasonably avoidable; and (3) not outweighed by offsetting benefits to consumers or competition.” DOT defines a practice as “deceptive” by showing that: “(1) The practice actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the circumstances; (3) with respect to a material matter.” 14 CFR § 399.79. Airlines have a statutory duty not to deceive and mislead their customers. 49 USC § 41712.

18. Nuisance: You deprive passengers who can't or won't wear masks of our statutory right to use the public airspace. “A citizen of the United States has a public right of transit through the navigable air-space. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.” 49 USC § 40103(a)(2). A public nuisance is when a person or corporation unreasonably interferes with a right that the general public shares in common.
19. Infringement on the Constitutional Right to Travel: You deprive disabled Americans and those who refuse to wear masks for health reasons of the ability to fly. In many cases, such as traveling from noncontinental states and territories to other states and territories, as well as going overseas, commercial airplanes are the only means of transportation. The Constitution protects against Americans' infringement on our freedom of movement by government actors and common carriers.
20. Violation of International Covenant on Civil & Political Rights: You require passengers to wear masks without giving our free consent, deprive us of our freedom to travel for not wanting to obstruct our breathing, curtail the liberty of movement, prevent us from entering or exiting our country of citizenship, and unlawfully interfere with our privacy. The United States has ratified the International Covenant on Civil & Political Rights, which makes it binding treaty law upon all persons and corporations in our country.

“[N]o one shall be subjected without his free consent to medical or scientific experimentation.” ICCPR Art. 7. “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” ICCPR Art. 9. “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement ... 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law... 4. No one shall be arbitrarily deprived of the right to enter his own country.” ICCPR Art. 12. “1. No one shall be subjected to arbitrary or unlawful interference with his privacy ... 2. Everyone has the right to the protection of the law against such interference or attacks.” ICCPR Art. 17.



(https://www.southwest.com/?clk=GNAVHOMEOLOGO)

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Contact Us (https://www.southwest.com/contact-us/contact-us.html?src=c360) > Email Us

Comment/Question

Disability - Future Travel Assistance

Do you have a disability-related question about your upcoming travel plans? Please share the details below, and we'll get back with you as soon as possible.

If this is regarding a past travel experience, please select one of the other applicable "Disability" sub categories so that your question or comment is directed to the appropriate personnel.

* (REQUIRED) ADD A DESCRIPTION

I require a mask exemption

24/4 character(s) remaining.

I do not need a response

Southwest Mask Request Tony.pdf x

ADD ATTACHMENT (OPTIONAL)

Upload Files

Maximum file size of the each attachment is 100MB

For your security, please do not enter personal information such as a credit card number or your date of birth unless date of birth is specifically requested on the form. You will receive an email acknowledging Southwest's receipt of the information you submitted and a case number for your reference. We accept common file types like jpg, jpeg, png, gif, doc, docx, xls, pdf, xlsx, and txt (max. per file: 100 MB / max. total: 500 MB and 5 files).

Flight Information

(JavaScript:Void(0);)

* (REQUIRED) FLIGHT / EVENT DATE

Oct 18, 2021

* (REQUIRED) AIRPORT

MCO

Orlando, FL - MCO

* (REQUIRED) FLIGHT NUMBER

1910

* (REQUIRED) CONFIRMATION NUMBER

4DPPAQ

* (REQUIRED) ORIGIN CITY

MCO

Orlando, FL - MCO

* (REQUIRED) DESTINATION CITY

DCA

Washington (Reagan National), DC - DCA

Contact Information

* (REQUIRED) FIRST NAME

Tony

* (REQUIRED) LAST NAME

Eades

* (REQUIRED) EMAIL

teades2603@live.com

PHONE NUMBER

RAPID REWARDS ACCOUNT NUMBER

> [Your Address \(Optional\)](#)

(JavaScript:Void(0);)

Go Back

Submit

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FW: Southwest Airlines Response to your Inquiry (Case #32943512)

From: Tony Eades (teades2603@live.com)

To: [REDACTED]

Date: Saturday, October 16, 2021, 05:30 PM EDT

From: Southwest Airlines <no-reply@southwest-communications.com>
Sent: Saturday, October 16, 2021 5:42 AM
To: teades2603@live.com
Subject: Southwest Airlines Response to your Inquiry (Case #32943512)



Dear Tony,

Thank you for taking the time to contact Southwest Airlines. The case number for your webform submission is 32943512. You indicated that your reason for contacting us is regarding a disability-related service. Depending on the nature of your correspondence and regulatory requirements, it may take up to 30 days before you receive a response. We are dedicated to providing you with a thorough and personal response. We apologize for any inconvenience this may cause and appreciate your patience.

This is an automated note, so please do not reply to this email. If your correspondence is regarding travel scheduled within the next seven days, please call us at 1-800-435-9792, or check out our [Frequently Asked Questions](#) on Southwest.com.



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• Tony Eades's 10/18 Wash. D.C. (Reagan) trip (4DPPAQ): This reservation has been canceled.

Yahoo/Inbox

Southwest Airlines <southwestairlines@ifly.southwest.com>
To: [REDACTED]

Sat, Oct 16 at 2:00 PM

Keep this confirmation number to apply funds toward a future reservation.
[View our mobile site](#) | [View in browser](#)



[Manage Flight](#) | [Flight Status](#) | [My Account](#)



You have canceled your reservation.

Depending on the fare type and the form of payment you used to purchase your ticket, you'll either receive reusable travel funds or a refund. We appreciate you, and we look forward to welcoming you back onboard soon.

OCTOBER 18
MCO ✈️ **DCA**
 Orlando to Wash. D.C. (Reagan)

Confirmation # **4DPPAQ** Confirmation date: 10/12/2021
PASSENGER Tony Eades
 RAPID REWARDS # [Join](#) or [Log In](#)
 TICKET # 5261441528419
 EXPIRATION¹ October 12, 2022

Your itinerary

Flight: Monday, 10/18/2021 Est. Travel Time: 2h 15m [Business Select®](#)

FLIGHT # 1910 **DEPARTS MCO 07:40PM** ✈️ **ARRIVES DCA 09:55PM**
 Orlando Wash. D.C. (Reagan)

Payment information

Total cost

Air - 4DPPAQ	
Base Fare	\$ 157.75
U.S. Transportation Tax	\$ 11.83
U.S. 9/11 Security Fee	\$ 5.60
U.S. Flight Segment Tax	\$ 4.30
U.S. Passenger Facility Chg	\$ 4.50
Total	\$ 183.98

Payment

Visa ending in 8403
 Date: October 12, 2021
Payment Amount: \$183.98
Refund to: Visa ending in 8403
 Date: October 16, 2021
Refund Amount: \$183.98

Fare Rules: If you decide to make a change to your current itinerary it may result in a fare increase. In the case you're left with travel funds from this confirmation number, you're in luck! We're happy to let you use them towards a future flight for the individual named on the ticket, as long as the new travel is completed by the expiration date.

Your ticket number: 5261441528419

5261441528419: NONTRANSFERABLE -BG WN ORL WN WAS157.75USD157.75END ZP MCO4.30 XF MCO4.5

BLN3R8A

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Mobile app



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¹ All travel involving funds from this Confirmation Number must be completed by the expiration date.

Passenger Application for Exemption to Federal Mask Requirement on Southwest Airlines

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Please check the box below that applies:

- XX • I am completing this form for myself.
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Passenger First Name: Tony

Passenger Middle Initial: _____

Passenger Last Name: Eades

Contact Email address: teades2603@live.com

Contact Phone number: _____

Reason for Mask Exception Request:

I am unable to wear a mask due to my medical conditions.

Is flight already booked? Yes XX No _____

If flight is already booked, please include the following information:

Date(s) of Travel: 10-24-21

City Pair: MCI-MCO

Confirmation Number (if flight already booked): 4AQMTC

Does Passenger possess a WN Employee ID? No

If Passenger possesses a WN Employee ID, please include the following information:

WN Employee ID of Traveling Passenger: N/A

By submitting this request and signing below, I [name of passenger or authorized representative] [on behalf of _____] have read and understand the disclosures and requirements included above pertaining to my application to receive an exemption from the federal requirement to wear a mask while flying on Southwest Airlines, including, without limitation, Southwest’s collection, use, and sharing of information.

/s/ Tony Eades

Passenger Signature or Signature of Passenger Parent or Guardian

Tony Eades

Printed Name of Passenger or Parent or Guardian

Date: 10-16-21



FLIGHT | HOTEL | CAR | VACATIONS SPECIAL OF

Customers with Disabilities

Notice of Disability

Assistance in the Airport

Security Screening

Wheelchairs & Other Devices

Allergies

Cognitive Disabilities

Deaf or Hard of Hearing

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Non-Passenger Escort

Mask Exemptions

Your Rights

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Tony Eades

Mask Exemption Request to Southwest Airlines

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MCI-MCO Oct. 24, 2021

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You also haven't told your passengers of the dozens of health risks of covering our sources of oxygen or that the scientific consensus is that masks are totally worthless in reducing COVID-19 spread. See 223 scientific studies, medical articles, and videos at <https://bit.ly/masksarebad>. Failing to disclose this information pursuant to the Food, Drug, & Cosmetic Act and your other legal obligations is a fraudulent misrepresentation.

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5. An airline may not require disabled passengers needing a mask exemption to undergo a medical screening with your third-party vendor. Since airlines may not require a medical certificate for a passenger unless he/she has a communicable disease, you may also not require a third-party medical consultation. "As a carrier, you may require that a passenger with a medical certificate undergo additional medical review by you if there is a legitimate medical reason for believing that there has been

a significant adverse change in the passenger's condition since the issuance of the medical certificate ...” 14 CFR § 382.23(d).

6. An airline may not change a disabled passenger's travel dates and/or flights. Federal law prohibits banning mask-exempt passengers from flying if a plane is more than a certain percentage full. Your policy that you may change the travel dates of a passenger with a disability if a flight is more than 75% booked is illegal discrimination as this policy does not apply to any nondisabled travelers. “As a carrier, you must not limit the number of passengers with a disability who travel on a flight.” 14 CFR § 382.17. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

You also may not change the seat assignment of a mask-exempt passenger without his/her consent. You may not instruct gate agents and/or flight attendants to move a mask-exempt passenger to the back of the aircraft. “As a carrier, you must not exclude any passenger with a disability from any seat or require that a passenger with a disability sit in any particular seat, on the basis of disability, except to comply with FAA or applicable foreign government safety requirements.” 14 CFR § 382.87(a).

7. An airline may not require disabled passengers who seek a mask exemption to submit a negative COVID-19 test for each flight when nondisabled customers aren't subject to this same requirement. No provision of the Air Carrier Access Act or its accompanying regulations promulgated by DOT (nor any other law enacted by Congress) permits airlines to require passengers submit a negative test for any communicable disease. Mandating disabled flyers submit an expensive COVID-19 test before checking in but not requiring the same of nondisabled travelers is illegal discrimination. “You must not discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation...” 14 CFR § 382.11(a)(1). See also 49 USC § 41705.

8. An airline may not refuse transportation solely on the basis of a passenger's disability. “As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.” 14 CFR § 382.19(a).

9. Recipients of federal funds including airlines are prohibited from discriminating against the disabled. “No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” 29 USC § 794(a).

10. Requiring Passengers Not Known to Have a Communicable Disease to Wear a Face Covering: Federal law bans airlines from requiring passengers who do not have a communicable disease to don a face mask. The ACAA, 49 USC § 41705, and its accompanying regulations, 14 CFR Part 382, spell out specific procedures for dealing with airline passengers who are known to have a communicable disease. Your mask policy violates these regulations by assuming that every passenger has a communicable disease such as COVID-19.

Airlines are prohibited from requiring that a passenger wear a face covering or refuse him/her transportation unless they determine that the passenger “has” a communicable disease and poses a “direct threat” to other passengers and the flight crew. 14 CFR § 382.23(c)(1). Your rules illegally assume every single traveler is infected with COVID-19. This violates the regulation that “In determining whether an individual poses a direct threat, you must make an individualized assessment.” 14 CFR § 382.19(c)(1). Your mask policy doesn't provide for making an “individualized assessment” of whether

someone is known to have COVID-19 or another communicable disease. According to DOT, "If a person who seeks passage has an infection or disease that would be transmittable during the normal course of a flight, and that has been deemed so by a federal public health authority knowledgeable about the disease or infection, then the carrier may: ... Impose on the person a condition or requirement not imposed on other passengers (e.g., wearing a mask)." This is the only scenario airlines are permitted to force any passenger to don a face covering.

11. "You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act." 14 CFR § 382.11(a)(4).
12. You are prohibited by federal regulations from forcing a disabled passenger to disclose his/her medical conditions. "May I ask an individual what his or her disability is? Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. Generally, you may not make inquiries about an individual's disability or the nature or severity of the disability," according to DOT. Your mask policy constitutes invasion of privacy, which is illegal.
13. Refusing Transportation to Disabled Passengers Who Are Healthy & Don't Pose a Direct Threat to Anyone: Airlines may not refuse to transport a disabled person who can't wear a face mask when there's no evidence that person is positive for COVID-19 or any other communicable disease." [Y]ou must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal." 14 CFR § 382.19(c)(2).
14. Breach of Contract: I did not agree to wear a face mask when I bought my ticket. Any mask provisions in your Contract of Carriage are invalid as they violate federal law and international treaties.
15. Forcing Passengers to Wear Masks in Violation of the Food, Drug, & Cosmetic Act that Are Experimental Medical Devices Proven to Harm Human Health: You are violating the FDCA by not giving passengers our legal option to refuse administration of an Food & Drug Administration unauthorized or Emergency Use Authorization medical device (a face mask). 21 USC § 360bbb-3(e)(1)(A)(ii)(III).
You provide FDA unauthorized or Emergency Use Authorization face masks without disclosing that: 1) the masks (if authorized at all) are only designated for emergency use; 2) that there are "significant known and potential benefits and risks of such use" (or "the extent to which such benefits and risks are unknown"); or 3) flyers have the "option to accept or refuse administration of the product." 21 USC § 360bbb-3. This constitutes reckless endangerment.
16. Practicing Medicine without a License: You are prescribing all passengers to wear FDA unauthorized or EUA medical devices, but you do not have a license to practice medicine. Practicing medicine without a license is illegal in every state.
17. Deceptive & Misleading Trade Practices: You are deceiving your customers regarding mask rules, efficacy, and harms, and attempt to mislead us into believing face coverings are good for our health when the reality is they cause dozens of harm and create havoc in the sky due to oxygen deprivation. "Intent is not an element of either unfairness or deception," according to DOT. 85 Fed. Reg. 78,707 (Dec. 7, 2020). However, it's clear you have an intent to deceive passengers that face masks are effective in reducing COVID-19 spread, are authorized by FDA, etc. You clearly mislead customers that masks may be forced on passengers without their consent in violation of the Food, Drug, & Cosmetic Act.

DOT defines an unfair trade practice by airlines as “demonstrating that the harm to consumers is (1) substantial; (2) not reasonably avoidable; and (3) not outweighed by offsetting benefits to consumers or competition.” DOT defines a practice as “deceptive” by showing that: “(1) The practice actually misleads or is likely to mislead consumers; (2) who are acting reasonably under the circumstances; (3) with respect to a material matter.” 14 CFR § 399.79. Airlines have a statutory duty not to deceive and mislead their customers. 49 USC § 41712.

18. Nuisance: You deprive passengers who can't or won't wear masks of our statutory right to use the public airspace. “A citizen of the United States has a public right of transit through the navigable air-space. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.” 49 USC § 40103(a)(2). A public nuisance is when a person or corporation unreasonably interferes with a right that the general public shares in common.
19. Infringement on the Constitutional Right to Travel: You deprive disabled Americans and those who refuse to wear masks for health reasons of the ability to fly. In many cases, such as traveling from noncontinental states and territories to other states and territories, as well as going overseas, commercial airplanes are the only means of transportation. The Constitution protects against Americans' infringement on our freedom of movement by government actors and common carriers.
20. Violation of International Covenant on Civil & Political Rights: You require passengers to wear masks without giving our free consent, deprive us of our freedom to travel for not wanting to obstruct our breathing, curtail the liberty of movement, prevent us from entering or exiting our country of citizenship, and unlawfully interfere with our privacy. The United States has ratified the International Covenant on Civil & Political Rights, which makes it binding treaty law upon all persons and corporations in our country.

“[N]o one shall be subjected without his free consent to medical or scientific experimentation.” ICCPR Art. 7. “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” ICCPR Art. 9. “1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement ... 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law... 4. No one shall be arbitrarily deprived of the right to enter his own country.” ICCPR Art. 12. “1. No one shall be subjected to arbitrary or unlawful interference with his privacy ... 2. Everyone has the right to the protection of the law against such interference or attacks.” ICCPR Art. 17.



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Comment/Question

Disability - Future Travel Assistance

Do you have a disability-related question about your upcoming travel plans? Please share the details below, and we'll get back with you as soon as possible.

If this is regarding a past travel experience, please select one of the other applicable "Disability" sub categories so that your question or comment is directed to the appropriate personnel.

* (REQUIRED) ADD A DESCRIPTION

I require a mask exemption

24/4 character(s) remaining.

I do not need a response

Southwest Mask Request Tony.pdf x

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Flight Information

(JavaScript:Void(0);)

* (REQUIRED) FLIGHT / EVENT DATE

Oct 24, 2021

* (REQUIRED) AIRPORT

MCI

Kansas City, MO - MCI

* (REQUIRED) FLIGHT NUMBER

4875

* (REQUIRED) CONFIRMATION NUMBER

4AQMTC

* (REQUIRED) ORIGIN CITY

MCI

Kansas City, MO - MCI

* (REQUIRED) DESTINATION CITY

MCO

Orlando, FL - MCO

Contact Information

* (REQUIRED) FIRST NAME

Tony

* (REQUIRED) LAST NAME

Eades

* (REQUIRED) EMAIL

teades2603@live.com

PHONE NUMBER

RAPID REWARDS ACCOUNT NUMBER

> [Your Address \(Optional\)](#)

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FW: Southwest Airlines Response to your Inquiry (Case #32943631)

From: Tony Eades (teades2603@live.com)

To: [REDACTED]

Date: Saturday, October 16, 2021, 05:31 PM EDT

From: Southwest Airlines <no-reply@southwest-communications.com>
Sent: Saturday, October 16, 2021 6:02 AM
To: teades2603@live.com
Subject: Southwest Airlines Response to your Inquiry (Case #32943631)



Dear Tony,

Thank you for taking the time to contact Southwest Airlines. The case number for your webform submission is 32943631. You indicated that your reason for contacting us is regarding a disability-related service. Depending on the nature of your correspondence and regulatory requirements, it may take up to 30 days before you receive a response. We are dedicated to providing you with a thorough and personal response. We apologize for any inconvenience this may cause and appreciate your patience.

This is an automated note, so please do not reply to this email. If your correspondence is regarding travel scheduled within the next seven days, please call us at 1-800-435-9792, or check out our [Frequently Asked Questions](#) on Southwest.com.



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Anthony Eades's 10/24 Orlando trip (4AQMTC): This reservation has been canceled. Yahoo/Inbox

 **Southwest Airlines** <southwestairlines@ifly.southwest.com> Tue, Oct 19 at 8:17 AM

To: [REDACTED]

Keep this confirmation number to apply funds toward a future reservation.
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 **You have canceled your reservation.**
Depending on the fare type and the form of payment you used to purchase your ticket, you'll either receive reusable travel funds or a refund. We appreciate you, and we look forward to welcoming you back onboard soon.

OCTOBER 24
MCI ✈️ **MCO**
Kansas City to Orlando

Confirmation # **4AQMTC** Confirmation date: 10/11/2021

PASSENGER Anthony Eades
RAPID REWARDS # [Join](#) or [Log In](#)
TICKET # 5261441504960
EXPIRATION¹ October 12, 2022

Your itinerary
Flight: Sunday, 10/24/2021 Est. Travel Time: 2h 40m [Business Select](#)

FLIGHT # 4875	DEPARTS MCI 07:20AM Kansas City	✈️	ARRIVES MCO 11:00AM Orlando
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Payment information

Total cost		Payment	
Air - 4AQMTC		Visa ending in 8403	
Base Fare	\$ 208.91	Date: October 11, 2021	
U.S. Transportation Tax	\$ 15.67	Payment Amount: \$238.98	
U.S. 9/11 Security Fee	\$ 5.60		
U.S. Flight Segment Tax	\$ 4.30	Refund to: Visa ending in 8403	
U.S. Passenger Facility Chg	\$ 4.50	Date: October 19, 2021	
Total	\$ 238.98	Refund Amount: \$238.98	

Fare Rules: If you decide to make a change to your current itinerary it may result in a fare increase. In the case you're left with travel funds from this confirmation number, you're in luck! We're happy to let you use them towards a future flight for the individual named on the ticket, as long as the new travel is completed by the expiration date.

Your ticket number: 5261441504960

5261441504960: NONTRANSFERABLE -BG WN MKC WN ORL208.91USD208.91END ZP MCI4.30 XF MCH.5

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Complaint

Disability - Policy and Procedures

We're sorry if you had a disappointing experience as a Customer with a disability while traveling with us. Please share your experience below, and our Customer Relations Department will research and respond as soon as possible.

If you are not contacting us as or on behalf of a Customer with a disability, please select ""Airport Experience"" rather than ""Disability"" so we can ensure that your concerns reach the right personnel.

* (REQUIRED) ADD A DESCRIPTION

I write regarding my reservation 4AQMTC. I received an e-mail that you canceled my booking. Please explain why you canceled my reservation without my permission.

It is illegal under the Air Carrier Access Act to retaliate against a person who submits a mask-exemption demand. "You must not take any adverse action against an individual (e.g., refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the Air Carrier Access Act." 14 CFR § 382.11(a)(4).

*Tony Eades

1930 character(s) remaining.

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[Flight Information \(Optional\)](#)

(JavaScript:Void(0);)

Contact Information

*(REQUIRED) FIRST NAME

Tony

*(REQUIRED) LAST NAME

Eades

*(REQUIRED) EMAIL

teades2603@live.com

PHONE NUMBER

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C

CHALLENGED TSA HEALTH DIRECTIVES & EMERGENCY AMENDMENT



U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

ACTION

MEMORANDUM FOR: David P. Pekoske
Administrator

THROUGH: Stacey Fitzmaurice
Senior Official Performing the
Duties of the Deputy Administrator

Thomas L. Bush /s/
Acting Executive Assistant Administrator
Operations Support

FROM: Eddie D. Mayenschein /s/
Assistant Administrator
Policy, Plans, and Engagement

SUBJECT: Security Measures – COVID-19 and Masks

Purpose

To request your signature to renew a series of directives that require masks be worn in the commercial aviation and surface transportation modes to minimize the spread of COVID-19. These directives would remain in effect through January 18, 2022, unless renewed or cancelled by TSA.

Background

On January 31, 2021, we issued Security Directive (SD) 1542-21-01 and SD 1544-21-02 to airport operators and Emergency Amendment (EA) 1546-21-01 to foreign air carriers requiring masks be worn at airports and onboard commercial aircraft. We also issued SD 1582/84-21-01 to the owners and operators of passenger railroads, intercity bus services, and public transportation requiring masks be worn on conveyances and in transportation hubs or facilities.¹ These directives became effective on February 1, 2021; renewed on May 12, 2021; and will expire on September 13, 2021.

¹ These directives were issued under the authority of sections 114, 44902, and 44903 of title 49, United States Code (U.S.C.); and sections 1542.303, 1544.305, 1546.105 of title 49, Code of Federal Regulations (CFR). SD 1542-21-01, SD 1544-21-02, and EA 1546-21-01 require persons to wear masks in and on airports and at all times throughout the flight on commercial aircraft. SD 1582/84-21-01 requires individuals to wear a mask while on public transportation, passenger railroads, and intercity bus conveyances, and in public areas of transportation hubs/facilities controlled by the regulated owner/operators (such as areas for purposes of purchasing tickets, waiting areas, and platforms for boarding and disembarking).

These emergency actions recognized the continuing threat to health, safety, and economic and national security posed by COVID-19, including new virus variants. They were created as directed in the January 21, 2021, Executive Order No. 13998, *Promoting COVID-19 Safety in Domestic and International Travel*;² the Acting Secretary of Homeland Security's Determination of National Emergency;³ and the Centers for Disease Control and Prevention (CDC) Notice and Order, *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*.⁴ Neither the Acting Secretary's Determination of National Emergency or the CDC Order includes an expiration date. They remain effective based on specific public health conditions and in consideration of the public health emergency.

The Transportation Security Oversight Board (TSOB) ratified TSA SD 1582/84-21-01 on February 28, 2021, as well as SD 1542-21-01, SD 1544-21-02, and EA 1546-21-01 on April 20, 2021. The TSOB also ratified any extension of the SDs and EA for a period no longer than the Acting Secretary's Determination of National Emergency and the CDC Order remain in effect. The goal of these directives is to increase mask wearing compliance with the Executive Order and CDC Order and reduce the spread of COVID-19.

The directives' requirements were developed through consultation with stakeholders, as required under section 3409 of the *FAA Extension, Safety, and Security Act of 2016*⁵ and section 1953 of the *TSA Modernization Act*.⁶ We continue to ensure industry awareness and understanding via ongoing, weekly conference calls and by publishing updates to the Frequently Asked Questions.

Since the original CDC Order was issued, CDC has updated public guidance based on infection and vaccination data. In its recent guidance, the CDC noted that the requirement for wearing a mask on planes, buses, trains, and other forms of public transportation and while indoors at transportation hubs remains in place. Its only exception is for travelers in outdoor areas of conveyances (such as open deck areas of a ferry or the uncovered top deck of a bus).⁷ Our directives are intended to enforce the original CDC Order and remain in place without modification.

Discussion

The threat of spreading COVID-19 and its variants, (such as the Delta variant), through the transportation system requires us to extend the expiration date of the directives and impose

² Published at 86 FR 7205 (Jan. 26, 2021).

³ Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (signed Jan. 27, 2021).

⁴ See 86 FR 8025 (Feb. 3, 2021) (The CDC Order provides that it "shall be enforced by the Transportation Security Administration under appropriate statutory and regulatory authorities" and "further enforced by other federal authorities" as well as "cooperating state and local authorities.").

⁵ Pub. L. 114-190 (130 Stat. 615, 662; Jul. 15, 2016).

⁶ Pub. L. 115-254 (132 Stat. 3186, 3596; Oct. 5, 2018).

⁷ Interim Public Health Recommendations for Fully Vaccinated People, available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>. (as updated on July 27, 2021).

mitigation measures consistent with Executive Order, the CDC Order, and the Determination of National Emergency, all of which remain in effect.

On August 13, 2021, an NSC Principals Committee advised us to extend the directives until January 18, 2022. By reissuing these directives, individuals will continue to wear a mask at airports and onboard commercial aircraft and will be notified by the applicable regulated entities of these federal requirements and the possible penalties for noncompliance.⁸

The reissuance is consistent with section 3409 of the *FAA Extension, Safety, and Security Act of 2016*. A working group consisting of representatives from Operations Support (Policy, Plans, and Engagement and Requirements and Capabilities Analysis), Security Operations (Domestic Aviation, Compliance and International Operations), and Chief Counsel concurred with reissuing the directives, without any revisions, to remain through the upcoming holiday travel period. We have been in regular consultation with the industry and government partners (including joint meetings with both the industry, unions, and government agencies) about implementing the directives and their continuation without modification.

With this extension, the directives would expire on January 18, 2022. This date is based on preliminary intergovernmental discussions. However, consistent with the TSOB’s ratification, we anticipate that the directives will remain effective until the Executive Order, the CDC Order, and the national emergency determination are revoked or rescinded. At that time, we would consider action to cancel these directives.

Recommendation

We recommend that you approve the renewal of the attached SDs and EA without any changes.

Approve *Diana P. Roberts* \ 8/20/2021 Date Disapprove _____ \ _____ Date

Modify _____ \ _____ Date Needs more discussion _____ \ _____ Date

Attachments:

1. SD 1542-21-01B
2. SD 1544-21-02B
3. SD 1582-84-21-01B
4. EA 1546-21-01B
5. Memo to the Airport Operators
6. Memo to Aircraft Operators
7. Memo to Railroad, Bus, and Public Transport Operators
8. Memo to Foreign Air Carriers
9. Congressional Notification Letters

⁸ Individuals who do not comply with the mask requirements may also be subject to criminal liability under CDC authorities or civil penalties under TSA authorities, or both.



**Transportation
Security
Administration**

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

SECURITY DIRECTIVE

NUMBER SD 1542-21-01B

SUBJECT Security Measures – Mask Requirements

EFFECTIVE DATE September 14, 2021

EXPIRATION DATE **January 18, 2022**

CANCELS AND SUPERSEDES SD 1542-21-01A

APPLICABILITY Airport operators regulated under 49 CFR 1542.103 and airlines that have exclusive area agreements under 49 CFR 1542.111

AUTHORITY 49 U.S.C. 114 and 44903; 49 CFR 1542.303

LOCATION Airports within the United States

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in and on airports, on commercial aircraft, and in various modes of surface transportation.¹ On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed² requiring the Transportation Security Administration (TSA) to issue this Security Directive (SD) to implement the Executive Order and enforce the related Order³ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. sections 114 and 44903. Consistent with these mandates and TSA's authority, TSA is issuing this SD requiring masks to be worn to mitigate

¹ 86 FR 7205 (published Jan. 26, 2021).

² Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> (accessed Feb. 22, 2021). The Acting Secretary's determination directs TSA to take actions consistent with its statutory authorities "to implement the Executive Order to promote safety in and secure the transportation system." In particular, the determination directs TSA to support "the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system."

³ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations (CFR) §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Stations, Ports, or Similar Transportation Hubs (January 29, 2021)

the spread of COVID-19 during air travel. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC. The requirements in this directive apply to all individuals, including those already vaccinated.

DEFINITIONS

For the purposes of this SD, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.⁴

ACTIONS REQUIRED

Except at locations under the control of an aircraft operator, foreign air carrier, or a federal government agency or their contractors, the airport operator must apply the following measures:

- A. The airport operator must make best efforts to provide individuals with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.⁵ This notice must also inform individuals of the following:
 1. Federal law requires wearing a mask at all times in and on the airport and failure to comply may result in removal and denial of re-entry.
 2. Refusing to wear a mask in or on the airport is a violation of federal law; individuals may be subject to penalties under federal law.
- B. The airport operator must require that individuals in or on the airport wear a mask, except as described in Sections D., E., and F.
 1. If individuals are not wearing masks, ask them to put a mask on.
 2. If individuals refuse to wear a mask in or on the airport, escort them from the airport.
- C. The airport operator must ensure direct employees, authorized representatives, tenants, and vendors wear a mask at all times in or on the airport, except as described in Sections D., E., and F.

⁴ A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this SD. CDC guidance for attributes of acceptable masks in the context of this SD is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

⁵ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; or other methods as appropriate.

D. The requirement to wear a mask does not apply under the following circumstances:

1. When necessary to temporarily remove the mask for identity verification purposes.
2. While eating, drinking, or taking oral medications for brief periods.⁶ Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
4. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.⁷

E. The following conveyances are exempted from this SD:

1. Persons in private conveyances operated solely for personal, non-commercial use.
2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

F. This SD exempts the following categories of persons from wearing masks:⁸

1. Children under the age of 2.

⁶ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. *See* <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁷ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁸ Airport operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the airport operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Airport operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Airport operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁹
 3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. If an individual refuses to comply with mask requirements, follow incident reporting procedures in accordance with the Airport Security Program and provide the following information, if available:
1. Date and airport code;
 2. Individual's full name and contact information;
 3. Name and contact information for any direct airport employees or authorized representatives involved in the incident; and
 4. The circumstances related to the refusal to comply.

PREEMPTION

The requirements in this SD do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this SD, if that provision is not incompatible with this SD.

ACKNOWLEDGMENT OF RECEIPT

The airport operator must immediately provide written confirmation of receipt of this SD to the Federal Security Director (FSD).

DISSEMINATION REQUIRED

The airport operator must immediately pass the information and measures set forth in this SD to any personnel having responsibilities in implementing the provisions of this directive. The airport operator may share this SD with anyone subject to the provisions of this directive to include but not limited to: federal, state, and local government personnel; direct airport employees or authorized representatives; vendors; tenants; exclusive area agreement holders; contractors; transport personnel; taxi drivers; law enforcement; etc.

⁹ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. The CDC issued additional guidance on disability exemptions on March 23, 2021, which is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

APPROVAL OF ALTERNATIVE MEASURES

The operator must immediately notify the FSD whenever any action required by this SD or a TSA-approved alternative measure cannot be carried out. In accordance with 49 CFR 1542.303(d), the airport operator may submit proposed alternative measures and the basis for submitting those measures in writing to the Assistant Administrator for Policy, Plans, and Engagement through the FSD.



David P. Pecoske
Administrator



**Transportation
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U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

SECURITY DIRECTIVE

NUMBER SD 1544-21-02**B**

SUBJECT Security Measures – Mask Requirements

EFFECTIVE DATE September 14, 2021

EXPIRATION DATE **January 18, 2022**

CANCELS AND SUPERSEDES SD 1544-21-02A

APPLICABILITY Aircraft operators regulated under 49 CFR 1544.101

AUTHORITY 49 U.S.C. 114, 44902, and 44903; 49 CFR 1544.305

LOCATION(S) All Locations

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in and on airports, on commercial aircraft, and in various modes of surface transportation.¹ On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed² requiring the Transportation Security Administration (TSA) to issue this Security Directive (SD) to implement the Executive Order and enforce the related Order³ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. sections 114, 44902, and 44903. Consistent with these mandates and TSA's authority, TSA is issuing this SD requiring masks to be worn to mitigate the spread of COVID-19 during air travel. The requirements in this SD must be applied to all persons onboard a commercial aircraft operated by a U.S. aircraft operator, including

¹ 86 FR 7205 (published Jan. 26, 2021).

² Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> (accessed Feb. 22, 2021). The Acting Secretary's determination directs TSA to take actions consistent with its statutory authorities "to implement the Executive Order to promote safety in and secure the transportation system." In particular, the determination directs TSA to support "the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system."

³ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations (CFR) §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Stations, Ports, or Similar Transportation Hubs (January 29, 2021)

passengers and crewmembers, including those already vaccinated. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC.

DEFINITIONS

For the purposes of this SD, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.⁴

ACTIONS REQUIRED

- A. The aircraft operator must provide passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.⁵ At a minimum, this notice must inform passengers, at or before check-in and as a pre-flight announcement, of the following:
1. Federal law requires each person to wear a mask at all times throughout the flight, including during boarding and deplaning.
 2. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.
 3. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation, masks should be removed to accommodate oxygen masks.
- B. The aircraft operator must not board any person who is not wearing a mask, except as described in Sections D., E., and F.
- C. The aircraft operator must ensure that direct employees and authorized representatives wear a mask at all times while on an aircraft or in an airport location under the control of the aircraft operator, except as described in Sections D., E., and F.
- D. The requirement to wear a mask does not apply under the following circumstances:
1. When necessary to temporarily remove the mask for identity verification purposes.

⁴ A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this SD. CDC guidance for attributes of acceptable masks in the context of this SD is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

⁵ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on boarding passes; or other methods as appropriate.

2. While eating, drinking, or taking oral medications for brief periods.⁶ Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
4. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation.
5. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance, or otherwise unable to remove the mask without assistance.⁷

E. The following conveyances are exempted from this SD:

1. Persons in private conveyances operated solely for personal, non-commercial use.
2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

F. This SD exempts the following categories of persons from wearing masks:⁸

1. Children under the age of 2.
2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁹

⁶ The CDC has stated that brief periods of close contact without a face mask should not exceed 15 minutes. *See* <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁷ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁸ Aircraft operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the aircraft operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Aircraft operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Aircraft operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

⁹ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to

3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. If a passenger refuses to comply with an instruction given by a crew member with respect to wearing a mask, the aircraft operator must:
1. Make best efforts to disembark the person who refuses to comply as soon as practicable; and
 2. Follow incident reporting procedures in accordance with its TSA-approved standard security program and provide the following information, if available:
 - a. Date and flight number;
 - b. Passenger's full name and contact information;
 - c. Passenger's seat number on the flight;
 - d. Name and contact information for any crew members involved in the incident; and
 - e. The circumstances related to the refusal to comply.

PREEMPTION

The requirements in this SD do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this SD, if that provision is not incompatible with this SD.

ACKNOWLEDGMENT OF RECEIPT

The aircraft operator must immediately provide written confirmation of receipt of this SD to its Principal Security Inspector (PSI) or International Industry Representative (IIR), as appropriate.

DISSEMINATION REQUIRED

The aircraft operator must immediately pass the information and measures set forth in this SD to any personnel having responsibilities in implementing the provisions of this directive. The aircraft operator may share this SD with anyone subject to the provisions of this directive to include but not limited to: federal, state, and local government personnel; authorized representatives; catering personnel; vendors; airline club staff; contractors; etc.

remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. The CDC issued additional guidance on disability exemptions on March 23, 2021, which is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

APPROVAL OF ALTERNATIVE MEASURES

In accordance with 49 CFR 1544.305(d), the aircraft operator must immediately notify its PSI or IIR, as appropriate, if unable to implement any of the measures in this SD, or in any TSA-approved alternative measure. The aircraft operator may submit proposed alternative measures and the basis for submitting those measures to its PSI or IIR.



David P. Pekoske
Administrator



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SECURITY DIRECTIVE

NUMBER SD 1582/84-21-01B

SUBJECT Security Measures – Mask Requirements

EFFECTIVE DATE September 14, 2021

EXPIRATION DATE **January 18, 2022**

CANCELS AND SUPERSEDES SD 1582/84-21-01A

APPLICABILITY Each owner/operator identified in 49 CFR 1582.1(a); each owner/operator identified in 49 CFR 1584.1 that provides fixed-route service as defined in 49 CFR 1500.3

AUTHORITY 49 U.S.C. 114

LOCATION United States

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in and on airports, on commercial aircraft, and in various modes of surface transportation.¹ On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed² requiring the Transportation Security Administration (TSA) to issue this Security Directive (SD) to implement the Executive Order and enforce the related Order³ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. section 114. Consistent with these mandates and TSA's authority, TSA is issuing this SD requiring masks to be worn to mitigate the spread of COVID-19. The requirements in this SD must be applied to all persons in or on one of the

¹ 86 FR 7205 (published Jan. 26, 2021).

² Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> (accessed Feb. 22, 2021). The Acting Secretary's determination directs TSA to take actions consistent with its statutory authorities "to implement the Executive Order to promote safety in and secure the transportation system." In particular, the determination directs TSA to support "the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system."

³ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and 42 Code of Federal Regulations §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Stations, Ports, or Similar Transportation Hubs (January 29, 2021).

conveyances or a transportation facility used by one of the modes identified above, including those already vaccinated. TSA developed these requirements in consultation with the Department of Transportation (including the Federal Railroad Administration, the Federal Transit Administration, and the Federal Motor Carrier Safety Administration) and the CDC.

DEFINITIONS

For the purpose of this SD, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.⁴

Transportation hub/facility means any airport, bus terminal, marina, seaport or other port, subway stations, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.

ACTIONS REQUIRED

- A. Owner/Operators must notify passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.⁵ At a minimum, this notice must inform passengers, at the time tickets are purchased or when otherwise booking transportation *and* at the time the conveyance departs its location after boarding passengers, of the following:
1. Federal law requires wearing a mask while on the conveyance and failure to comply may result in denial of boarding or removal.
 2. Refusing to wear a mask is a violation of federal law; passengers may be subject to penalties under federal law.
- B. Owner/Operators must require that individuals wear a mask, except as described in Sections D., E., or F., as follows:
1. Any persons in a public transportation, passenger railroad, or bus conveyance covered by this SD.

⁴ A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this SD. CDC guidance for attributes of acceptable masks in the context of this SD is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

⁵ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on tickets; or other methods as appropriate.

2. Any person in public areas of transportation hubs/facilities controlled by the owner/operator (such as for purposes of purchasing tickets, waiting areas, and platforms for boarding and disembarking) for the duration of travel, boarding, and disembarking.
- C. Owner/Operators must ensure that direct employees and contractor employees wear a mask at all times when in conveyances or in or around transportation facilities under their control, except as described in Sections D., E., or F.
- D. The requirement to wear a mask does not apply under the following circumstances:
1. When necessary to temporarily remove the mask for identity verification purposes.
 2. While eating, drinking, or taking oral medications for brief periods⁶. Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
 3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
 4. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.⁷
- E. The following conveyances are exempted from wearing masks:
1. Persons in private conveyances operated solely for personal, non-commercial use.
 2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

⁶ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. See <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁷ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

-
- F. This SD exempts the following categories of persons from wearing masks:⁸
1. Children under the age of 2.
 2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁹
 3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. Owner/Operators must establish procedures to manage situations with persons who refuse to comply with the requirement to wear a mask. At a minimum, these procedures must ensure that if an individual refuses to comply with an instruction given by the owner/operator with respect to wearing a mask, the owner/operator must:
1. Deny boarding;
 2. Make best efforts to disembark the individual as soon as practicable; or
 3. Make best efforts to remove the individual from the transportation hub/facility.
- H. If an individual's refusal to comply with the mask requirement constitutes a significant security concern, the owner/operator must report the incident to the Transportation Security Operations Center (TSOC) at 1-866-615-5150 or 1-703-563-3240 in accordance with 49 CFR 1570.203.

⁸ Owner/Operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the owner/operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Owners/Operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or transportation hub/facility. Owners/Operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

⁹ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. The CDC issued additional guidance on disability exemptions on March 23, 2021, which is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

PREEMPTION

The requirements in this SD do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this SD, if that provision is not incompatible with this SD.

PROCEDURES FOR SECURITY DIRECTIVES

- A. The owner/operator must immediately provide written confirmation of receipt of this SD via email to TSA at TSA-Surface@tsa.dhs.gov.
- B. The owner/operator must immediately disseminate the information and measures in this SD to corporate senior management, security management representatives, and any personnel having responsibilities in implementing the provisions in this directive. The owner/operator may widely share this SD with anyone subject to the provisions of this directive to include, but not limited to, federal, state, and local government personnel; direct owner/operator employees; tenants; contractors; transport personnel; taxi drivers; law enforcement; etc.
- C. All individuals responsible for implementing this SD must be briefed by the owner/operator. If the owner/operator is unable to implement the measures in this SD, the owner/operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval.
- D. The owner/operator may comment on this SD by submitting data, views, or arguments in writing to TSA via email at TSA-Surface@tsa.dhs.gov. TSA may amend the SD based on comments received. Submission of a comment does not delay the effective date of the SD.

APPROVAL OF ALTERNATIVE MEASURES

The owner/operator must immediately notify TSA via email at TSA-Surface@tsa.dhs.gov if unable to implement any of the measures in this SD. The owner/operator may submit proposed alternative measures and a justification for adopting those measures to the email addresses above.



David Pecoske
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**Transportation
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EMERGENCY AMENDMENT

<u>NUMBER</u>	EA 1546-21-01B
<u>SUBJECT</u>	Security Measures – Mask Requirements
<u>EFFECTIVE DATE</u>	September 14, 2021
<u>EXPIRATION DATE</u>	January 18, 2022
<u>CANCELS AND SUPERSEDES</u>	EA 1546-21-01A
<u>APPLICABILITY</u>	Foreign air carriers regulated under 49 CFR 1546.101(a) and (b)
<u>AUTHORITY</u>	49 U.S.C. 114, 44902, and 44903; 49 CFR 1546.105(d)
<u>LOCATION(S)</u>	All flights to, from, or within the United States

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in and on airports, on commercial aircraft, and in various modes of surface transportation.¹ On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed² requiring the Transportation Security Administration (TSA) to issue this Emergency Amendment (EA) to implement the Executive Order and enforce the related Order³ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. sections 114, 44902, and 44903. Consistent with these mandates and the TSA's authority, TSA is issuing this EA requiring masks to be worn to mitigate the spread of COVID-19 during air travel. The requirements in this EA must be applied to all persons onboard a commercial aircraft operated by a foreign air carrier,

¹ 86 FR 7205 (published Jan. 26, 2021).

² Acting Secretary David P. Pekoske, Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> (accessed Feb. 22, 2021). The Acting Secretary's determination directs TSA to take actions consistent with its statutory authorities "to implement the Executive Order to promote safety in and secure the transportation system." In particular, the determination directs TSA to support "the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system."

³ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations (CFR) §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Stations, Ports, or Similar Transportation Hubs (January 29, 2021)

including passengers and crewmembers, and those already vaccinated. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC.

DEFINITIONS

For the purposes of this EA, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.⁴

ACTIONS REQUIRED

- A. The foreign air carrier must provide passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.⁵ At a minimum, this notice must inform passengers, at or before check-in and as a pre-flight announcement, of the following:
1. Federal law requires each person to wear a mask at all times throughout the flight, including during boarding and deplaning.
 2. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.
 3. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation, masks should be removed to accommodate oxygen masks.
- B. The foreign air carrier must not board any person who is not wearing a mask, except as described in Sections D., E., and F.
- C. The foreign air carrier must ensure that direct employees and authorized representatives wear a mask at all times while on an aircraft or in a U.S.⁶ airport location under the control of the foreign air carrier, except as described in Sections D., E., and F.
- D. The requirement to wear a mask does not apply under the following circumstances:
1. When necessary to temporarily remove the mask for identity verification purposes.

⁴ A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this EA. CDC guidance for attributes of acceptable masks in the context of this EA is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

⁵ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on boarding passes; or other methods as appropriate.

⁶ Including U.S. territories: American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

2. While eating, drinking, or taking oral medications for brief periods.⁷ Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
4. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation.
5. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.⁸

E. The following conveyances are exempted from this EA:

1. Persons in private conveyances operated solely for personal, non-commercial use.
2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

F. This EA exempts the following categories of persons from wearing masks:⁹

1. Children under the age of 2.
2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).¹⁰

⁷ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. *See* <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁸ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁹ Foreign air carriers may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the foreign air carrier, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Foreign air carriers may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Foreign air carriers may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

¹⁰ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may

3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. If a passenger refuses to comply with an instruction given by a crew member with respect to wearing a mask, the foreign air carrier must:
1. Make best efforts to disembark the person who refuses to comply as soon as practicable; and
 2. Follow incident reporting procedures in accordance with its TSA-accepted security program or any applicable EAs and provide the following information, if available:
 - a. Date and flight number;
 - b. Passenger's full name and contact information;
 - c. Passenger's seat number on the flight;
 - d. Name and contact information for any crew members involved in the incident; and
 - e. The circumstances related to the refusal to comply.

PREEMPTION

The requirements in this EA do not preempt any host government, State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this EA, if that provision is not incompatible with this EA.

ACKNOWLEDGMENT OF RECEIPT

The foreign air carrier must immediately provide written confirmation of receipt of this EA to its International Industry Representative (IIR).

DISSEMINATION REQUIRED

The foreign air carrier must immediately pass the information and measures set forth in this EA to any personnel having responsibilities in implementing the provisions of this directive. The foreign air carrier may share this EA with anyone subject to the provisions of this directive to include but not limited to: host government, federal, state, and local government personnel; authorized representatives; catering personnel; vendors; airline club staff; contractors; etc.

only be difficult. The CDC issued additional guidance on disability exemptions on March 23, 2021, which is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

APPROVAL OF ALTERNATIVE MEASURES

The foreign air carrier must immediately notify its IIR if unable to implement any of the measures in this EA, or in any TSA-approved alternative measure. In accordance with 49 CFR 1546.105, the foreign air carrier may submit proposed alternative measures and the basis for submitting those measures to its IIR.



David P. Pekoske
Administrator

8

OTHER FEDERAL TRANSPORTATION MASK MANDATE DOCUMENTS

[whitehouse.gov](https://www.whitehouse.gov)

Executive Order on Promoting COVID-19 Safety in Domestic and International Travel | The White House

11-14 minutes

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. Science-based public health measures are critical to preventing the spread of coronavirus disease 2019 (COVID-19) by travelers within the United States and those who enter the country from abroad. The Centers for Disease Control and Prevention (CDC), the Surgeon General, and the National Institutes of Health have concluded that mask-wearing, physical distancing, appropriate ventilation, and timely testing can mitigate the risk of travelers spreading COVID-19. Accordingly, to save lives and allow all Americans, including the millions of people employed in the transportation industry, to travel and work safely, it is the policy of my Administration to implement these public health measures consistent with CDC guidelines on public modes of transportation and at ports of entry to the United States.

Sec. 2. Immediate Action to Require Mask-Wearing on Certain Domestic Modes of Transportation.

(a) Mask Requirement. The Secretary of Labor, the Secretary of Health and Human Services (HHS), the Secretary of Transportation (including through the Administrator of the Federal Aviation Administration (FAA)), the Secretary of Homeland Security (including through the Administrator of the Transportation Security Administration (TSA) and the Commandant of the United States Coast Guard), and the heads of any other executive departments and agencies (agencies) that have relevant regulatory authority (heads of agencies) shall immediately take action, to the extent appropriate and consistent with applicable law, to require masks to be worn in compliance with CDC guidelines in or on:

- (i) airports;
- (ii) commercial aircraft;
- (iii) trains;
- (iv) public maritime vessels, including ferries;
- (v) intercity bus services; and
- (vi) all forms of public transportation as defined in section 5302 of title 49, United States Code.

(b) Consultation. In implementing this section, the heads of agencies shall consult, as appropriate, with interested parties, including State, local, Tribal, and territorial officials; industry and union representatives from the transportation sector; and consumer representatives.

(c) Exceptions. The heads of agencies may make categorical or case-by-case exceptions to policies developed under this section, consistent with applicable law, to the extent that doing so is necessary or required by law. If the heads of agencies do make exceptions, they shall require alternative and appropriate safeguards, and shall document all exceptions in writing.

(d) Preemption. To the extent permitted by applicable law, the heads of agencies shall ensure that any action taken to implement this section does not preempt State, local, Tribal, and territorial laws or rules imposing public health measures that are more protective of public health than those required by the heads of agencies.

(e) Coordination. The Coordinator of the COVID-19 Response and Counselor to the President (COVID-19 Response Coordinator) shall coordinate the implementation of this section. The heads of agencies shall update the COVID-19 Response Coordinator on their progress in implementing this section, including any categorical exceptions established under subsection (c) of this section, within 7 days of the date of this order and regularly thereafter. The heads of agencies are encouraged to bring to the attention of the COVID-19 Response Coordinator any questions regarding the scope or implementation of this section.

Sec. 3. Action to Implement Additional Public Health Measures for Domestic Travel.

(a) Recommendations. The Secretary of Transportation (including through the Administrator of the FAA) and the Secretary of Homeland Security (including

through the Administrator of the TSA and the Commandant of the Coast Guard), in consultation with the Director of CDC, shall promptly provide to the COVID-19 Response Coordinator recommendations concerning how their respective agencies may impose additional public health measures for domestic travel.

(b) Consultation. In implementing this section, the Secretary of Transportation and the Secretary of Homeland Security shall engage with interested parties, including State, local, Tribal, and territorial officials; industry and union representatives from the transportation sector; and consumer representatives.

Sec. 4. Support for State, Local, Tribal, and Territorial Authorities. The COVID-19 Response Coordinator, in coordination with the Secretary of Transportation and the heads of any other relevant agencies, shall promptly identify and inform agencies of options to incentivize, support, and encourage widespread mask-wearing and physical distancing on public modes of transportation, consistent with CDC guidelines and applicable law.

Sec. 5. International Travel.

(a) Policy. It is the policy of my Administration that, to the extent feasible, travelers seeking to enter the United States from a foreign country shall be:

(i) required to produce proof of a recent negative COVID-19 test prior to entry; and

(ii) required to comply with other applicable CDC guidelines concerning international travel, including recommended periods of self-quarantine or self-isolation after entry into the United States.

(b) Air Travel.

(i) The Secretary of HHS, including through the Director of CDC, and in coordination with the Secretary of Transportation (including through the Administrator of the FAA) and the Secretary of Homeland Security (including through the Administrator of the TSA), shall, within 14 days of the date of this order, assess the CDC order of January 12, 2021, regarding the requirement of a negative COVID-19 test result for airline passengers traveling into the United States, in light of subsection (a) of this section. Based on such assessment, the Secretary of HHS and the Secretary of Homeland Security shall take any further appropriate regulatory action, to the extent feasible and consistent with CDC guidelines and applicable law. Such assessment and regulatory action shall include consideration of:

(A) the timing and types of COVID-19 tests that should satisfy the negative test requirement, including consideration of additional testing immediately prior to departure;

(B) the proof of test results that travelers should be required to provide;

(C) the feasibility of implementing alternative and sufficiently protective public health measures, such as testing, self-quarantine, and self-isolation on arrival, for travelers entering the United States from countries where COVID-19 tests are inaccessible, particularly where such inaccessibility of tests would affect the ability of United States citizens and lawful permanent residents to return to the United States; and

(D) measures to prevent fraud.

(ii) The Secretary of HHS, in coordination with the Secretary of Transportation (including through the Administrator of the FAA) and the Secretary of Homeland Security (including through the Administrator of the TSA), shall promptly provide to the President, through the COVID-19 Response Coordinator, a plan for how the Secretary and other Federal Government actors could implement the policy stated in subsection (a) of this section with respect to CDC-recommended periods of self-quarantine or self-isolation after a flight to the United States from a foreign country, as he deems appropriate and consistent with applicable law. The plan shall identify agencies' tools and mechanisms to assist travelers in complying with such policy.

(iii) The Secretary of State, in consultation with the Secretary of HHS (including through the Director of CDC), the Secretary of Transportation (including through the Administrator of the FAA), and the Secretary of Homeland Security, shall seek to consult with foreign governments, the World Health Organization, the International Civil Aviation Organization, the International Air Transport Association, and any other relevant stakeholders to establish guidelines for public health measures associated with safe international travel, including on aircraft and at ports of entry. Any such guidelines should address quarantine, testing, COVID-19 vaccination, follow-up testing and symptom-monitoring, air filtration requirements, environmental decontamination standards, and contact tracing.

(c) Land Travel. The Secretary of State, in consultation with the Secretary of HHS, the Secretary of Transportation, the Secretary of Homeland Security, and the Director of CDC, shall immediately commence diplomatic outreach to the governments of Canada and Mexico regarding public health protocols for land ports of entry. Based on this diplomatic engagement, within 14 days of the date of this order, the Secretary of HHS (including through the Director of CDC), the Secretary

of Transportation, and the Secretary of Homeland Security shall submit to the President a plan to implement appropriate public health measures at land ports of entry. The plan should implement CDC guidelines, consistent with applicable law, and take into account the operational considerations relevant to the different populations who enter the United States by land.

(d) Sea Travel. The Secretary of Homeland Security, through the Commandant of the Coast Guard and in consultation with the Secretary of HHS and the Director of CDC, shall, within 14 days of the date of this order, submit to the President a plan to implement appropriate public health measures at sea ports. The plan should implement CDC guidelines, consistent with applicable law, and take into account operational considerations.

(e) International Certificates of Vaccination or Prophylaxis. Consistent with applicable law, the Secretary of State, the Secretary of HHS, and the Secretary of Homeland Security (including through the Administrator of the TSA), in coordination with any relevant international organizations, shall assess the feasibility of linking COVID-19 vaccination to International Certificates of Vaccination or Prophylaxis (ICVP) and producing electronic versions of ICVPs.

(f) Coordination. The COVID-19 Response Coordinator, in consultation with the Assistant to the President for National Security Affairs and the Assistant to the President for Domestic Policy, shall coordinate the implementation of this section. The Secretary of State, the Secretary of HHS, the Secretary of Transportation, and the Secretary of Homeland Security shall update the COVID-19 Response Coordinator on their progress in implementing this section within 7 days of the date of this order and regularly thereafter. The heads of all agencies are encouraged to bring to the attention of the COVID-19 Response Coordinator any questions regarding the scope or implementation of this section.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 21, 2021.

**Determination of a National Emergency Requiring Actions to Protect the Safety of
Americans Using and Employed by the Transportation System**

As reflected in numerous determinations by the Executive Branch, including the President's March 13, 2020 determination that the outbreak of Coronavirus Disease 2019 (COVID-19) constitutes a "national emergency" under the National Emergencies Act and the nationwide public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, the COVID-19 pandemic continues to pose a threat to our health and security. On January 15, 2021, the Centers for Disease Control and Prevention (CDC) updated their information to account for several new strains of COVID-19, including variant B.1.1.7 from the United Kingdom, variant B.1.351 from South Africa, and variant B.1.1.28.1 from Brazil. As of January 20, 2021, the United States has experienced more than 24 million confirmed COVID-19 cases and more than 400,000 COVID-19 deaths. The CDC, the Surgeon General, and the National Institutes of Health have concluded that mask-wearing, physical distancing, appropriate ventilation, and timely testing can mitigate the risk of travelers spreading COVID-19. On January 21, 2021, the President issued the *Executive Order on Promoting COVID-19 Safety in Domestic and International Travel*. The purpose of this Executive Order is to save lives and allow all Americans, including the millions of people employed in the transportation industry, to travel and work safely. Further, on January 25, 2021 the President issued a *Proclamation on the Suspension of Entry as Immigrants and Non-Immigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease* whereby he reinstated travel restriction for individuals traveling to the United States from the United Kingdom, Ireland, the Schengen Area, and instituted restrictions for South Africa.

In the light of these circumstances and direction from the President, and after consultation with public health officials, I, David P. Pekoske, Acting Secretary of Homeland Security, pursuant to the authority vested in me under section 101 of the Aviation and Transportation Security Act (ATSA), as codified at section 114(g) of title 49, United States Code (U.S.C.) do hereby determine that a national emergency exists and am directing the Transportation Security Administration to take actions consistent with the authorities in ATSA as codified at 49 U.S.C. sections 106(m) and 114(f), (g), (l), and (m) to implement the Executive Order to promote safety in and secure the transportation system. This includes supporting the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including

passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system, to the extent appropriate and consistent with applicable law. I specifically direct the Transportation Security Administration to use its authority to accept the services of, provide services to, or otherwise cooperate with other federal agencies, including through the implementation of countermeasures with appropriate departments, agencies, and instrumentalities of the United States in order to address a threat to transportation, recognizing that such threat may involve passenger and employee safety.

 1/27/2021

David P. Pekoske
Acting Secretary
Department of Homeland Security

The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly to ensure that its actions are commensurate with the threat. This necessarily involves assessing evolving conditions that inform CDC's determinations.

The conditions that existed on September 4, 2020 have only worsened. As of January 21, 2021, there have been over 24,400,000 cases and over 400,000 deaths. Data collected by Princeton University show that eviction filings are occurring; it is therefore expected that large numbers of evictions would be processed if the Order were to expire. [<https://evictionlab.org/eviction-tracking>]. Without this Order, there is every reason to expect that evictions will increase significantly, resulting in further spread of COVID-19. It is imperative is to act quickly to protect the public health, and it would be impracticable and contrary to the public interest to delay the issuance and effective date of the Order pending notice-and-comment rulemaking.

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs (OIRA) has determined that it would be a major rule under the Congressional Review Act (CRA). But there would not be a delay in its effective date. The agency has determined that for the same reasons, there would be good cause under the CRA to make the requirements herein effective immediately.

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

This Order shall be enforced by federal authorities and cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18. However, this Order has no effect on the contractual obligations of renters to pay rent and shall not preclude charging or collecting fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis, under the terms of any applicable contract.

Criminal Penalties

Under 18 U.S.C. 3559, 3571; 42 U.S.C. 271; and 42 CFR 70.18, a person violating this Order may be subject to a fine of no more than \$100,000 if the violation does not result in a death, or a fine of no more than \$250,000 if the

violation results in a death, or as otherwise provided by law. An organization violating this Order may be subject to a fine of no more than \$200,000 per event if the violation does not result in a death or \$500,000 per event if the violation results in a death or as otherwise provided by law. The U.S. Department of Justice may initiate criminal proceedings as appropriate seeking imposition of these criminal penalties.

Notice to Cooperating State and Local Officials

Under 42 U.S.C. 243, the U.S. Department of Health and Human Services is authorized to cooperate with and aid state and local authorities in the enforcement of their quarantine and other health regulations and to accept state and local assistance in the enforcement of Federal quarantine rules and regulations, including in the enforcement of this Order.

Notice of Available Federal Resources

While this Order to prevent eviction is effectuated to protect the public health, the states and units of local government are reminded that the Federal Government has deployed unprecedented resources to address the pandemic, including housing assistance.

The Department of Housing and Urban Development (HUD) has informed CDC that all HUD grantees—states, cities, communities, and nonprofits—who received Emergency Solutions Grants (ESG) or Community Development Block Grant (CDBG) funds under the CARES Act may use these funds to provide temporary rental assistance, homelessness prevention, or other aid to individuals who are experiencing financial hardship because of the pandemic and are at risk of being evicted, consistent with applicable laws, regulations, and guidance.

HUD has further informed CDC that:

HUD's grantees and partners play a critical role in prioritizing efforts to support this goal. As grantees decide how to deploy CDBG-CV and ESG-CV funds provided by the CARES Act, all communities should assess what resources have already been allocated to prevent evictions and homelessness through temporary rental assistance and homelessness prevention, particularly to the most vulnerable households.

HUD stands at the ready to support American communities take these steps to reduce the spread of COVID-19 and maintain economic prosperity. Where gaps are identified, grantees should coordinate across available Federal, non-Federal, and philanthropic funds to ensure these critical needs are

sufficiently addressed and utilize HUD's technical assistance to design and implement programs to support a coordinated response to eviction prevention needs. For program support, including technical assistance, please visit www.hudexchange.info/program-support. For further information on HUD resources, tools, and guidance available to respond to the COVID-19 pandemic, state and local officials are directed to visit <https://www.hud.gov/coronavirus>. These tools include toolkits for Public Housing Authorities and Housing Choice Voucher landlords related to housing stability and eviction prevention, as well as similar guidance for owners and renters in HUD-assisted multifamily properties.

Similarly, the Department of the Treasury has informed CDC that the funds allocated through the Coronavirus Relief Fund and the Emergency Rental Assistance Program may be used to fund rental assistance programs to prevent eviction. Visit <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> for more information about the Coronavirus Relief Fund and <https://home.treasury.gov/policy-issues/cares/emergency-rental-assistance-program> for more information about the Emergency Rental Assistance Program..

Effective Date

This Order is effective on January 31, 2021 and will remain in effect, unless extended, modified, or rescinded, through March 31, 2021.

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.2.

Dated: January 29, 2021.

Sherri Berger

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021-02243 Filed 1-29-21; 4:15 pm]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Requirement for Persons To Wear Masks While on Conveyances and at Transportation Hubs

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of Agency Order.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the U.S. Department of Health and Human Services (HHS), announces an Agency Order requiring persons to wear masks over the mouth and nose when traveling on any conveyance (e.g., airplanes, trains, subways, buses, taxis, ride-shares, ferries, ships, trolleys, and cable cars) into or within the United States. A person must also wear a mask on any conveyance departing from the United States until the conveyance reaches its foreign destination. Additionally, a person must wear a mask while at any transportation hub within the United States (e.g., airport, bus terminal, marina, train station, seaport or other port, subway station, or any other area that provides transportation within the United States). Furthermore, operators of conveyances and transportation hubs must use best efforts to ensure that persons wear masks as required by this Order.

DATES: This Order takes effect at 11:59 p.m. Monday February 1, 2021.

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16-4, Atlanta, GA 30329. Email: dgmqpolicyoffice@cdc.gov.

SUPPLEMENTARY INFORMATION: The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet) mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths, eyes, or noses of people who are nearby and possibly be inhaled into the lungs. Some people without symptoms also spread the virus. In general, the more closely a person interacts with others and the longer that interaction, the higher the risk of COVID-19 spread.

This Order is issued to preserve human life; maintain a safe and operating transportation system; mitigate the further introduction, transmission, and spread of COVID-19 into the United States and from one state or territory into any other state or territory; and support response efforts to COVID-19 at the Federal, state, local, territorial, and tribal level.

Appropriately worn masks reduce the spread of COVID-19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19. Masks are most likely to reduce the spread of COVID-19 when they are widely used by people in public

settings. Using masks along with other preventive measures, including social distancing, frequent handwashing, and cleaning and disinfecting frequently touched surfaces, is one of the most effective strategies available for reducing COVID-19 transmission.

This Order will remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists.

A copy of the Order is provided below and a copy of the signed order can be found at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>

CENTERS FOR DISEASE CONTROL AND PREVENTION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ORDER UNDER SECTION 361

OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 264)

AND 42 CODE OF FEDERAL REGULATIONS 70.2, 71.31(b), 71.32(b)

REQUIREMENT FOR PERSONS TO WEAR MASKS

WHILE ON CONVEYANCES AND AT TRANSPORTATION HUBS

SUMMARY:

Notice and Order; and subject to the limitations under “Applicability,” pursuant to 42 U.S.C. 264(a) and 42 CFR 70.2, 71.31(b), and 71.32(b):

(1) Persons¹ must wear² masks over the mouth and nose when traveling on conveyances into and within the United States. Persons must also wear masks at transportation hubs as defined in this Order.

(2) A conveyance operator transporting persons into and within the United States³ must require all persons onboard to wear masks for the duration of travel.

(3) A conveyance operators operating a conveyance arriving at or departing from a U.S. port of entry must require all persons on board to wear masks for

¹ As used in this Order, “persons” includes travelers (i.e., passengers and crew), conveyance operators, and any workers or service providers in the transportation hub.

² To “wear a mask” means to wear a mask over the nose and mouth.

³ This includes international, interstate, or intrastate waterways, subject to the jurisdiction of the United States.

the duration of travel as a condition of controlled free pratique.⁴

(4) Conveyance operators must use best efforts to ensure that any person on the conveyance wears a mask when boarding, disembarking, and for the duration of travel. Best efforts include:

- Boarding only those persons who wear masks;
- instructing persons that Federal law requires wearing a mask on the conveyance and failure to comply constitutes a violation of Federal law;
- monitoring persons onboard the conveyance for anyone who is not wearing a mask and seeking compliance from such persons;
- at the earliest opportunity, disembarking any person who refuses to comply; and
- providing persons with prominent and adequate notice to facilitate awareness and compliance of the requirement of this Order to wear a mask; best practices may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on transit tickets; or other methods as appropriate.

(5) Operators of transportation hubs must use best efforts to ensure that any person entering or on the premises of the transportation hub wears a mask. Best efforts include:

- Allowing entry only to those persons who wear masks;
- instructing persons that Federal law requires wearing a mask in the transportation hub and failure to comply constitutes a violation of Federal law;
- monitoring persons on the premises of the transportation hub for anyone who is not wearing a mask and seeking compliance from such persons;
- at the earliest opportunity, removing any person who refuses to comply from the premises of the transportation hub; and
- providing persons with prominent and adequate notice to facilitate awareness and compliance with the requirement of this Order to wear a mask; best practices may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or

⁴ As a condition of this controlled free pratique to commence or continue operations in the United States, conveyance operators must additionally require all persons to wear masks on board conveyances departing from the United States and for the duration of their travel until the conveyance arrives at the foreign destination if at any time any of the persons on the conveyance (passengers, crew, or conveyance operators) will return to the United States while this Order remains in effect. This precaution must be followed regardless of scheduled itinerary.

email; posted signage in multiple languages with illustrations; printing the requirement on transit tickets; or other methods as appropriate.

DEFINITIONS:

Controlled free pratique shall have the same definition as under 42 CFR 71.1, meaning “permission for a carrier to enter a U.S. port, disembark, and begin operation under certain stipulated conditions.”

Conveyance shall have the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle,⁵ vessel . . . or other means of transport, including military.” Included in the definition of “conveyance” is the term “carrier” which under 42 CFR 71.1 has the same definition as conveyance under 42 CFR 70.1.

Conveyance operator means an individual operating a conveyance and an individual or organization causing or authorizing the operation of a conveyance.

Mask means a material covering the nose and mouth of the wearer, excluding face shields.⁶

Interstate traffic shall have the same definition as under 42 CFR 70.1, meaning

“(1):

(i) The movement of any conveyance or the transportation of persons or property, including any portion of such movement or transportation that is entirely within a state or possession—

(ii) From a point of origin in any state or possession to a point of destination in any other state or possession; or

(iii) Between a point of origin and a point of destination in the same state or possession but through any other state, possession, or contiguous foreign country.

(2) Interstate traffic does not include the following:

(i) The movement of any conveyance which is solely for the purpose of unloading persons or property transported from a foreign country or loading persons or property for transportation to a foreign country.

⁵ This includes rideshares meaning arrangements where passengers travel in a privately owned road vehicle driven by its owner in connection with a fee or service.

⁶ A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this Order. CDC guidance for attributes of acceptable masks in the context of this Order is available at: <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

(ii) The movement of any conveyance which is solely for the purpose of effecting its repair, reconstruction, rehabilitation, or storage.”

Intrastate traffic means the movement of any conveyance or the transportation or movement of persons occurring solely within the boundaries of a state or territory, or on tribal land.

Possession shall have the same definition as under 42 CFR 70.1 and 71.1, meaning a “U.S. territory.”

State shall have the same definition as under 42 CFR 70.1, meaning “any of the 50 states, plus the District of Columbia.”

Territory shall have the same definition as “U.S. territory” under 42 CFR 70.1 and 71.1, meaning “any territory (also known as possessions) of the United States, including American Samoa, Guam, the [Commonwealth of the] Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.”

Transportation hub means any airport, bus terminal, marina, seaport or other port, subway station, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.

Transportation hub operator means an individual operating a transportation hub and an individual or organization causing or authorizing the operation of a transportation hub.

U.S. port shall have the same definition as under 42 CFR 71.1, meaning any “seaport, airport, or border crossing point under the control of the United States.”

STATEMENT OF INTENT:

This Order shall be interpreted and implemented in a manner as to achieve the following objectives:

- Preservation of human life;
- Maintaining a safe and secure operating transportation system;
- Mitigating the further introduction, transmission, and spread of COVID-19 into the United States and from one state or territory into any other state or territory; and
- Supporting response efforts to COVID-19 at the Federal, state, local, territorial, and tribal levels.

APPLICABILITY:

This Order shall not apply within any state, locality, territory, or area under the jurisdiction of a Tribe that (1) requires a person to wear a mask on conveyances; (2) requires a person to wear a mask at transportation hubs; and (3) requires conveyances to transport only persons wearing masks. Such

requirements must provide the same level of public health protection as—or greater protection than—the requirements listed herein.

In addition, the requirement to wear a mask shall not apply under the following circumstances:

- While eating, drinking, or taking medication, for brief periods;
- While communicating with a person who is hearing impaired when the ability to see the mouth is essential for communication;
- If, on an aircraft, wearing of oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation;
- If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance;⁷ or
- When necessary to temporarily remove the mask to verify one’s identity such as during Transportation Security Administration screening or when asked to do so by the ticket or gate agent or any law enforcement official.

This Order exempts the following categories of persons:⁸

- A child under the age of 2 years;
- A person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*).⁹

⁷ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁸ Operators of conveyances or transportation hubs may impose requirements, or conditions for carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SARS-CoV-2 viral test and documentation of recovery are available in the Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or transportation hub. Operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

⁹ This is a narrow exception that includes a person with a disability who cannot wear a mask

Continued

• A person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

This Order exempts the following categories of conveyances, including persons on board such conveyances:

- Private conveyances operated solely for personal, non-commercial use;
- Commercial motor vehicles or trucks as these terms are defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle or truck;
- Conveyances operated or chartered by the U.S. military services provided that such conveyance operators observe Department of Defense precautions to prevent the transmission of COVID-19 that are equivalent to the precautions in this Order.

This Order applies to persons on conveyances and at transportation hubs directly operated by U.S. state, local, territorial, or tribal government authorities, as well as the operators themselves. U.S. state, local, territorial, or tribal government authorities directly operating conveyances and transportation hubs may be subject to additional federal authorities or actions, and are encouraged to implement additional measures enforcing the provisions of this Order regarding persons traveling onboard conveyances and at transportation hubs operated by these government entities.

To the extent permitted by law, and consistent with President Biden's Executive Order of January 21, 2021 (Promoting COVID-19 Safety in Domestic and International Travel),¹⁰ Federal agencies are required to implement additional measures enforcing the provisions of this Order.

BACKGROUND:

There is currently a pandemic of respiratory disease (coronavirus disease 2019 or "COVID-19") caused by a novel coronavirus (SARS-CoV-2). As of January 27, 2021, there have been 99,638,507 confirmed cases of COVID-19 globally, resulting in more than 2,141,000 deaths. As of January 27, 2021, there have been over 25,000,000 cases identified in the United States and over 415,000 deaths due to the disease. New SARS-CoV-2 variants have emerged in recent weeks, including at

for reasons related to the disability. CDC will issue additional guidance regarding persons who cannot wear a mask under this exemption. <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

¹⁰ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-promoting-covid-19-safety-in-domestic-and-international-travel/>.

least one with evidence of increased transmissibility.¹¹

The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet) mainly through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths, eyes, or noses of people who are nearby and possibly be inhaled into the lungs. Infected people without symptoms (asymptomatic) and those in whom symptoms have not yet developed (pre-symptomatic) can also spread the virus. In general, the more closely an infected person interacts with others and the longer those interactions, the higher the risk of COVID-19 spread. COVID-19 may be transmitted by touching surfaces or objects that have the virus on them and then touching one's own or another person's eyes, nose, or mouth.

Masks help prevent people who have COVID-19, including those who are pre-symptomatic or asymptomatic, from spreading the virus to others.¹² Masks are primarily intended to reduce the emission of virus-laden droplets, *i.e.*, they act as source control by blocking exhaled virus.¹³ This is especially relevant for asymptomatic or pre-symptomatic infected wearers who feel well and may be unaware of their infectiousness to others, and who are estimated to account for more than 50% of transmissions.^{14 15} Masks also provide personal protection to the wearer by reducing inhalation of these droplets, *i.e.*, they reduce wearers' exposure through filtration.¹⁶ The community benefit of wearing masks for SARS-CoV-2 control is due to the combination of these effects; individual prevention benefit increases with increasing

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>.

¹² <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov-2.html>.

¹³ Leung NHL, Chu DKW, Shiu EYC, et al. Respiratory virus shedding in exhaled breath and efficacy of face masks. *Nature Medicine*. 2020;26(5):676-680. <https://dx.doi.org/10.1038/s41591-020-0843-2>.

¹⁴ Moghadas SM, Fitzpatrick MC, Sah P, et al. The implications of silent transmission for the control of COVID-19 outbreaks. *Proc Natl Acad Sci U S A*. 2020;117(30):17513-17515. <https://doi.org/10.1073/pnas.2008373117>. <https://www.ncbi.nlm.nih.gov/pubmed/32632012>.

¹⁵ Johansson MA, Quandelacy TM, Kada S, et al. SARS-CoV-2 Transmission From People Without COVID-19 Symptoms. *JAMA*. 2021 Jan 4;4(1):e2035057. <https://doi.org/10.1001/jamanetworkopen.2020.35057>.

¹⁶ Ueki H, Furusawa Y, Iwatsuki-Horimoto K, et al. Effectiveness of Face Masks in Preventing Airborne Transmission of SARS-CoV-2. *mSphere*. 2020;5(5):10.1128/mSphere.00637-20. <https://www.ncbi.nlm.nih.gov/pubmed/33087517>.

numbers of people using masks consistently and correctly.

Appropriately worn masks reduce the spread of COVID-19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19. Seven studies have confirmed the benefit of universal masking in community level analyses: in a unified hospital system,¹⁷ a German city,¹⁸ a U.S. State,¹⁹ a panel of 15 U.S. States and Washington, DC,^{20 21} as well as both Canada²² and the United States²³ nationally. Each analysis demonstrated that, following directives from organizational and political leadership for universal masking, new infections fell significantly. Two of these studies^{24 25} and an additional analysis of data from 200 countries that included localities within the United States²⁶ also demonstrated reductions in

¹⁷ Wang X, Ferro EG, Zhou G, Hashimoto D, Bhatt DL. Association Between Universal Masking in a Health Care System and SARS-CoV-2 Positivity Among Health Care Workers. *JAMA*. 2020.10.1001/jama.2020.12897. <https://www.ncbi.nlm.nih.gov/pubmed/32663246>.

¹⁸ Mitze T., Kosfeld R., Rode J., Wälde K. *Face Masks Considerably Reduce COVID-19 Cases in Germany: A Synthetic Control Method Approach*. IZA—Institute of Labor Economics (Germany);2020.ISSN: 2365-9793, DP No. 13319. <http://ftp.iza.org/dp13319.pdf>.

¹⁹ Gallaway MS, Rigler J, Robinson S, et al. Trends in COVID-19 Incidence After Implementation of Mitigation Measures—Arizona, January 22–August 7, 2020. *MMWR Morb Mortal Wkly Rep*. 2020;69(40):1460-1463. <https://doi.org/10.15585/mmwr.mm6940e3>. <https://www.ncbi.nlm.nih.gov/pubmed/33031366>.

²⁰ Lyu W, Wehby GL. Community Use Of Face Masks And COVID-19: Evidence From A Natural Experiment Of State Mandates In The US. *Health Aff (Millwood)*. 2020;39(8):1419-1425. <https://doi.org/10.1377/hlthaff.2020.00818>. <https://www.ncbi.nlm.nih.gov/pubmed/32543923>.

²¹ Hatzius J, Struyven D, Rosenberg I. Face Masks and GDP. *Goldman Sachs Research* <https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html>. Accessed January 20, 2021.

²² Karaivanov A., Lu SE, Shigeoka H., Chen C., Pamplona S. *Face Masks, Public Policies and Slowing the Spread of Covid-19: Evidence from Canada* National Bureau of Economic Research 2020. Working Paper 27891. <http://www.nber.org/papers/w27891>.

²³ Chernozhukov V, Kasahara H, Schrimpf P. Causal Impact of Masks, Policies, Behavior on Early Covid-19 Pandemic in the U.S. *J Econom*. 2021 Jan;220(1):23-62. <https://doi.org/10.1016/j.jeconom.2020.09.003>. Epub 2020 Oct 17.

²⁴ Hatzius J, Struyven D, Rosenberg I. Face Masks and GDP. *Goldman Sachs Research* <https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html>. Accessed January 20, 2021.

²⁵ Chernozhukov V, Kasahara H, Schrimpf P. Causal Impact of Masks, Policies, Behavior on Early Covid-19 Pandemic in the U.S. *J Econom*. 2021 Jan;220(1):23-62. <https://doi.org/10.1016/j.jeconom.2020.09.003>. Epub 2020 Oct 17.

²⁶ Leffler CT, Ing EB, Lykins JD, Hogan MC, McKeown CA, Gzybowski A. Association of country-wide coronavirus mortality with demographics, testing, lockdowns, and public wearing of masks. *Am J Trop Med Hyg*. 2020 Dec;103(6):2400-2411. <https://doi.org/10.4269/ajtmh.20-1015>. Epub 2020 Oct 26.

mortality. An economic analysis using U.S. data found that, given these effects, increasing universal masking by 15% could prevent the need for lockdowns and reduce associated losses of up to \$1 trillion or about 5% of gross domestic product.²⁷

Wearing a mask especially helps protect those at increased risk of severe illness from COVID-19²⁸ and workers who frequently come into close contact with other people (e.g., at transportation hubs). Masks are most likely to reduce the spread of COVID-19 when they are widely used by people in public settings. Using masks along with other preventive measures, including social distancing, frequent handwashing, and cleaning and disinfecting frequently touched surfaces, is one of the most effective strategies available for reducing COVID-19 transmission.

Traveling on multi-person conveyances increases a person's risk of getting and spreading COVID-19 by bringing persons in close contact with others, often for prolonged periods, and exposing them to frequently touched surfaces. Air travel often requires spending time in security lines and crowded airport terminals. Social distancing may be difficult if not impossible on flights. People may not be able to distance themselves by the recommended 6 feet from individuals seated nearby or those standing in or passing through the aircraft's aisles. Travel by bus, train, vessel, and other conveyances used for international, interstate, or intrastate transportation pose similar challenges.

Intrastate transmission of the virus has led to—and continues to lead to—interstate and international spread of the virus, particularly on public conveyances and in travel hubs, where passengers who may themselves be traveling only within their state or territory commonly interact with others traveling between states or territories or internationally. Some states, territories, Tribes, and local public health authorities have imposed mask-wearing requirements within their jurisdictional boundaries to protect public health.²⁹

²⁷ Hatzius J, Struyven D, Rosenberg I. Face Masks and GDP. *Goldman Sachs Research* <https://www.goldmansachs.com/insights/pages/face-masks-and-gdp.html>. Accessed January 20, 2021.

²⁸ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>.

²⁹ Based on internet sources, 37 states plus DC and Puerto Rico mandate the wearing of masks in public. Among the jurisdictions that have imposed mask mandates, variations in requirements exist. For example, exemptions for children range in cutoff age from 2 to 12, but masks are generally required in indoor public spaces such as restaurants and stores, on public transit and ride-hailing services, and outdoors when unable to maintain 6

Any state or territory without sufficient mask-wearing requirements for transportation systems within its jurisdiction has not taken adequate measures to prevent the spread of COVID-19 from such state or territory to any other state or territory. That determination is based on, *inter alia*, the rapid and continuing transmission of the virus across all states and territories and across most of the world. Furthermore, given how interconnected most transportation systems are across the nation and the world, local transmission can grow even more quickly into interstate and international transmission when infected persons travel on non-personal conveyances without wearing a mask and with others who are not wearing masks.

Therefore, I have determined that the mask-wearing requirements in this Order are reasonably necessary to prevent the further introduction, transmission, or spread of COVID-19 into the United States and among the states and territories. Individuals traveling into or departing from the United States, traveling interstate, or traveling entirely intrastate, conveyance operators that transport such individuals, and transportation hub operators that facilitate such transportation, must comply with the mask-wearing requirements set forth in this Order.

America's transportation systems are essential. Not only are they essential for public health, they are also essential for America's economy and other bedrocks of American life. Those transportation systems carry life-saving medical supplies and medical providers into and across the nation to our hospitals, nursing homes, and physicians' offices. Trains, planes, ships, and automobiles bring food and other essentials to our communities and to our homes. Buses bring America's children and teachers to school. Buses, trains, and subways, bring America's workforce to their jobs.

Requiring masks on our transportation systems will protect Americans and provide confidence that we can once again travel safely even during this pandemic. Therefore, requiring masks will help us control this pandemic and aid in re-opening America's economy.

The United States and countries around the world are currently embarking on efforts to vaccinate their populations, starting with healthcare personnel and other essential workers at increased risk of exposure to SARS-

feet of distance from others. See <https://www.aarp.org/health/healthy-living/info-2020/states-mask-mandates-coronavirus.html> (accessed January 28, 2021).

CoV-2 and people at increased risk for severe illness from the virus. While vaccines are highly effective at preventing severe or symptomatic COVID-19, at this time there is limited information on how much the available COVID-19 vaccines may reduce transmission in the general population and how long protection lasts.³⁰ Therefore, this mask requirement, as well as CDC recommendations to prevent spread of COVID-19,³¹ additionally apply to vaccinated persons. Similarly, CDC recommends that people who have recovered from COVID-19 continue to take precautions to protect themselves and others, including wearing masks;³² therefore, this mask requirement also applies to people who have recovered from COVID-19.

ACTION:

Until further notice, under 42 U.S.C. 264(a) and 42 CFR 70.2, 71.31(b), and 71.32(b), unless excluded or exempted as set forth in this Order, a person must wear a mask while boarding, disembarking, and traveling on any conveyance into or within the United States. A person must also wear a mask at any transportation hub that provides transportation within the United States.

Conveyance operators traveling into or within the United States may transport only persons wearing masks and must use best efforts to ensure that masks are worn when embarking, disembarking, and throughout the duration of travel. Operators of transportation hubs must use best efforts to ensure that any person entering or on the premises of the transportation hub wears a mask.

As a condition of receiving controlled free pratique under 42 CFR 71.31(b) to enter a U.S. port, disembark passengers, and begin operations at any U.S. port of entry, conveyances arriving into the United States must require persons to wear masks while boarding, disembarking, and for the duration of travel. Conveyance operators must also require all persons to wear masks while boarding and for the duration of their travel on board conveyances departing from the United States until the conveyance arrives at the foreign destination, if at any time any of the persons onboard (passengers, crew, or conveyance operators) will return to the United States while this Order remains in effect. These travel conditions are

³⁰ <https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html>.

³¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

³² <https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html>.

necessary to mitigate the harm of further introduction of COVID-19 into the United States.

Requiring a properly worn mask is a reasonable and necessary measure to prevent the introduction, transmission and spread of COVID-19 into the United States and among the states and territories under 42 U.S.C. 264(a) and 42 CFR 71.32(b). Among other benefits, masks help prevent dispersal of an infected person's respiratory droplets that carry the virus. That precaution helps prevent droplets from landing in the eye, mouth, or nose or possibly being inhaled into the lungs of an uninfected person, or from landing on a surface or object that an uninfected person may then touch and then touch his or her own or another's eyes, nose, or mouth. Masks also provide some protection to the wearer by helping reduce inhalation of respiratory droplets.

This Order shall not apply within any state, locality, territory, or area under the jurisdiction of a Tribe, where the controlling governmental authority: (1) Requires a person to wear a mask on conveyances; (2) requires a person to wear a mask at transportation hubs; and (3) requires conveyances to transport only persons wearing masks. Those requirements must provide the same level of public health protection as—or greater protection than—the requirements listed herein.

In accordance with 42 U.S.C. 264(e), state, local, territorial, and tribal authorities may impose additional requirements that provide greater public health protection and are more restrictive than the requirements in this Order. Consistent with other federal, state, or local legal requirements, this Order does not preclude operators of conveyances or transportation hubs from imposing additional requirements, or conditions for carriage, that provide greater public health protection and are more restrictive than the requirements in this Order (e.g., requiring a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19 or imposing requirements for social distancing or other recommended protective measures).

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA") but rather is an emergency action taken under the existing authority of 42 U.S.C. 264(a) and 42 CFR 70.2, 71.31(b), 71.32(b). In the event that a court determines this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and

the opportunity to comment on this Order and the delay in effective date. Considering the public health emergency caused by COVID-19, it would be impracticable and contrary to the public's health, and by extension the public's interest, to delay the issuance and effective date of this Order. Similarly, the Office of Information and Regulatory Affairs has determined that if this Order were a rule, it would be a major rule under the Congressional Review Act, but there would not be a delay in its effective date as the agency has determined that there would be good cause to make the requirements herein effective immediately under the APA.

This order is also an economically significant regulatory action under Executive Order 12866 and has therefore been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget. The agency is proceeding without the complete analysis required by Executive Order 12866 under the emergency provisions of 6(a)(3)(D) of that Order.

If any provision of this Order, or the application of any provision to any carriers, conveyances, persons, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any carriers, conveyances, persons, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

To address the COVID-19 public health threat to transportation security, this Order shall be enforced by the Transportation Security Administration under appropriate statutory and regulatory authorities including the provisions of 49 U.S.C. 106, 114, 44902, 44903, and 46301; and 49 CFR part 1503, 1540.105, 1542.303, 1544.305 and 1546.105.

This Order shall be further enforced by other federal authorities and may be enforced by cooperating state and local authorities through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18 and 71.2.³³

EFFECTIVE DATE:

This Order shall enter into effect on February 1, 2021, at 11:59 p.m. and will

³³ While this Order may be enforced and CDC reserves the right to enforce through criminal penalties, CDC does not intend to rely primarily on these criminal penalties but instead strongly encourages and anticipates widespread voluntary compliance as well as support from other federal agencies in implementing additional civil measures enforcing the provisions of this Order, to the extent permitted by law and consistent with President Biden's Executive Order of January 21, 2021 (Promoting COVID-19 Safety in Domestic and International Travel).

remain in effect unless modified or rescinded based on specific public health or other considerations, or until the Secretary of Health and Human Services rescinds the determination under section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists.

Dated: February 1, 2021.

Sherri Berger,

Acting Chief of Staff, Centers for Disease Control and Prevention.

[FR Doc. 2021-02340 Filed 2-1-21; 4:15 pm]

BILLING CODE 4163-18-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20EG31DW50100; OMB Control Number 1028-New]

Agency Information Collection Activities; Hydrography Addressing tool

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing a new information collection. **DATES:** Interested persons are invited to submit comments on or before April 5, 2021.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to gs-info_collections@usgs.gov. Please reference OMB Control Number 1028-xxxx in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Michael Tinker by email at mdtinker@usgs.gov or by telephone at 303-202-4476.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below.

tsa.gov

TSA to implement Executive Order regarding face masks at airport security checkpoints and throughout the transportation network

5-6 minutes

[\(Español\)](#) | [Simplified Chinese](#) | [Traditional Chinese](#)

UPDATE: Regarding the civil penalty fine structure for individuals who violate the Security Directive, TSA will recommend a fine ranging from \$250 for the first offense up to \$1,500 for repeat offenders. Based on substantial aggravating or mitigating factors, TSA may seek a sanction amount that falls outside these ranges. TSA has provided transportation system operators specific guidance on how to report violations so that TSA may issue penalties to those who refuse to wear a face mask.

WASHINGTON – The Transportation Security Administration (TSA) will implement provisions of President Biden’s Executive Order on Promoting COVID-19 Safety in Domestic and International Travel by requiring travelers to wear face masks when they are in airports, bus and rail stations, as well as while on passenger aircraft, public transportation, passenger railroads, and over-the-road buses operating on scheduled fixed-routes. TSA’s action will also support the [Centers for Disease Control and Prevention \(CDC\) Emergency Order](#) requiring that individuals wear masks on conveyances and at stations, ports, or similar transportation hubs.

Starting on February 2, 2021, TSA will require individuals to wear a mask at TSA airport screening checkpoints and throughout the commercial and public transportation systems. This requirement will remain effective until May 11, 2021.

“TSA will fully comply with the President’s Executive Orders, CDC guidance and the DHS National Emergency determination to ensure healthy and secure travel across all transportation sectors. This will help prevent further spread of COVID-19 and encourage a unified government response,” said Darby LaJoye, Senior Official Performing the Duties of the TSA Administrator. “As we continue to experience impacts from this pandemic, we are committed to this measure as the right thing to do for the TSA workforce, for our industry stakeholders and for passengers.”

The federal face mask requirement extends to the nation’s domestic network of airports; passengers and crewmembers flying aboard airplanes operated by domestic and foreign air carriers with inbound flights to U.S. ports of entry; and surface transportation modes, such as passenger rail, bus systems, and over-the-road bus companies. Passengers without a mask may be denied entry, boarding, or continued transport. Failure to comply with the mask requirement can result in civil penalties.

Whether beginning the security screening process at the airport Travel Document Checker (TDC) or submitting checked baggage for screening, all passengers who appear to be over the age of 2 must properly wear a face mask throughout the security screening process. The officer at the TDC will request that travelers temporarily lower the mask to verify their identity. Those who approach the TDC without a mask will be asked to wear or obtain one to proceed. Passengers who refuse to wear a

mask will not be permitted to enter the secure area of the airport, which includes the terminal and gate area. Depending on the circumstance, those who refuse to wear a mask may be subject to a civil penalty for attempting to circumvent screening requirements, interfering with screening personnel, or a combination of those offenses.

According to the CDC Order, face masks should cover the nose and mouth and fit snugly against the sides without gaps. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. While medical masks and N-95 respirators fulfill CDC and TSA's requirements, face shields and/or goggles are not an acceptable substitute for the use of a mask; however, they may be used in addition to an acceptable mask.

In developing implementing guidance, TSA collaborated with stakeholders in identifying certain exemptions to the face mask requirement. Exemptions include travelers under the age of 2 years old, those with a disability who cannot wear a mask, or cannot safely wear a mask because of the disability as defined by the Americans with Disabilities Act, and those for whom a mask would create a risk to workplace health, safety, or job duty as determined by relevant workplace safety guidelines or federal regulations. Visit [TSA.gov](https://www.tsa.gov) for more [information about face mask requirements](#).

TSA Cares is a helpline that provides airline passengers with disabilities, medical conditions and other special circumstances additional assistance during the airport security screening process. Call them at (855) 787-2227 about 72 hours prior to traveling with any questions about screening policies, procedures and what to expect at the security checkpoint.

All commuters and airline travelers, including persons considering international travel, should first check the [CDC website](#) prior to taking their trip.

Throughout the pandemic, TSA has closely coordinated COVID-19 safeguards with industry stakeholders, federal partners, and local law enforcement. This coordination will continue for swift and consistent implementation of this requirement across the transportation network.

###

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**NOTICE OF ENFORCEMENT POLICY:
ACCOMMODATION BY CARRIERS OF PERSONS WITH DISABILITIES
WHO ARE UNABLE TO WEAR OR SAFELY WEAR MASKS WHILE ON
COMMERCIAL AIRCRAFT**

The Office of Aviation Consumer Protection (OACP), a unit within the Office of the General Counsel of the U.S. Department of Transportation (DOT or the Department), is issuing this Notice of Enforcement Policy to remind U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the public health risks associated with the Coronavirus Disease 2019 (COVID-19). OACP will exercise its prosecutorial discretion and provide airlines 45 days from the date of this notice to be in compliance with their obligation under the Air Carrier Access Act (ACAA)¹ and the Department's implementing regulation in 14 CFR Part 382 (Part 382) to provide reasonable accommodations to persons with disabilities who are unable to wear or safely wear masks, so long as the airlines demonstrate that they began the process of compliance as soon as this notice was issued.

To carry out the Executive Order on Promoting COVID-19 Safety in Domestic and International Travel (Executive Order),² the Centers for Disease Control and Prevention (CDC) issued an order on January 29, 2021 (CDC Order)³ that, among other things, requires U.S. and foreign air carriers to use their best efforts to ensure that persons on flights to, within, or from⁴ the United States wear a mask for the duration of travel, including when boarding and disembarking aircraft. The CDC Order exempts certain categories of persons from the mask-wearing mandate, including a person with a disability who cannot wear a mask, or who cannot safely wear a mask

¹ The ACAA, signed into law in 1986, prohibits discrimination by airlines against individuals with disabilities in commercial air transportation. The Americans with Disabilities Act, signed into law after the ACAA in 1990, prohibits discrimination against individuals with disabilities in employment, state or local government, public accommodations, commercial facilities, telecommunications, and transportation other than by commercial airlines.

² Exec. Order No. 13998, 86 FR 7205 (Jan. 26, 2021).

³ Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2, 71.31(b), 71.32(b): Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (CDC Order), *available at* https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC_GMTF_01-29-21-p.pdf.

⁴ CDC Order specifies that “[c]onveyance operators must also require all persons to wear masks on board conveyances departing from the United States and for the duration of their travel until the conveyance arrives at the foreign destination if at any time any of the persons onboard (passengers or conveyance operators) will return to the United States while this Order remains in effect.” CDC Order at 9.

because of the disability.⁵ However, it allows airlines to impose requirements or conditions for carriage on the categories of persons exempted from the mask mandate, whether the person is a child under the age of two, a person for whom wearing a mask would create a risk to workplace safety, health, or job duty, or a person with a disability who is unable to wear or safely wear a mask because of the disability. Additionally, on January 31, 2021, the Transportation Security Administration (TSA) issued a Security Directive (SD) to aircraft operators on face mask requirements to implement the Executive Order and to support enforcement of the CDC Order mandating masks.⁶ The Department supports actions by the airline industry to have procedures in place requiring passengers to wear masks in accordance with the CDC Order, CDC guidance, and TSA SD. At the same time, the ACAA and Part 382, which are enforced by OACP, require airlines to make reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear or safely wear a mask due to their disability. This Notice sets forth the enforcement policy that OACP will apply in determining, on a prospective basis, whether airlines are complying with the requirements of the ACAA and Part 382 when implementing procedures requiring mask-wearing by passengers.

Background

SARS-CoV-2, the virus that causes COVID-19, spreads most often when an infected person coughs, sneezes, or talks, and droplets from the infected individual's mouth or nose are spread through the air and come in contact with people nearby.⁷ Persons with COVID-19 infection may have symptoms of fever, cough, or shortness of breath,⁸ or they may be asymptomatic⁹ or pre-symptomatic¹⁰ but still able to spread the virus.¹¹ CDC has made clear that appropriately worn masks reduce the spread of COVID-19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19.¹²

⁵ CDC Order at 4 and 5 (noting that this is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to disability).

⁶ TSA Security Directive 1544-21-02: Security Measures – Face Mask Requirements (January 31, 2021).

⁷ See Ctrs. for Disease Control & Prevention, *How COVID Spreads*, CDC.gov (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>; Ctrs. for Disease Control & Prevention, *Considerations for Wearing Masks*, CDC.gov (last updated Dec. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.

⁸ Ctrs. for Disease Control & Prevention, *Symptoms of Coronavirus*, CDC.gov (last updated Dec. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

⁹ An asymptomatic case is an individual infected with SARS-CoV-2, who does not exhibit symptoms during the course of infection. Ctrs. for Disease Control & Prevention, *COVID-19 Pandemic Planning Scenarios*, CDC.gov (last updated Sept. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

¹⁰ A pre-symptomatic case of COVID-19 is an individual infected with SARS-CoV-2, who has not exhibited symptoms at the time of testing, but who later exhibits symptoms during the course of the infection. *COVID-19 Pandemic Planning Scenarios*, *supra* note 8.

¹¹ See *How COVID Spreads* and *Considerations for Wearing Masks*, *supra* note 6.

¹² CDC Order at 6.

As of January 27, 2021, there have been over 99 million confirmed cases of COVID-19 globally and over 25 million confirmed cases of COVID-19 in the United States, with over 2 million deaths globally and over 400,000 deaths in the United States due to the disease.¹³ To slow the spread of COVID-19, on January 21, 2021, President Biden issued Executive Order 13998, which directs the heads of certain Federal agencies to take immediate actions to require mask-wearing in domestic and international transportation. The Executive Order further provides that the heads of agencies may make categorical or case-by-case exceptions to policies developed under the order, consistent with applicable law, to the extent that doing so is necessary or required by law.

Pursuant to the Executive Order, on January 29, 2021, CDC issued an order directing conveyance operators, which includes airlines, to use best efforts to ensure that any person on the conveyance, such as an aircraft, wears a mask when boarding, disembarking, and for the duration of travel. Recognizing that there are specific instances when wearing a mask may not be feasible, the CDC Order exempts several categories of persons from the mask mandate, including “a person with a disability who cannot wear a mask, or who cannot safely wear a mask because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.)” The Americans with Disabilities Act (ADA) defines a person with a disability to include a person who has a physical or mental impairment that substantially limits one or more major life activities.¹⁴ To ensure that only qualified persons under the exemptions would be able to travel without a mask, the CDC Order permits operators of transportation conveyances, such as airlines, to impose requirements, or conditions for carriage, on persons requesting an exemption, including requiring a person seeking an exemption to request an accommodation in advance, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the operator. The CDC Order also permits operators to require protective measures, such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19 or seating or otherwise situating the individual in a less crowded section of the conveyance, e.g., aircraft.¹⁵

In response to COVID-19, U.S. and foreign air carriers generally have implemented policies requiring passengers to wear masks onboard aircraft even before the issuance of the Executive Order and the CDC Order. Some carriers have adopted policies that expressly allow “no exceptions” to the mask requirement other than for children under the age of two.¹⁶ OACP has

¹³ *Id.* at 5.

¹⁴ 42 U.S.C. 12102(4). OACP notes that the definition of a person with a disability under the ADA is almost identical to the definition of a person with a disability under the Department’s ACAA regulation. See also CDC Order at 4 and 5.

¹⁵ CDC Order at 4. CDC definitions for SARS-CoV-2 viral test and documentation of recovery are available in the Frequently Asked Questions at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>.

¹⁶ It would be a violation of the ACAA to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not to have an exemption for the limited number of individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others. See Ctrs. for Disease Control & Prevention, *Information for Pediatric Healthcare Providers*, CDC.gov (last updated Dec. 30, 2020), <https://www.cdc.gov/coronavirus/2019->

received complaints from persons who assert they have a disability that precludes their wearing a mask, and who contend that they were denied transport by an airline under a “no exceptions allowed” mask policy.

The CDC and other medical authorities recognize that individuals with certain medical conditions may have trouble breathing or other difficulties such as being unable to remove the mask without assistance if required to wear a mask that fits closely over the nose and mouth.¹⁷ The CDC Order provides that a mask is not required in circumstances where an individual is “unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to wear the mask without assistance.”¹⁸ The Order notes that individuals may remove masks “who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask.”¹⁹ Also, individuals with acute illness may remove the mask if it “interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.”²⁰ CDC will issue additional guidance regarding persons who cannot wear a mask on the basis of disability.²¹ Individuals who have a physical or mental impairment that substantially limits one or more major life activities are individuals with a disability for purposes of the ACAA and Part 382.²²

Legal Authority

The ACAA prohibits U.S. and foreign air carriers from denying air transportation to or otherwise discriminating in the provision of air transportation against a person with a disability by reason of the disability.²³ When a policy or practice adopted by a carrier has the effect of denying service to or otherwise discriminating against passengers because of their disabilities, the Department’s disability regulations in Part 382 require the airline to modify the policy or practice as necessary to provide nondiscriminatory service to the passengers with disabilities, provided that the modifications would not constitute an undue burden or fundamentally alter the airline’s program.²⁴

Part 382 allows an airline to refuse to provide air transportation to an individual whom the airline determines presents a disability-related safety risk, provided that the airline can demonstrate that

[ncov/hcp/pediatric-hcp.html](https://www.cdc.gov/hcp/pediatric-hcp.html) (stating that “[r]ecent evidence suggests that compared to adults, children likely have similar viral loads in their nasopharynx, similar secondary infections rates, and can spread the virus to others”).

¹⁷ Considerations for Wearing Masks, *supra* note 6.

¹⁸ CDC Order at 4.

¹⁹ CDC Order at 4 (footnote 7).

²⁰ CDC Order at 4 (footnote 7).

²¹ CDC Order at 5 (footnote 9).

²² 49 U.S.C. 41705(a); 14 CFR 382.3.

²³ 49 U.S.C. 41705(a); 14 CFR 382.11.

²⁴ 14 CFR 382.13.

the individual would pose a “direct threat” to the health or safety of others onboard the aircraft, and that a less restrictive option is not feasible.²⁵ To support a determination that an individual poses such a direct threat, the airline must make “an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence,” in order to ascertain “(i) [t]he nature, duration, and severity of the risk; (ii) [t]he probability that the potential harm to the health and safety of others will actually occur; and (iii) [w]hether reasonable modifications of policies, practices, or procedures will mitigate the risk.”²⁶ If the airline has adequately determined, based on such an individualized assessment, that the passenger does pose a direct threat to the health or safety of others because of a disability-related condition, the airline “must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others,” and must, for example, “not refuse transportation to the passenger if [the airline] can protect the health and safety of others by means short of a refusal” to provide transportation.²⁷ Furthermore, the Department’s regulations permit the airline to impose reasonable conditions, restrictions, or requirements on a passenger who has a “medical condition” that may cause the passenger to pose a risk to the health and safety of others.²⁸

Enforcement Policy

The authority to pursue or not to pursue enforcement action against airlines with respect to air travel consumer protection and civil rights requirements, including compliance with the ACAA, lies with OACP.²⁹

In accordance with the CDC Order, as conveyance operators, airlines are required to implement face mask policies that treat passengers presumptively as potential carriers of the SARS-CoV-2 virus and, therefore, as presenting a potential threat to the health and safety of other passengers and the crew.³⁰ Notably, however, the CDC Order exempts from the mask mandate a person with a disability who cannot wear a mask, or who cannot safely wear a mask because of the

²⁵ 14 CFR 382.19(c)(1), (2).

²⁶ *Id.*

²⁷ 14 CFR 382.19(c)(2).

²⁸ 14 CFR 382.21(a)(3). The rule recognizes that a passenger with a communicable disease or infection, such as infection with the SARS-CoV-2 virus or other “medical condition,” may pose a direct threat to the health and safety of others onboard an aircraft, and the airline may be justified in refusing to transport the passenger or in requiring protective measures to mitigate the risk, consistent with the directives of public health authorities. 14 CFR 382.21(a)–(b).

²⁹ 49 U.S.C. 41705(c), 46301. The CDC Order requiring aircraft operators to mandate mask use will be enforced by the Transportation Security Administration under its statutory and regulatory authorities, including 49 U.S.C. 106, 114, 44902, 44903, and 46301; and 49 CFR 1542.303, 1544.305, and 1546.105.

³⁰ CDC Order at 5 (“The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet.);”); *id.* at 7 (“Traveling on public conveyances increases a person’s risk of getting and spreading COVID-19 by bringing persons in close contact with others, often for prolonged periods, and exposing them to frequently touched surfaces.”).

disability. The Department also requires reasonable accommodations for persons with disabilities who are unable to wear masks or are unable to wear them safely.³¹

Airlines have expressed concerns to OACP that a significant number of passengers may claim medical exemption from the mask requirements without an apparent credible basis. The CDC Order permits airlines to impose requirements or conditions for carriage on a person requesting an exemption, including requiring a person seeking an exemption to request an accommodation in advance, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the airline.³² Similarly, under the Department's disability regulation in 14 CFR Part 382, airlines may impose conditions, restrictions, or requirements on a passenger asserting that a medical condition prevents the passenger from wearing a face mask, because the passenger may pose a direct threat to the health or safety of others, as any passenger is a potential carrier of the SARS-CoV-2 virus.³³ In short, both the CDC Order and Part 382 permit airlines to require passengers to consult with the airline's medical expert and/or to provide medical evaluation documentation from the passenger's doctor sufficient to satisfy the airline that the passenger does, indeed, have a recognized medical condition precluding the wearing or safe wearing of a mask.

Airlines have also represented to OACP that, given the number of passengers making such claims, it is not practicable for airlines to make the required individualized assessment of appropriate mitigation measures at the airport on the day of the flight. Under the Department's disability regulation in Part 382, airlines must conduct an individualized assessment of the potential ways to mitigate the risk to others of allowing passengers with disabilities to fly without a mask.³⁴ However, Part 382, like the CDC Order, permits airlines to require passengers with disabilities who are unable to wear masks to request an accommodation in advance. Airlines may also require such passengers to check in early and to agree to undergo the required individualized assessment a reasonable period in advance of the scheduled flight, provided that the process is completed on the day of travel.

In addition, airlines may impose protective measures to reduce or prevent the risk to other passengers. For example, airlines may require protective measures, such as a negative result from a SARS-CoV-2 test,³⁵ taken at the passenger's own expense, during the days immediately

³¹ 14 CFR 382.13.

³² *Id.*

³³ 14 CFR 382.21(a)(3).

³⁴ 14 CFR 382.19(c)(1).

³⁵ On January 12, 2021, CDC issued an order requiring any passenger flying into the United States from a foreign country to provide, before boarding the flight, proof of a negative pre-departure test result for SARS-CoV-2, the virus that causes COVID-19, or documentation of recovery from COVID-19 after a previous SARS-CoV-2 infection. This order became effective on January 26, 2021. Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2, 71.31(b): Requirement for Negative Pre-Departure COVID-19 Test Result or Documentation of Recovery From COVID-19 for All Airlines or Other Aircraft Passengers Arriving into the United States from Any Foreign Country, *available at* https://www.cdc.gov/quarantine/pdf/global-airline-testing-order_2021-01-2_R3-signed-encrypted-p.pdf.

prior to the scheduled flight.³⁶ Further, the airline may arrange for additional, appropriate mitigation measures, including arranging for the passenger to sit in a less crowded section of the plane, to take a flight at times when airports are less crowded, and/or scheduling the passenger on a less crowded flight.

To ensure travelers are aware of the face mask requirements, airlines should use their best efforts to make this information easily available. The Department requires airlines provide information on request, to individuals with disabilities, about any service-related or other limitations on the airline's ability to accommodate passengers with a disability.³⁷ Also, CDC and TSA require airlines to provide passengers with prominent and adequate notice to facilitate awareness and compliance with the requirement that masks must be worn, subject to certain limited exemptions, to mitigate the spread of COVID-19 during air travel.³⁸ Airlines' obligation to provide information on the face mask requirements includes updating airlines' face mask policies on their websites to ensure accuracy and consistency with the ACAA, CDC Order and TSA SD.³⁹

In recognition of the CDC Order, as well as airlines' efforts to minimize the potential for transmission of the virus onboard aircraft by implementing policies requiring passengers to wear masks onboard aircraft even before the issuance of the CDC Order, OACP will exercise its prosecutorial discretion and provide airlines an opportunity to follow the steps described herein to become compliant before taking further action.⁴⁰ Airlines are expected to review their face mask policies immediately and to revise them as necessary to comply with the ACAA and Department's disability regulation in Part 382. OACP will refrain from taking enforcement action against an airline for a period of up to 45 days from the date of this notice, so long as the airline demonstrates that it began the process of compliance as soon as this notice was issued. This timeframe should provide airlines with adequate time to review and revise their mask procedures as needed to comply with the law.⁴¹

³⁶ A positive test result for SARS-CoV-2, the virus that causes COVID-19, is a valid reason for an airline to deny transport to any individual, including an individual with a disability. CDC recommends isolation to separate people infected with SARS-CoV-2 from people who are not infected. See Ctrs. for Disease Control & Prevention, *Isolate if You are Sick*, CDC.gov (last updated Jan. 7, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html>.

³⁷ 14 CFR 382.41.

³⁸ CDC Order at 1; TSA SD at 2.

³⁹ See 14 CFR 399.79 (b)(2) (defining an airline's practice as "deceptive" to consumers within the meaning of section 41712 if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter).

⁴⁰ Every day, we are learning more about how COVID-19 spreads and affects people and communities. OACP will continue to follow the data and information provided by public health authorities, such as CDC, on actions necessary to limit the spread or impact of SARS-CoV-2 and will make changes to this notice as necessary to be consistent with current medical knowledge and the best available objective evidence.

⁴¹ This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a safeguard from Departmental enforcement as described herein. To the extent that this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way.

Questions regarding this Notice may be addressed to the Office of Aviation Consumer Protection (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

By:

Blane A. Workie
***Assistant General Counsel for
Office of Aviation Consumer Protection***

Dated: February 5, 2021

An electronic version of this document is available at <http://www.dot.gov/airconsumer>

[phe.gov](https://www.phe.gov)

Renewal of Determination That A Public Health Emergency Exists

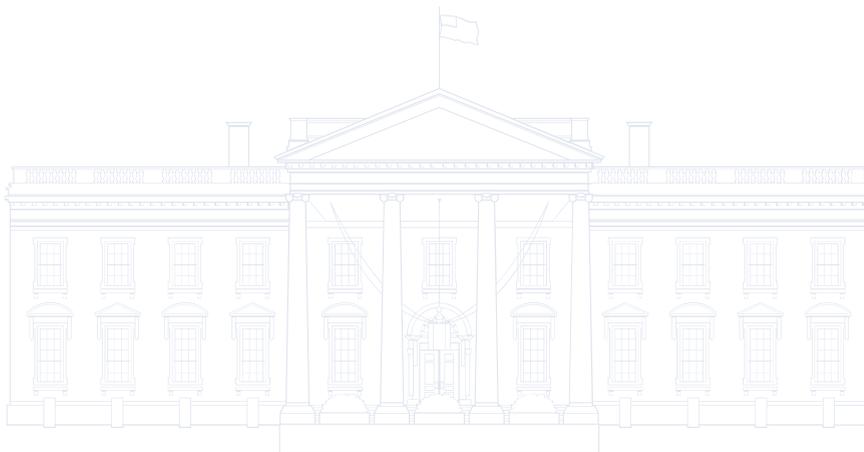
1 minute

As a result of the continued consequences of the Coronavirus Disease 2019 (COVID-19) pandemic, on this date and after consultation with public health officials as necessary, I, Xavier Becerra, Secretary of Health and Human Services, pursuant to the authority vested in me under section 319 of the Public Health Service Act, do hereby renew, effective October 18, 2021, the January 31, 2020, determination by former Secretary Alex M. Azar II, that he previously renewed on April 21, 2020, July 23, 2020, October 2, 2020, and January 7, 2021, and that I renewed on April 15, 2021 and July 19, 2021, that a public health emergency exists and has existed since January 27, 2020, nationwide.

October 15, 2021		/s/
Date		Xavier Becerra

- This page last reviewed: October 15, 2021

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[Briefing Room](#)

President Biden Announces New Actions to Protect Americans Against the Delta and Omicron Variants as We Battle COVID-19 this Winter

New Actions Aim to Get Americans Boosted for Even Greater Protection Against the Delta and Omicron Variants, Keep Schools and Businesses Open, and Help Quickly Respond to Surges if Needed During the Colder Months

Today, President Biden will announce new actions to combat COVID-19 as the United

States heads into the winter months and with the emergence of a new variant, Omicron. The United States has come far in its fight against the virus and is more prepared than ever to deal with the challenges of COVID-19. We have the public health tools we need to continue to fight this virus without shutting down our schools and businesses. As we head into winter, today, the President will announce actions to provide additional protection to Americans and fight the Omicron and Delta variants, while keeping our economy growing.

This plan includes:

1. Boosters for All Adults
2. Vaccinations to Protect Our Kids and Keep Our Schools Open
3. Expanding Free At-Home Testing for Americans
4. Stronger Public Health Protocols for Safe International Travel
5. Protections in Workplaces to Keep Our Economy Open
6. Rapid Response Teams to Help Battle Rising Cases
7. Supplying Treatment Pills to Help Prevent Hospitalizations and Death
8. Continued Commitment to Global Vaccination Efforts
9. Steps to Ensure We Are Prepared for All Scenarios

Last week, after the World Health Organization (WHO) named the Omicron variant as a Variant of Concern, the President took immediate steps to restrict travel from the most impacted countries in order to give the U.S. time to learn more about the variant and prepare. We have more tools today to fight the Omicron variant than we have had to fight previous variants, including Delta. Nearly 60 percent of Americans are fully vaccinated, booster shots are authorized for all adults, and a vaccine is authorized for kids aged 5 and older. The U.S. is leading the world in vaccinating children, and millions of Americans have already gotten their boosters. And, the Food and Drug Administration (FDA) is reviewing additional antiviral treatments for when people do get sick.

Today's actions will ensure we are using these tools as effectively as possible to protect the American people against this variant and to continue to battle the Delta variant during the winter months when viruses tend to thrive. These actions will help keep our economy growing and keep Americans safe from severe COVID-19.

Today, President Biden will announce the following actions:

1. **Boosters for All Adults:** President Biden will announce new steps to ensure that the nearly 100 million eligible Americans who have not yet gotten their booster shot, get one as soon as possible. As we face the Omicron variant, boosters are more important than ever. Boosters increase the strength of your antibody response, so when the virus

4. **Stronger Public Health Protocols for Safe International Travel:** Last month, the Administration implemented stronger international travel protocols, including requirements for foreign travelers to be fully vaccinated. The very day the WHO identified the new Omicron variant, the Biden Administration took immediate steps to restrict travel from the countries in the region where it was confirmed to be spreading quickly. The President will announce additional steps to strengthen the safety of international travel as we face this new threat – just as we have faced those that have come before it.

- **Strengthening global pre-departure testing protocols:** Early next week, the United States will tighten pre-departure testing protocols by requiring all inbound international travelers to test within one day of departure globally, regardless of nationality or vaccination status. This tighter testing timeline provides an added degree of public health protection as scientists continue to assess the Omicron variant.
- **Extending the requirement to wear a mask on airplanes, rail travel, and public transportation:** The Administration will continue to require masking during international or other public travel – as well as in transportation hubs such as airports or indoor bus terminals – through March 18 as we continue to battle COVID-19 this winter. The Transportation Security Administration will extend its implementing orders to maintain these requirements through March 18. Fines will continue to be doubled from their initial levels for noncompliance with the masking requirements – with a minimum fine of \$500 and fines of up to \$3,000 for repeat offenders.

5. **Protecting Workplaces to Keep Businesses Open:** Today, the President will announce additional progress we're making in protecting workers and keeping our economy growing and businesses open. Since President Biden took office, the economy has added 5.6 million jobs, new unemployment claims have fallen by 70 percent, and applications for new businesses have risen 30 percent above the pre-pandemic average. To protect this progress and to ensure workers stay safe and on the job, we have to slow the spread of COVID-19 in our workplaces and places of businesses. Vaccination requirements do just that. The President is calling on businesses to continue to take steps to ensure workers are protected as we head into the winter.

- **Calling on businesses to move forward with vaccination or testing programs:** The President will call on businesses to move forward expeditiously with requiring their workers to get vaccinated or tested weekly. This is especially important given the Omicron variant. No business should shut down this winter because of COVID-19. The Department of Labor has provided a clear roadmap to help businesses keep workers safe and their doors open. Already, 60 percent of businesses report they are moving forward with implementing a program to ensure their workers are either vaccinated or tested on a weekly basis, and the U.S. Chamber of Commerce and more than 100 leading public

E

MISCELLANEOUS EXHIBITS

State Mask Mandates During COVID-19 Pandemic*Data updated through Nov. 24, 2021*

<u>STATE</u>	<u>MASK MANDATE</u>	<u>REPEALED</u>	<u>NOTES</u>
Alabama	Yes	4/9/2021	
Alaska	No	N/A	
Arizona	Yes	3/25/2021	Local mandates prohibited by EO
Arkansas	Yes	3/31/2021	Local mandates prohibited by new law
California	Yes	In Effect	Applies only to unvaccinated
Colorado	Yes	5/14/2021	
Connecticut	Yes	In Effect	Applies only to unvaccinated
Delaware	Yes	5/21/2021	
Florida	No	N/A	Local mandates prohibited by EO
Georgia	No	N/A	
Hawaii	Yes	In Effect	Only state that never repealed mandate
Idaho	No	N/A	
Illinois	Yes	In Effect	Reinstated
Indiana	Yes	4/6/2021	
Iowa	Yes	2/7/2021	Local mandates prohibited by new law
Kansas	Yes	4/1/2021	Repealed by legislature; counties could opt out when in effect
Kentucky	Yes	6/11/2021	
Louisiana	Yes	10/27/2021	
Maine	Yes	5/24/2021	
Maryland	Yes	7/1/2021	
Massachusetts	Yes	5/29/2021	
Michigan	Yes	6/22/2021	
Minnesota	Yes	5/14/2021	
Mississippi	Yes	3/3/2021	
Missouri	No	N/A	
Montana	Yes	2/12/2021	Local mandates prohibited by new law
Nebraska	No	N/A	
Nevada	Yes	In Effect	Reinstated
New Hampshire	Yes	4/16/2021	
New Jersey	Yes	5/28/2021	
New Mexico	Yes	In Effect	Reinstated
New York	Yes	In Effect	Applies only to unvaccinated
North Carolina	Yes	5/14/2021	
North Dakota	Yes	1/18/2021	Mandates prohibited by new law
Ohio	Yes	6/2/2021	
Oklahoma	No	N/A	School mandates restricted by new law
Oregon	Yes	In Effect	Reinstated
Pennsylvania	Yes	6/28/2021	
Rhode Island	Yes	7/6/2021	
South Carolina	No	N/A	Local mandates prohibited by EO; school mandates prohibited by new law
South Dakota	No	N/A	
Tennessee	No	N/A	Local mandates prohibited by new law
Texas	Yes	3/10/2021	Local mandates prohibited by EO
Utah	Yes	4/10/2021	Repealed by legislature; school mandates prohibited by new law
Vermont	Yes	6/15/2021	School mandates prohibited
Virginia	Yes	5/28/2021	
Washington	Yes	In Effect	Reinstated
West Virginia	Yes	6/20/2021	
Wisconsin	Yes	3/31/2021	Struck down by Wisconsin Supreme Court
Wyoming	Yes	3/16/2021	

Source: www.aarp.org/health/healthy-living/info-2020/states-mask-mandates-coronavirus.html

Chart by: Lucas Wall

[fox13news.com](https://www.fox13news.com)

Florida reports lowest daily coronavirus cases per capita in nation

FOX News

2-3 minutes

Published November 27, 2021 1:18PM

TALLAHASSEE, Fla. - [Florida](#) is reporting the lowest amount of [coronavirus cases per capita in the nation](#) after Gov. Ron DeSantis was widely criticized by media outlets for his handling of the virus.

The Sunshine State [reported](#) a daily average of 1,393 coronavirus cases as of Friday, six per 100,000, which was a two percent decrease over the last two weeks.

[FLASHBACK: BIDEN SUGGESTED TRUMP'S CORONAVIRUS TRAVEL BAN WAS 'XENOPHOBIC'](#)

DeSantis has been slammed by critics in the media since the start of the pandemic over his opposition to government-imposed mask and vaccine mandates. In 2020, DeSantis was [accused](#) by a Democratic politician of going on a "killing spree" for opposing mask mandates and a Vanity Fair headline from September of this year [referred](#) to the governor as an "angel of death."

At the same time Florida reported the lowest amount of new cases in the country per capita, coronavirus cases are surging in many states where strict lockdown orders were issued by Democratic governors.

Michigan, where Democratic Gov. Gretchen Whitmer imposed some of the most controversial restrictions in the nation during the height of the pandemic, leads the nation in daily coronavirus cases per capita.

**BIDEN SOUTH AFRICA TRAVEL BAN ANNOUNCED HOURS AFTER
FAUCI SAID WHITE HOUSE DIDN'T KNOW ENOUGH TO IMPLEMENT
BAN**

New York is reporting a daily average of 6,666 cases which amounts to 34 per 100,000.

Former New York Governor Andrew Cuomo, a Democrat who resigned in disgrace earlier this year, was widely praised by the media for his handling of the coronavirus and even [received](#) an Emmy Award.

"It just shows once again the success of Governor DeSantis's science based and data based policies," DeSantis Press Secretary Christina Pushaw told Fox News Digital about the case levels in Florida. "He's always made decisions based on the data and that continued even during the Delta surge this summer what he realized would help was not mask mandates in school or lockdowns but provide treatment that actually works."

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States with Mask Mandates Reporting Higher Coronavirus Numbers than Maskless Florida

Hannah Bleau

11-27-21

3 minutes



Joe Raedle, Chip Somodevilla/Getty Images

2:42

States with statewide mask mandates in place are reporting higher coronavirus cases per capita than Florida, a target of the establishment media throughout the Chinese coronavirus pandemic.

Illinois is just one of a handful of states that has a [mask mandate](#) in place.

Gov. J.B. Pritzker (D) [reinstated](#) the mandate in late August, which requires all Illinois residents older than two to wear a mask in indoor settings, regardless of vaccination status. However, that has not seemed to stop the virus from spreading.

According to the *New York Times*' coronavirus [tracker](#), Illinois is [reporting](#) a daily average of 4,661 cases, or 37 per 100,000. That reflects **an increase of 45 percent over the last two weeks.**

While Oregon [lifted](#) its controversial outdoor mask mandate this week, it still has an indoor requirement in place. Still, it is reporting a daily average of 806 cases, or 19 per capita.

In October, Gov. Michelle Lujan Grisham's (D) administration in New Mexico [extended](#) the statewide mask mandate. Yet, as of Saturday, it reported a daily average of 1,406 cases, or 67 per capita, representing an increase of five percent in the last two weeks.

Other states that have a mask mandate in place include Nevada, which is reporting a daily average of 21 cases per 100,000, and Washington, which is reporting a daily average of 18 cases per 100,000.

Hawaii is the only state with a mask mandate in place that comes close to Florida, reporting a daily average of seven cases per 100,000. Florida is still the lowest in the nation, reporting 6 per 100,000.

The Sunshine State never once had a statewide mask mandate in place.





MPI10 / MediaPunch/IPX via AP

“They should not be mandated. No government entity should force you to do that. That is your choice. If that’s something you believe provides you protection, no one is going to say anything to you. But that should not, absolutely not, be mandated,” Gov. DeSantis [said](#) in August, defending his long-held belief and noting that “even some of these experts now are acknowledging, with an aerosolized virus, a piece of cloth is not going to stop the aerosols.”

“I leave that [masking] to people to make their own judgments. If they feel comfortable with that, do it. But absolutely not should that be mandated in any way,” he emphasized.

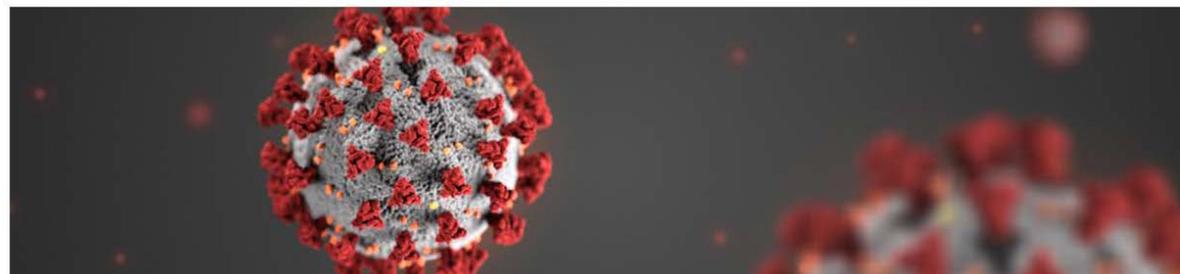
 An official website of the United States government
[Here's how you know](#)



Home » Coronavirus (COVID-19) information



Coronavirus (COVID-19) information



Updated November 24, 2021

TSA Response to COVID-19

The Transportation Security Administration continues to adjust its security operations during the COVID-19 global pandemic. We established this webpage to provide resources and information to assist passengers who travel during this time. TSA is ready to meet the current and future security needs of the nation's transportation systems and remains dedicated to keeping travelers and our frontline workforce healthy and secure.

For the latest press releases and statements related to COVID-19, please visit our [media page](#).

Face Masks Now Required

The Transportation Security Administration has implemented the Executive Order on face masks at airport security checkpoints and throughout the transportation network when indoors. For more information, please read our [latest press release](#).

Any passenger who violates federal regulations, such as refusal to wear a mask in U.S. transportation systems covered by the January 31, 2021 Security Directive and subsequent amendments, may be subject to penalties or fines. The traveler will also be denied TSA PreCheck expedited screening benefits for a period of time.

Stay Healthy. Stay Secure.

should check with their airline and airports of origin and destination for the latest information on closures and cancellations.

Supporting our Workforce

The health and safety of our frontline workforce is paramount to TSA. In addition to the measures taken to protect our frontline workforce from COVID-19 transmission, we are also using our unique authorities to provide them with the additional support and care they deserve during this unprecedented time. This includes:

- Granting paid administrative leave or excused absences (rather than requiring use of personal leave) for those who are diagnosed with COVID-19, need to self-quarantine while awaiting a COVID-19 test result, or have had direct contact with an infected individual.
- Providing for the maximum use of telework to promote social distancing.
- Affording new protections and alternatives to employees who are members of vulnerable populations to fit their individual situations.

We will continuously evaluate and adapt our procedures and policies to keep our workforce safe as we learn more about this devastating disease and how it spreads.

TSA Confirmed COVID-19 Cases

TSA has **273** employees with active COVID-19 infections. Those individuals are staying home to help keep the traveling public safe. **Since the beginning of the pandemic, TSA has cumulatively had 11,227 federal employees test positive for COVID-19. 10,954** employees have recovered, and **33** have unfortunately died after contracting the virus. We have also been notified that two screening contractors have passed away due to the virus.

TSA is committed to notifying the public about airport locations where TSA employees or screening contractors have tested positive for COVID-19. The chart below lists airports with confirmed COVID-19 cases and the last date worked for the most recent screening employee who tested positive. It does not include non-airport TSA employees or contractors who have limited or no interaction with the public. Passengers who believe they may have come in contact with an infected individual within the past 14 days should follow the [CDC's recommendations](#) for travel-associated exposure.

**The chart includes TSA employees and screening contractors who may have had direct interaction with the public at an airport location.*

Airport	Total Confirmed Cases	TSA Screening Officers	Non-Screening Employees	Last work date of most recent screening
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Particulate Respirator N95

User Instructions 8210Plus/8210PlusMX/ 8210/8210MX/07048/8110S



WARNING

This respirator helps protect against certain particles. **Misuse may result in sickness or death.** For correct use, consult supervisor and these *User Instructions*, or call 3M in U.S.A., 1-800-247-3941. In Canada, call Technical Service at 1-800-267-4414. In Mexico, call 01-800-712-0646.

IMPORTANT

Before use, wearer must read and understand these *User Instructions*. Keep these instructions for reference.

Use For

Particles such as those from grinding, sanding, sweeping, sawing, bagging, or processing minerals, coal, iron ore, flour, metal, wood, pollen, and certain other substances. Liquid or non-oil based particles from sprays that do not also emit oil aerosols or vapors. Follow all applicable local regulations. For additional information on 3M use recommendations for this class of respirator please consult the 3M Respirator Selection Guide found on the Personal Safety web site at www.3M.com/respiratorselector or call 1-800-243-4630 in U.S.A. In Canada, call 1-800 267-4414.

Do Not Use For

Do not use for gases and vapors, oil aerosols, asbestos, or sandblasting; particulate concentrations that exceed either 10 times the occupational exposure limit or applicable government regulations, whichever is lower. In the United States, do not use when the U.S. Occupational Safety and Health Administration (OSHA) substance specific standards, such as those for arsenic, cadmium, lead in the construction industry, or 4,4'-methylene dianiline (MDA), specify other types of respiratory protection. This respirator does not supply oxygen.

Biological Particles

This respirator can help reduce inhalation exposures to certain airborne biological particles (e.g. mold, *Bacillus anthracis*, *Mycobacterium tuberculosis*, etc.) but cannot eliminate the risk of contracting infection, illness or disease. OSHA and other government agencies have not established safe exposure limits for these contaminants.

Use Instructions

1. Failure to follow all instructions and limitations on the use of this respirator and/or failure to wear this respirator during all times of exposure can reduce respirator effectiveness and **may result in sickness or death.**
2. In the U.S., before occupational use of this respirator, a written respiratory protection program must be implemented meeting all the requirements of OSHA 29 CFR 1910.134, such as training, fit testing, medical evaluation, and applicable OSHA substance specific standards. In Canada, CSA standard Z94.4 requirements must be met and/or requirements of the applicable jurisdiction, as appropriate. Follow all applicable local regulations.
3. The particles which can be dangerous to your health include those so small that you cannot see them.
4. Leave the contaminated area immediately and contact supervisor if dizziness, irritation, or other distress occurs.
5. Store the respirator away from contaminated areas when not in use.
6. Inspect respirator before each use to ensure that it is in good operating condition. Examine all the respirator parts for signs of damage including the two headbands, attachment points, nose foam, and noseclip. The respirator should be disposed of immediately upon observation of damaged or missing parts. Filtering facepieces are to be inspected prior to each use to assure there are no holes in the breathing zone other than the punctures around staples and no damage has occurred. Enlarged holes resulting from ripped or torn filter material around staple punctures are considered damage. Immediately replace respirator if damaged. Staple perforations do not affect NIOSH approval (For 8110S only).
7. Conduct a user seal check before each use as specified in the Fitting Instructions section. **If you cannot achieve a proper seal, do not use the respirator.**
8. Dispose of used product in accordance with applicable regulations.

Use Limitations

1. This respirator does not supply oxygen. Do not use in atmospheres containing less than 19.5% oxygen.
2. Do not use when concentrations of contaminants are immediately dangerous to life and health, are unknown or when concentrations exceed 10 times the permissible exposure limit (PEL) or according to specific OSHA standards or applicable government regulations, whichever is lower.
3. Do not alter, wash, abuse or misuse this respirator.
4. Do not use with beards or other facial hair or other conditions that prevent a good seal between the face and the sealing surface of the respirator.
5. Respirators can help protect your lungs against certain airborne contaminants. They will not prevent entry through other routes such as the skin, which would require additional personal protective equipment (PPE).
6. This respirator is designed for occupational/professional use by adults who are properly trained in its use and limitations. This respirator is not designed to be used by children.

7. Individuals with a compromised respiratory system, such as asthma or emphysema, should consult a physician and must complete a medical evaluation prior to use.
8. When stored in accordance with temperature and humidity conditions specified below, the product may be used until the “use by” date specified on the packaging.

Storage Conditions and Shelf Life

Before use, store respirators in the original packaging away from contaminated areas, dust, sunlight, extreme temperatures, excessive moisture and damaging chemicals. When stored in accordance with temperature and humidity conditions specified below, the product may be used until the “use by” date specified on packaging. Always inspect product and conduct a user seal check before use as specified in the *User Instructions*. **If you cannot achieve a proper seal, do not use the respirator.**



End of Shelf Life

Use respirators before the “use by” date specified on packaging



Storage Temperature Range

-20°C (-4°F) to +30°C (+86°F).



Storage Maximum Relative Humidity

<80% RH

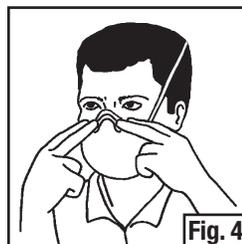
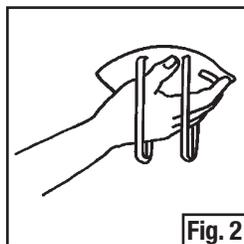
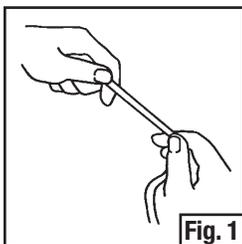
Time Use Limitation

If respirator becomes damaged, soiled or breathing becomes difficult, leave the contaminated area immediately and replace the respirator.

Fitting Instructions

Must be followed each time respirator is worn.

1. Prestretch top and bottom straps before placing respirator on the face (8210/8210MX only) (Fig. 1).
2. Cup the respirator in your hand, with the nosepiece at your fingertips, allowing the headbands to hang freely below your hand (Fig. 2).
3. Position the respirator under your chin with the nosepiece up. Pull the top strap over your head resting it high at the top back of your head. Pull the bottom strap over your head and position it around the neck below the ears (Fig. 3).
4. Place your fingertips from both hands at the top of the metal nosepiece. Using two hands, mold the nose area to the shape of your nose by pushing inward while moving your fingertips down both sides of the nosepiece (Fig. 4).
 ▲ Pinching the nosepiece using one hand may result in improper fit and less effective respirator performance. Use two hands.
5. Perform a User Seal Check prior to each wearing. To check the respirator-to-face seal, place both hands completely over the respirator and exhale sharply. Be careful not to disturb the position of the respirator. If air leaks around nose, readjust the nosepiece as described in step 4. If air leaks at the respirator edges, work the straps back along the sides of your head (Fig. 5). **If you CANNOT achieve a proper seal, DO NOT enter the contaminated area. See your supervisor.**



Removal Instructions

See step 3 of *Fitting Instructions* and cup respirator in hand to maintain position on face. Pull bottom strap over head. Still holding respirator in position, pull top strap over head and remove respirator.

This respirator contains no components made from natural rubber latex.

adasoutheast.org

The ADA and Face Mask Policies - Southeast ADA Center

40-51 minutes

Updated: 8/27/2021

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- [Court Cases: ADA and Face Masks](#)
- [Is there a reason a person might not be able to wear a face mask?](#)
- [Examples of a person with a disability who might not be able to wear a face mask](#)
- [If a person with a disability is unable to wear a face mask, do I still have to allow them in my business or government agency?](#)
- [Are there any situations when an agency or business does not have to provide a reasonable modification to the face mask policy?](#)
- [Fundamental Alteration](#)
- [Undue Burden](#)
- [Direct Threat](#)
- [How should I respond to a request for a reasonable modification to the face mask policy?](#)
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accommodating customers; and (3) posting signs at store entrances notifying customers they can request additional assistance.^[41]

Is there a reason a person might not be able to wear a face mask?

The Centers for Disease Control and Prevention (CDC) states that a person who has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance should not wear a face mask or cloth face covering.^[6]

Examples of a person with a disability who might not be able to wear a face mask

- Individuals with asthma, chronic obstructive pulmonary disease (COPD), or other respiratory disabilities may not be able to wear a face mask because of difficult or impaired breathing. People with respiratory disabilities should consult their own medical professional for advice about using face masks. The Centers for Disease Control and Prevention (CDC) also states that anyone who has trouble breathing should not wear a face mask.^[7]
A woman fitting a face mask on a young child.
- People with post-traumatic stress disorder (PTSD), claustrophobia (an abnormal fear of being in enclosed or narrow places), severe anxiety^[8] may feel afraid or terrified when wearing a face mask. These individuals may not be able to stay calm or function when wearing a face mask.
- Some people with autism are sensitive to touch and texture.^[9] Covering the nose and mouth with fabric can cause sensory overload, feelings of panic, and extreme anxiety.
- A person who has cerebral palsy may have difficulty moving the small muscles in the hands, wrists, or fingers. Due to their limited mobility, they may not be able to tie the strings or put the elastic loops of a face mask over the ears. This means that the person may not be able to put on or remove a face mask without assistance.
- A person who uses mouth control devices such as a sip and puff to operate a wheelchair or assistive technology or uses their mouth or tongue to use assistive ventilators may be unable to wear a face mask.

If a person with a disability is unable to wear a face mask, do I still have to allow them in my business or government agency?

The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions.^[33] As of July 20, 2021, eight states (California, Connecticut, Hawaii, Illinois, Nevada, New Mexico, New York, and Washington), the

[gpadacenter.org](https://www.gpadacenter.org)

FAQs: The ADA, Small Business and Face Mask Policies | Great Plains ADA Center

13-17 minutes

The ADA and Small Business: Frequently Asked Questions About Face Mask Policies and Serving Customers with Disabilities.

The Great Plains ADA Center has received many questions regarding face mask policies and the ADA from the business community. We have collected a summary of these questions and our responses to guide businesses wanting to ensure their face mask policies comply with the ADA.

Please note: No specific guidance on face mask policies and the ADA has been issued by the U.S. Dept. of Justice at the present time. Our technical assistance on this particular issue is based on our understanding of the ADA as well as guidance and recommended practices from other regional ADA Centers, attorneys, disability organizations, and federal agencies. This document will continue to be updated to reflect new information.

FAQs

1) I've heard that a person carrying a card issued from the U.S. Dept. of Justice does not have to wear a face mask, and I could be fined if I do not let this person shop freely without a face mask.

This information is false. The U.S. Department of Justice released the statement below in response to this particular misleading information circulating on the internet.

The Department of Justice Warns of Inaccurate Flyers and Postings Regarding the Use of Face Masks and the Americans with Disabilities Act

Assistant Attorney General for the Civil Rights Division Eric Dreiband reiterated today that cards and other documents bearing the Department of Justice seal and claiming that individuals are exempt from face mask requirements are fraudulent.

Inaccurate flyers or other postings have been circulating on the web and via social media channels regarding the use of face masks and the Americans with Disabilities Act (ADA) due to the COVID-19 pandemic. Many of these notices included use of the Department of Justice seal and ADA phone number.

As the Department has stated in a previous [alert](#), the Department did not issue and does not endorse them in any way. The public should not rely on the information contained in these postings.

The ADA does not provide a blanket exemption to people with disabilities from complying with legitimate safety requirements necessary for safe operations.

2) My business is very small, and I only have one employee. Am I covered by the ADA? Do I

have to make accommodations to customers with disabilities?

Businesses are covered by Title III of the Americans with Disabilities Act. There is no exception in Title III based on the number of employees or facility size. Businesses covered by the ADA must not discriminate based solely on a customer's disability. Businesses must also provide:

- Reasonable modifications to their policies and practices to ensure customers with disabilities can access their goods and services.
- Effective communication through auxiliary aids and services ensuring that communication with people with disabilities is as effective as communication with people without disabilities.
- Access to goods and services through the removal of physical barriers such as steps, narrow doorways, and high thresholds, when readily achievable.

3) Does the ADA require me to have customers wear face masks in my store?

No. The ADA applies to **how** face mask policies are carried out to ensure they are not discriminatory against people with disabilities. Many states and local governments have issued regulations and/or ordinances that require people to wear face masks in public places. Other states and local governments have left policies up to individual businesses. The Great Plains ADA Center highly recommends that businesses stay up to date on face mask policy recommendations and rules issued by their state and local governments. Businesses may use this FAQ and other resources to determine how to apply face mask policies in a way that does not discriminate against people with disabilities.

4) If a customer can't wear a mask because of their disability, do I have to make an exception to the face mask policy?

The U.S. Department of Justice has stated that "The ADA does not provide a blanket exemption to people with disabilities from complying with legitimate safety requirements necessary for safe operations." (See question 1) A business owner does not have to automatically waive a face mask requirement unless there is a local ordinance or state law specifically requiring the business to do so.

5) Are there people who really can't wear face masks because of their disabilities?

Yes. For many individuals with different types of disabilities the effects of wearing a mask are far more severe than being slightly uncomfortable. Wearing a face mask can have a significant impact on their health, wellbeing, and ability to function. For example, a person with a respiratory disability such as asthma or chronic obstructive pulmonary disease (COPD) may not be able to wear a face mask because doing so causes difficulty in breathing. People with anxiety disorders and post-traumatic stress disorder (PTSD) may develop severe anxiety when wearing a face mask. People who have sensory issues may find the constant sensation of a mask on their face very difficult to tolerate.

6) What should I do if a person requests to not wear a face mask because of their disability?

At this time, we recommend that a business follow the same criteria that the ADA requires in any other request for modification of policy. That is, determine if the modification is "reasonable" based on whether providing it would be an undue financial burden, change the fundamental nature of the

business, or cause a direct threat to the health and safety of others.

Denying a Modification in Policy based on "Direct Threat"

Title III regulations of the ADA state that "denying a policy modification request because it would pose a direct threat to the health and safety of others must be based on legitimate evidence". Sources for evidence of a legitimate threat can include guidance from public health authorities such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes of Health, including the National Institute of Mental Health. (Title III Section 36.28). Based on this guidance in the regulations, current public health guidelines can be used to establish that there is legitimate evidence that face masks are necessary to slow or stop the spread of COVID-19 in public places. Public health guidelines regarding the coronavirus pandemic may change over time, and business policies should reflect the changes.

However, even if face mask exemptions may be denied on the basis of "direct threat", there is still an obligation under the ADA to determine if there are other modifications that could be provided to access goods and services.

Some examples include but are not limited to:

- Providing customers with curbside pick-up or no contact home delivery.
- Allow a customer to wear a full face shield instead of a face mask. Scarves or looser coverings may also be appropriate.
- Letting customers order services online or by phone.
- Conducting individual appointments, such as a tax consultation, remotely.

7) My business does not have a face mask policy, but our local government just passed an ordinance requiring people to wear face masks in public places. Because there is a local ordinance that our business must follow, do we still have to provide reasonable modifications to people who can't wear a face mask due to a disability?

Yes. ADA regulations would still require your business to offer alternative ways to provide access to goods and services. However, you are not required to take any actions that would result in an undue financial hardship, change the fundamental nature of the business, or cause a direct threat to health and safety to others, including your employees.

8) Our business provides a face mask to customers that are not wearing masks as they enter the store. A customer told me that she can't wear a face mask. Am I allowed to ask if the reason is because of a disability?

Yes, you may ask a customer if they cannot wear a face mask due to disability. But be careful not to ask questions about the nature or severity of the disability. This response is based on general guidance regarding modification of policy in Title III of the ADA. Currently, there is no specific guidance regarding face mask inquiries and people with disabilities from the U.S. Department of Justice.

9) A few individuals have requested curbside service because they can't wear a mask due to disability. I'm not so sure if this is really the case. Can I require a note from a doctor or some other form of documentation?

We recommend that businesses treat requests for modifications to a face mask policy as they would other requests for policy modification. Generally, when a person with a disability asks for a relatively simple modification, the individual is not required to provide any type of documentation. As a rule people with disabilities do not carry documentation of disability or a doctor's note. Considering that many customers have different kinds of needs that may require additional customer service, singling out people with disabilities to provide documentation may appear discriminatory.

This interpretation is supported by a recent article, A '[Get Out of Masking Free](#)' Card Based on the ADA? , which appeared in the National Law Review. Authors Metcalf and Paul, state "In the non-employment context (i.e., a customer relationship), a business generally cannot demand documentation confirming that an individual is disabled or needs a particular accommodation, so businesses may run the risk of alienating customers with disabilities, or even draw a bona fide complaint to the DOJ or a lawsuit, by requiring a showing of such proof."

More on Documentation:

Please note that the questions and answers in this document are targeted to small businesses such as retail stores, restaurants, and theaters. Many other types of entities are covered by Title II and III of the ADA including schools, hospitals and clinics, daycare facilities, and camps. These entities may have instances when requiring documentation of disability and/or medical testing would be appropriate under the ADA. Future Q & A's from the Great Plains ADA Center will address documentation and broader ADA related issues for these entities.

10) We require identification for items such as alcohol and cigarettes at the check-out counter. If I provide curbside service to someone who can't wear a face mask, can I still require identification?

Yes. These types of legal requirements still apply to people with disabilities, just like everyone else. You also have a right to set up procedures which make contact as minimal as possible. For example, you may have the person drop their Driver's license or ID card in a box rather than hand it directly to staff.

11) My business offers eyebrow waxing and other spa services. We have a customer who says she can't wear a mask due to disability and doesn't want to use any other type of face-covering or face shield. We can't provide these services online or through delivery. Does that mean we must make an exception to our face mask policy?

The ADA requires businesses to assess what types of modifications they can provide that are reasonable. Depending upon the nature of the business, there may be no reasonable alternative method to provide goods and services to the customer. If this is the case, your business does not have to change its face mask policy provided it is based on a legitimate threat to others' health and safety.

12) Until a couple of weeks ago, our business had no face mask policy and left the choice to wear a mask up to our customers. Due to increased cases in our area, we want to begin requiring face masks in our store. A couple of our

customers have told us they weren't wearing masks due to their disabilities. They believe that it is both unfair and discriminatory that they must now wear face masks to come into the store when so many other people were not required to wear masks.

This scenario is a good example of why it is highly recommended that businesses communicate their face mask policies clearly to their customers. If there is a change in policy, a written notice in the front of the business stating the new policy and when it will go into effect is good practice. This information could also be posted on the business website and social media.

Businesses should also be careful to apply their policies equally to all customers. For example, if young, healthy looking customers shop openly without a mask while, in contrast, a customer who appears to have a disability is questioned about their disability and then asked to wear a face mask-- the discrimination complaint may be legitimate.

13) A young man who is deaf and read lips frequently shops at our store. Should we require our staff to wear face masks with clear plastic inserts to allow lip reading?

According to the National Association of the Deaf (NAD), face masks pose real communication challenges for deaf and hard of hearing individuals. Face masks with clear plastic shielding to make the mouth visible are one way to meet the needs of people who read lips. These masks would not have to be worn all of the time by employees, but simply be available as needed to communicate with customers who read lips. A full face shield is another option that allows more visibility of the entire face, making lip-reading easier. (Of course, sanitation protocols should be used rather than just letting different employees share the same mask or shield!) Not everyone who is deaf or hard of hearing lip-reads. Other alternative methods of simple communication include text messaging, Skype or Face time, dry erase boards, and disposable pens and paper.

Developed by the Great Plains ADA Center. July 10, 2020



Review

Is a Mask That Covers the Mouth and Nose Free from Undesirable Side Effects in Everyday Use and Free of Potential Hazards?

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Abstract: Many countries introduced the requirement to wear masks in public spaces for containing SARS-CoV-2 making it commonplace in 2020. **Up until now, there has been no comprehensive investigation as to the adverse health effects masks can cause.** The aim was to find, test, evaluate and compile scientifically proven related side effects of wearing masks. For a quantitative evaluation, 44 mostly experimental studies were referenced, and for a substantive evaluation, 65 publications were found. The literature revealed relevant adverse effects of masks in numerous disciplines. In this paper, we refer to the psychological and physical deterioration as well as multiple symptoms described because of their consistent, recurrent and uniform presentation from different disciplines as a **Mask-Induced Exhaustion Syndrome (MIES)**. **We objectified evaluation evidenced changes in respiratory physiology of mask wearers with significant correlation of O₂ drop and fatigue ($p < 0.05$), a clustered co-occurrence of respiratory impairment and O₂ drop (67%), N95 mask and CO₂ rise (82%), N95 mask and O₂ drop (72%), N95 mask and headache (60%), respiratory impairment and temperature rise (88%), but also temperature rise and moisture (100%) under the masks. Extended mask-wearing by the general population could lead to relevant effects and consequences in many medical fields.**

Keywords: personal protective equipment; masks; N95 face mask; surgical mask; risk; adverse effects; long-term adverse effects; contraindications; health risk assessment; hypercapnia; hypoxia; headache; dyspnea; physical exertion; MIES syndrome

1. Introduction

At the beginning of the spread of the novel pathogen SARS-CoV-2, it was necessary to make far-reaching decisions even without available explicit scientific data. The initial assumption was that the pandemic emergency measures were set in place to reduce the acute threat of the public health system effectively and swiftly.

In April 2020, the World Health Organization (WHO) recommended the use of masks only for symptomatic, ill individuals and health care workers and did not recommend its widespread use.

In June 2020, they changed this recommendation to endorse the general use of masks in, e.g., crowded places [1,2]. In a meta-analysis study commissioned by the WHO (evidence level Ia), no clear, scientifically graspable benefit of moderate or strong evidence was derived from wearing masks [3].

While maintaining a distance of at least one meter showed moderate evidence with regard to the spreading of SARS-CoV-2, only weak evidence at best could be found for masks alone in everyday use (non-medical setting) [3]. Another meta-analysis conducted in the same year confirmed the weak scientific evidence for masks [4].

Accordingly, the WHO did not recommend general or uncritical use of masks for the general population and expanded its risk and hazard list within just two months. While the April 2020 guideline highlighted the dangers of self-contamination, possible breathing difficulties and false sense of security, the June 2020 guideline found additional potential adverse effects such as headache, development of facial skin lesions, irritant dermatitis, acne or increased risk of contamination in public spaces due to improper mask disposal [1,2].

However, under pressure from increasing absolute numbers of positive SARS-CoV-2 tests, many prescribers further extended mask-wearing according to certain times and situations, always justified by the desire to limit the spread of the virus [5]. The media, numerous institutions and most of the population supported this approach.

Among the medical profession and scientists, the users and observers of medical devices, there have been simultaneous calls for a more nuanced approach [6–8]. While there has been a controversial scientific discussion worldwide about the benefits and risks of masks in public spaces, they became the new social appearance in everyday life in many countries at the same time.

Although there seems to be a consensus among the decision makers who have introduced mandatory masks that medical exemptions are warranted, it is ultimately the responsibility of individual clinicians to weigh up when to recommend exemption from mandatory masks. Physicians are in a conflict of interest concerning this matter. On the one hand, doctors have a leading role in supporting the authorities in the fight against a pandemic. On the other hand, doctors must, in accordance with the medical ethos, protect the interests, welfare and rights of their patient's third parties with the necessary care and in accordance with the recognized state of medical knowledge [9–11].

A careful risk–benefit analysis is becoming increasingly relevant for patients and their practitioners regarding the potential long-term effects of masks. The lack of knowledge of legal legitimacy on the one hand and of the medical scientific facts on the other is a reason for uncertainty among clinically active colleagues.

The aim of this paper is to provide a first, rapid, scientific presentation of the risks of general mandatory mask use by focusing on the possible adverse medical effects of masks, especially in certain diagnostic, patient and user groups.

2. Materials and Methods

The objective was to search for documented adverse effects and risks of different types of mouth–nose-covering masks. Of interest here were, on the one hand, readymade and self-manufactured fabric masks, including so-called community masks and, on the other hand medical, surgical and N95 masks (FFP2 masks).

Our approach of limiting the focus to negative effects seems surprising at first glance. However, such an approach helps to provide us with more information. This methodology is in line with the strategy of Villalonga-Olives and Kawachi, who also conducted a review exclusively on the negative effects [12].

For an analysis of the literature, we defined the risk of mouth–nose protection as the description of symptoms or the negative effects of masks. Reviews and expert presentations from which no measurable values could be extracted, but which clearly present the research situation and describe negative effects, also fulfill this criterion.

Additionally, we defined the quantifiable, negative effect of masks as the presentation of a measured, statistically significant change in a physiological parameter in a pathological direction ($p < 0.05$), a statistically significant detection of symptoms ($p < 0.05$) or the occurrence of symptoms in at least 50% of those examined in a sample ($n \geq 50\%$).

Up to and including 31 October 2020, we conducted a database search in PubMed/MEDLINE on scientific studies and publications on adverse effects and risks of different types of mouth–nose-covering masks according to the criteria mentioned above (see Figure 1: Review flowchart). Terms searched were “face masks”, “surgical mask” and “N95” in combination with the terms “risk” and “adverse effects” as well as “side effects”. The selection criteria of the papers were based on our above definition of risk and adverse effect of masks. Mainly English- and German-language publications of evidence levels I to III according to the recommendations of the Agency for Healthcare Research and Quality (AHRQ) that were not older than 20 years at the time of the review were considered. The evaluation also excluded level IV evidence, such as case reports and irrelevant letters to the editor that exclusively reflect opinions without scientific evidence.

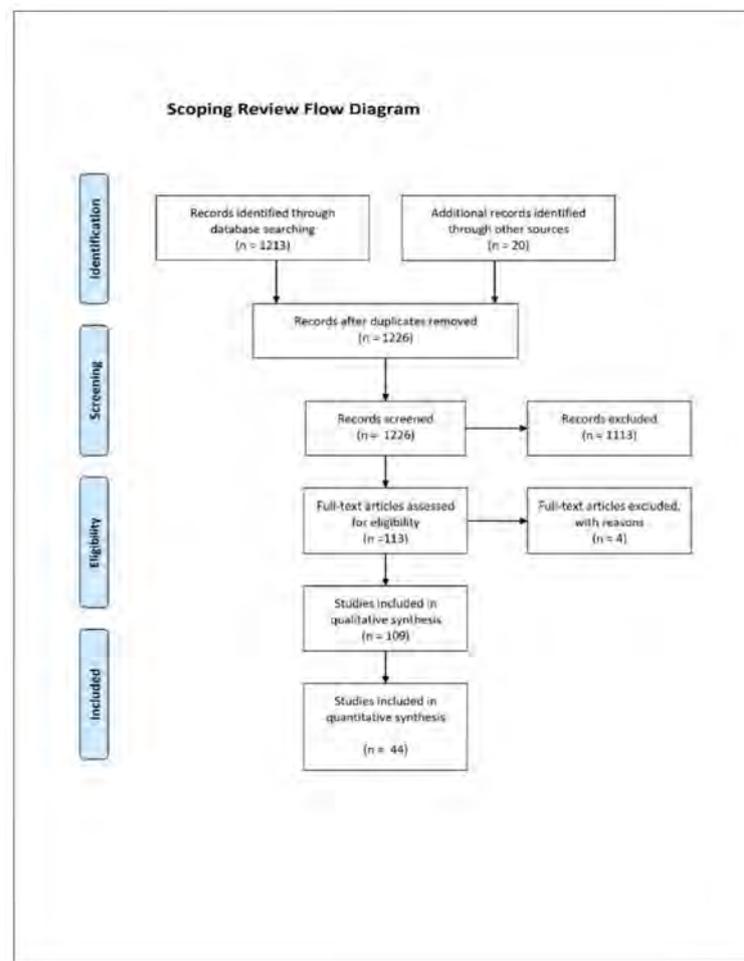


Figure 1. Scoping review flow diagram according to the PRISMA scheme.

After excluding 1113 papers that were irrelevant to the research question and did not meet the criteria mentioned (quantifiable, negative effects of masks, description of symptoms or the negative effects of masks), a total of 109 relevant publications were found for evaluation in the context of our scoping review (see Figure 1: Flow chart).

Sixty-five relevant publications concerning masks were considered being within the scope of the content-related evaluation. These included 14 reviews and 2 meta-analyses from the primary research. For the quantitative evaluation, 44 presentations of nega-

tive effects from the years 2004 to 2020 were eligible. Thirty-one of these studies were experimental (70%), and 13 studies were data collection studies in the sense of simple observational studies, especially in the dermatological field (30%). The observed study parameters and significant results from these 44 publications ($p < 0.05$ or $n \geq 50\%$) were compiled in an overall display (Figure 2). Based on this data, a correlation analysis of the observed mask effects was performed. This included a correlation calculation of the recorded symptoms and physiological changes (for nominally scaled, dichotomous variables according to Fisher using R, R Foundation for Statistical Computing, Vienna, Austria, version 4.0.2).

significantly measured mask-induced changes in scientific studies 2004-2020: ● = $p < 0.05$ ■ = $n \geq 50\%$	Fabric Mask	Surgical Mask	N95 Mask	O ₂	CO ₂	Humidity	Temperature	Breathing Resistance	Respiratory Rate	Blood Pressure	Cerebral Vasodilation	Heart Rate	Respiratory Impairment	Exhaustion & Fatigue	Drowsiness	Dizziness	Headache	Psycho-vegetative Effect	Decrease in Empathy	Itch	Skin Irritation	Acne	Rhinitis	Voice Disorder	False Sense of Security	Bacterial Contamination	Fungal Contamination	Viral Contamination
	Beder 2006		X		■								●															
Bharatendu 2020			X		■						●							●										
Butz 2005		X			■																							
Chughtai 2019		X																										●
Epstein 2020		X	X		■																							●
Fikenzler 2020		X	X		■	■	■	■					●	●														
Foo 2006			X																		■	■	■					
Georgi 2020	X	X	X		■	■	■		●				●	●								■	■					
Goh 2019			X		■																							
Heider 2020		X	X																						●			
Hua 2020		X	X			■																■	■					
Jacobs 2009			X																●									
Jagim 2018	X			■										●	●													
Kao 2004			X	■						●			●	●														
Klimek 2020																									●			
Kyung 2020			X	■	■				●				●	●														
Lan 2020			X																		■	■						
Lee 2011			X						●																			
Li 2005		X	X			■	■	■		●		●	●	●														●
Lim 2006			X																●									
Liu 2020	X	X	X		■	■	■					●	●	●	●	●						■						
Luckman 2020	X	X	X																						●			
Luksamijarukul 2014			X																							●	●	
Matusiak 2020	X	X	X			■	■							●								■	■					
Mo 2020			X		■					●			●															
Monalisa 2017			X																							●	●	
Ong 2020			X																●									
Person 2018			X											●														
Pifarre 2020			X	X		■	■																					
Porcari 2016			X		■									●														
Prousa 2020	X	X	X																●									
Ramirez 2020		X	X																●									
Rebmann 2013		X	X		■	■							●	●	●													●
Roberge 2012		X			■	■	■		●				●	●														
Roberge 2014			X		■	■																						
Rosner 2020		X	X																●				■	■				
Scarano 2020		X	X			■	■							●									■					
Shenai 2012	X	X	X											●														
Smart 2020		X	X			■								●														
Szepietkowski 2020	X	X	X																			■						
Tchassarian 2020	X	X	X																									
Tong 2015		X		■	■																							
Wong 2013			X																									●
Zhiqing 2018		X																										●

Figure 2. Overview including all 44 considered studies with quantified, significant adverse effects of masks (black dots and black rectangles). Not all studies examined each mentioned parameter, as focused or subject-related questions were often in the foreground. Gray fields correspond to a lack of coverage in the primary studies, white fields represent measured effects. We found an often combination of significant chemical, physical, physiological parameters and complaints. Drowsiness summarizes the symptom for any qualitative neurological deficits described in the scientific literature examined.

In addition, another 64 publications with a neighboring range of topics were consulted in connection with the mask effects we found. These included declarations, guidelines

and legal principles. In order to expand the amount of data for the discussion, we proceeded according to the “snowball principle” by locating citations of selected papers in the bibliographies and including them where appropriate.

Since the findings from the topics presented for discussion were to an unexpected degree subject-related, we decided to divide the results according to the fields of medicine. Of course, there are overlaps between the respective fields, which we point out in detail.

3. Results

A total of 65 scientific papers on masks qualified for a purely content-based evaluation. These included 14 reviews and two meta-analyses.

Of the mathematically evaluable, groundbreaking 44 papers with significant negative mask effects ($p < 0.05$ or $n \geq 50\%$), 22 were published in 2020 (50%), and 22 were published before the COVID-19 pandemic. Of these 44 publications, 31 (70%) were of experimental nature, and the remainder were observational studies (30%). Most of the publications in question were English (98%). Thirty papers referred to surgical masks (68%), 30 publications related to N95 masks (68%), and only 10 studies pertained to fabric masks (23%).

Despite the differences between the primary studies, we were able to demonstrate a statistically significant correlation in the quantitative analysis between the negative side effects of blood-oxygen depletion and fatigue in mask wearers with $p = 0.0454$.

In addition, we found a mathematically grouped common appearance of statistically significant confirmed effects of masks in the primary studies ($p < 0.05$ and $n \geq 50\%$) as shown in Figure 2. In nine of the 11 scientific papers (82%), we found a combined onset of N95 respiratory protection and carbon dioxide rise when wearing a mask. We found a similar result for the decrease in oxygen saturation and respiratory impairment with synchronous evidence in six of the nine relevant studies (67%). N95 masks were associated with headaches in six of the 10 studies (60%). For oxygen deprivation under N95 respiratory protectors, we found a common occurrence in eight of 11 primary studies (72%). Skin temperature rise under masks was associated with fatigue in 50% (three out of six primary studies). The dual occurrence of the physical parameter temperature rise and respiratory impairment was found in seven of the eight studies (88%). A combined occurrence of the physical parameters temperature rise and humidity/moisture under the mask was found in 100% within six of six studies, with significant readings of these parameters (Figure 2).

The literature review confirms that relevant, undesired medical, organ and organ system-related phenomena accompanied by wearing masks occur in the fields of internal medicine (at least 11 publications, Section 3.2), The list covers neurology (seven publications, Section 3.3), psychology (more than 10 publications, Section 3.4), psychiatry (three publications, Section 3.5), gynecology (three publications, Section 3.6), dermatology (at least 10 publications, Section 3.7), ENT medicine (four publications, Section 3.8), dentistry (one publication, Section 3.8), sports medicine (four publications, Section 3.9), sociology (more than five publications, Section 3.10), occupational medicine (more than 14 publications, Section 3.11), microbiology (at least four publications, Section 3.12), epidemiology (more than 16 publications, Section 3.13), and pediatrics (four publications, Section 3.14) as well as environmental medicine (four publications, Section 3.15).

We will present the general physiological effects as a basis for all disciplines. This will be followed by a description of the results from the different medical fields of expertise and closing off with pediatrics the final paragraph.

3.1. General Physiological and Pathophysiological Effects for the Wearer

As early as 2005, an experimental dissertation (randomized crossover study) demonstrated that wearing surgical masks in healthy medical personnel (15 subjects, 18–40 years old) leads to measurable physical effects with elevated transcutaneous carbon dioxide values after 30 min [13]. The role of dead space volume and CO₂ retention as a cause of the significant change ($p < 0.05$) in blood gases on the way to hypercapnia, which was still

within the limits, was discussed in this article. Masks expand the natural dead space (nose, throat, trachea, bronchi) outwards and beyond the mouth and nose.

An experimental increase in the dead space volume during breathing increases carbon dioxide (CO₂) retention at rest and under exertion and correspondingly the carbon dioxide partial pressure pCO₂ in the blood ($p < 0.05$) [14].

As well as addressing the increased rebreathing of carbon dioxide (CO₂) due to the dead space, scientists also debate the influence of the increased breathing resistance when using masks [15–17].

According to the scientific data, mask wearers as a whole show a striking frequency of typical, measurable, physiological changes associated with masks.

In a recent intervention study conducted on eight subjects, measurements of the gas content for oxygen (measured in O₂ Vol%) and carbon dioxide (measured in CO₂ ppm) in the air under a mask showed a lower oxygen availability even at rest than without a mask. A Multi-Rae gas analyzer was used for the measurements (RaeSystems®) (Sunnyvale, California CA, United States). At the time of the study, the device was the most advanced portable multivariant real-time gas analyzer. It is also used in rescue medicine and operational emergencies. The absolute concentration of oxygen (O₂ Vol%) in the air under the masks was significantly lower (minus 12.4 Vol% O₂ in absolute terms, statistically significant with $p < 0.001$) at 18.3% compared to 20.9% room air concentration. Simultaneously, a health-critical value of carbon dioxide concentration (CO₂ Vol%) increased by a factor of 30 compared to normal room air was measured (ppm with mask versus 464 ppm without mask, statistically significant with $p < 0.001$) [18].

These phenomena are responsible for a statistically significant increase in carbon dioxide (CO₂) blood content in mask wearers [19,20], on the one hand, measured transcutaneously via an increased PtcCO₂ value [15,17,19,21,22], on the other hand, via end-expiratory partial pressure of carbon dioxide (PETCO₂) [23,24] or, respectively, the arterial partial pressure of carbon dioxide (PaCO₂) [25].

In addition to the increase in the wearer's blood carbon dioxide (CO₂) levels ($p < 0.05$) [13,15,17,19,21–28], another consequence of masks that has often been experimentally proven is a statistically significant drop in blood oxygen saturation (SpO₂) ($p < 0.05$) [18,19,21,23,29–34]. A drop in blood oxygen partial pressure (PaO₂) with the effect of an accompanying increase in heart rate ($p < 0.05$) [15,23,29,30,34] as well as an increase in respiratory rate ($p < 0.05$) [15,21,23,35,36] have been proven.

A statistically significant measurable increase in pulse rate ($p < 0.05$) and decrease in oxygen saturation SpO₂ after the first ($p < 0.01$) and second hour ($p < 0.0001$) under a disposable mask (surgical mask) were reported by researchers in a mask intervention study they conducted on 53 employed neurosurgeons [30].

In another experimental study (comparative study), surgical and N95 masks caused a significant increase in heart rate ($p < 0.01$) as well as a corresponding feeling of exhaustion ($p < 0.05$). These symptoms were accompanied by a sensation of heat ($p < 0.0001$) and itching ($p < 0.01$) due to moisture penetration of the masks ($p < 0.0001$) in 10 healthy volunteers of both sexes after only 90 min of physical activity [35]. Moisture penetration was determined via sensors by evaluating logs (SCXI-1461, National Instruments, Austin, TX, USA).

These phenomena were reproduced in another experiment on 20 healthy subjects wearing surgical masks. The masked subjects showed statistically significant increases in heart rate ($p < 0.001$) and respiratory rate ($p < 0.02$) accompanied by a significant measurable increase in transcutaneous carbon dioxide PtcCO₂ ($p < 0.0006$). They also complained of breathing difficulties during the exercise [15].

The increased rebreathing of carbon dioxide (CO₂) from the enlarged dead space volume in mask wearers can reflectively trigger increased respiratory activity with increased muscular work as well as the resulting additional oxygen demand and oxygen consumption [17]. This is a reaction to pathological changes in the sense of an adaptation effect. A mask-induced drop in blood oxygen saturation value (SpO₂) [30] or the blood

oxygen partial pressure (PaO₂) [34] can in turn additionally intensify subjective chest complaints [25,34].

The documented mask-induced changes in blood gases towards hypercapnia (increased carbon dioxide/CO₂ blood levels) and hypoxia (decreased oxygen/O₂ blood levels) may result in additional nonphysical effects such as confusion, decreased thinking ability and disorientation [23,36–39], including overall impaired cognitive abilities and decrease in psychomotoric abilities [19,32,38–41]. This highlights the importance of changes in blood gas parameters (O₂ and CO₂) as a cause of clinically relevant psychological and neurological effects. The above parameters and effects (oxygen saturation, carbon dioxide content, cognitive abilities) were measured in a study on saturation sensors (Semi-Tec AG, Therwil, Switzerland), using a Borg Rating Scale, Frank Scale, Roberge Respirator Comfort Scale and Roberge Subjective Symptoms-during-Work Scale, as well as with a Likert scale [19]. In the other main study, conventional ECG, capnography and symptom questionnaires were used in measuring carbon dioxide levels, pulse and cognitive abilities [23]. Other physiological data collection was done with pulse oximeters (Allegiance, MCGaw, USA), subjective complaints were assessed with a 5-point Likert scale and motoric speed was recorded with linear-position transducers (Tendo-Fitrodyne, Sport Machins, Trencin, Slovakia) [32]. Some researchers used standardized, anonymized questionnaires to collect data on subjective complaints associated with masks [37].

In an experimental setting with different mask types (community, surgical, N95) a significant increase in heart rate ($p < 0.04$), a decrease in oxygen saturation SpO₂ ($p < 0.05$) with an increase in skin temperature under the mask (face) and difficulty of breathing ($p < 0.002$) were recorded in 12 healthy young subjects (students). In addition, the investigators observed dizziness ($p < 0.03$), listlessness ($p < 0.05$), impaired thinking ($p < 0.03$) and concentration problems ($p < 0.02$), which were also statistically significant when wearing masks [29].

According to other researchers and their publications, masks also interfere with temperature regulation, impair the field of vision and of non-verbal and verbal communication [15,17,19,36,37,42–45].

The above-mentioned measurable and qualitative physiological effects of masks can have implications in various areas of expertise in medicine.

It is known from pathology that not only supra-threshold stimuli exceeding normal limits have disease-relevant consequences. Subthreshold stimuli are also capable of causing pathological changes if the exposure time is long enough. Examples occur from the slightest air pollution by hydrogen sulfide resulting in respiratory problems (throat irritation, coughing, reduced absorption of oxygen) and neurological diseases (headaches, dizziness) [46]. Furthermore, subthreshold but prolonged exposure to nitrogen oxides and particulate matter is associated with an increased risk of asthma, hospitalization and higher overall mortality [47,48]. Low concentrations of pesticides are also associated with disease-relevant consequences for humans such as mutations, development of cancer and neurological disorders [49]. Likewise, the chronic subthreshold intake of arsenic is associated with an increased risk of cancer [50], subthreshold intake of cadmium with the promotion of heart failure [51], subthreshold intake of lead is associated with hypertension, renal metabolic disorders and cognitive impairment [52] or subthreshold intake of mercury with immune deficiency and neurological disorders [53]. Subliminal UV radiation exposure over long periods is also known to cause mutation-promoting carcinogenic effects (especially white skin cancer) [54].

The mask-induced adverse changes are relatively minor at first glance, but repeated exposure over longer periods in accordance with the above-mentioned pathogenetic principle is relevant. Long-term disease-relevant consequences of masks are to be expected. Insofar, the statistically significant results found in the studies with mathematically tangible differences between mask wearers and people without masks are clinically relevant. They give an indication that with correspondingly repeated and prolonged exposure to physical, chemical, biological, physiological and psychological conditions, some of which are

subliminal, but which are significantly shifted towards pathological areas, health-reducing changes and clinical pictures can develop such as high blood pressure and arteriosclerosis, including coronary heart disease (metabolic syndrome) as well as neurological diseases. For small increases in carbon dioxide in the inhaled air, this disease-promoting effect has been proven with the creation of headaches, irritation of the respiratory tract up to asthma as well as an increase in blood pressure and heart rate with vascular damage and, finally, neuropathological and cardiovascular consequences [38]. Even slightly but persistently increased heart rates encourage oxidative stress with endothelial dysfunction, via increased inflammatory messengers, and finally, the stimulation of arteriosclerosis of the blood vessels has been proven [55]. A similar effect with the stimulation of high blood pressure, cardiac dysfunction and damage to blood vessels supplying the brain is suggested for slightly increased breathing rates over long periods [56,57]. Masks are responsible for the aforementioned physiological changes with rises in inhaled carbon dioxide [18–28], small sustained increases in heart rate [15,23,29,30,35] and mild but sustained increases in respiratory rates [15,21,23,34,36].

For a better understanding of the side effects and dangers of masks presented in this literature review, it is possible to refer to well-known principles of respiratory physiology (Figure 3).

The average dead space volume during breathing in adults is approximately 150–180 mL and is significantly increased when wearing a mask covering the mouth and nose [58]. With an N95 mask, for example, the dead space volume of approximately 98–168 mL was determined in an experimental study [59]. This corresponds to a mask-related dead space increase of approximately 65 to 112% for adults and, thus, almost a doubling. At a respiratory rate of 12 per minute, the pendulum volume respiration with such a mask would, thus, be at least 2.9–3.8 L per minute. Therefore, the dead space amassed by the mask causes a relative reduction in the gas exchange volume available to the lungs per breath by 37% [60]. This largely explains the impairment of respiratory physiology reported in our work and the resulting side effects of all types of masks in everyday use in healthy and sick people (increase in respiratory rate, increase in heart rate, decrease in oxygen saturation, increase in carbon dioxide partial pressure, fatigue, headaches, dizziness, impaired thinking, etc.) [36,58].

In addition to the effect of increased dead space volume breathing, however, mask-related breathing resistance is also of exceptional importance (Figure 3) [23,36].

Experiments show an increase in airway resistance by a remarkable 126% on inhalation and 122% on exhalation with an N95 mask [60]. Experimental studies have also shown that moisturization of the mask (N95) increases the breathing resistance by a further 3% [61] and can, thus, increase the airway resistance up to 2.3 times the normal value.

This clearly shows the importance of the airway resistance of a mask. Here, the mask acts as a disturbance factor in breathing and makes the observed compensatory reactions with an increase in breathing frequency and simultaneous feeling of breathlessness plausible (increased work of the respiratory muscles). This extra strain due to the amplified work of breathing against bigger resistance caused by the masks also leads to intensified exhaustion with a rise in heart rate and increased CO₂ production. Fittingly, in our review of the studies on side effects of masks (Figure 2), we also found a percentage clustering of significant respiratory impairment and a significant drop in oxygen saturation (in about 75% of all study results).

In the evaluation of the primary papers, we also determined a statically significant correlation of the drop in oxygen saturation (SpO₂) and fatigue with a common occurrence in 58% of the mask use studies with significant results (Figure 2, $p < 0.05$).

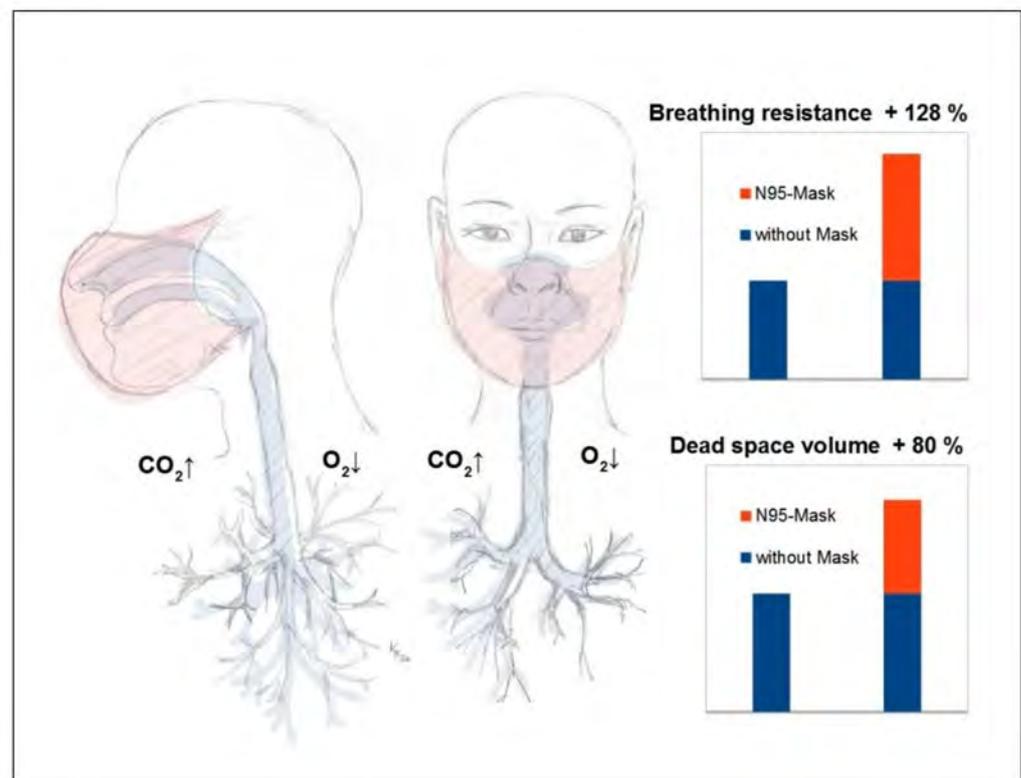


Figure 3. Pathophysiology of the mask (important physical and chemical effects): Illustration of the breathing resistance* and of the dead space volume of an N95 mask in an adult. When breathing, there is an overall significantly reduced possible gas exchange volume of the lungs of minus 37% caused by the mask (Lee 2011) [60] according to a decrease in breathing depth and volume due to the greater breathing resistance of plus128%* (exertion when inhaling greater than when exhaling) and due to the increased dead space volume of plus80%***, which does not participate directly in the gas exchange and is being only partially mixed with the environment. (* = averaged inspiration and expiration according to Lee 2011 [60] including moisture penetration according to Roberge 2010 [61], ** = averaged values according to Xu 2015 [59]).

3.2. Internistic Side Effects and Dangers

As early as 2012, an experiment showed that walking in the 20 masked subjects compared to the identical activity without masks significantly increased heart rates (average +9.4 beats per minute, $p < 0.001$) and breathing rates ($p < 0.02$). These physiological changes were accompanied by transcutaneous significantly measurable increased transcutaneous carbon dioxide (PtcCO₂) levels ($p < 0.0006$) as well as respiratory difficulties in the mask wearers compared to the control group [15].

In a recent experimental comparative study from 2020, 12 healthy volunteers under surgical masks as well as under N95 masks experienced measurable impairments in the measured lung function parameters as well as cardiopulmonary capacity (lower maximum blood lactate response) during moderate to heavy physical exertion compared to exertion without masks ($p < 0.001$) [31]. The mask-induced increased airway resistance led to increased respiratory work with increased oxygen consumption and demand, both of the respiratory muscles and the heart. Breathing was significantly impeded ($p < 0.001$) and participants reported mild pain. The scientists concluded from their results that the cardiac compensation of the pulmonary, mask-induced restrictions, which still functioned in healthy people, was probably no longer possible in patients with reduced cardiac output [31].

In another recent study, researchers tested fabric masks (community masks), surgical masks and FFP2/N95 masks in 26 healthy people during exercise on a cycle ergometer. All

masks also showed a measurable carbon dioxide (CO₂) retention (PtcCO₂) (statistically significant with $p < 0.001$) and, for N95 masks, a decrease in the oxygen saturation value SpO₂ (statistically significant at 75 and 100 W with $p < 0.02$ and $p < 0.005$, respectively). The clinical relevance of these changes was shown in an increase in breathing frequency with fabric masks ($p < 0.04$) as well as in the occurrence of the previously described mask-specific complaints such as a feeling of heat, shortness of breath and headaches. The stress perception was recorded on a Borg scale from 1 to 20. During physical exertion under an N95 mask, the group with masks showed a significant increase in the feeling of exhaustion compared to the group without with 14.6 versus 11.9 on the scale of 20. During the exposure, 14 of the 24 subjects wearing masks complained of shortness of breath (58%), four of headaches and two of a feeling of heat. Most of the complaints concerned FFP2 masks (72%) [21].

The aforementioned physiological and subjective physical effects of masks on healthy people at rest and under exertion [21,31] give an indication of the effect of masks on sick and elderly people even without exertion.

In an observational study of ten 20 to 50 year-old nurses wearing N95 masks during their shift work, side effects such as breathing difficulties (“I can’t breathe”), feelings of exhaustion, headache ($p < 0.001$), drowsiness ($p < 0.001$) and a decrease in oxygen saturation SpO₂ ($p < 0.05$) as well as an increase in heart rate ($p < 0.001$) were statistically significant in association with an increase in obesity (BMI) [19]. The occurrence of symptoms under masks was also associated with older age (statistically significant correlation of fatigue and drowsiness with $p < 0.01$ each, nausea with $p < 0.05$, an increase in blood pressure with $p < 0.01$, headache with $p < 0.05$, breathing difficulties with $p < 0.001$) [19].

In an intervention study involving 97 patients with advanced chronic obstructive pulmonary disease (COPD) the respiratory rate, oxygen saturation and exhaled carbon dioxide equivalents (capnometry) changed unfavorably and significantly after the use of N95 masks (FFP2 equivalent) with an initial 10-minute rest and subsequent 6-minute walking. Seven patients discontinued the experiment due to serious complaints with a decrease in the oxygen saturation value SpO₂ and a pathological carbon dioxide (CO₂) retention as well as increased end-expiratory partial pressure of carbon dioxide (PETCO₂) [23]. In two patients, the PETCO₂ exceeded the normal limits and reached values of >50 mmHg. An FEV1 < 30% and a modified Medical Research Council (mMRC) Dyspnea Scale Score of ≥ 3 , both indicators of advanced COPD, correlated with mask intolerance overall in this study. The most common symptom under mask was breathlessness at 86%. In the dropouts of the study, dizziness (57%) and headaches were also often recorded. In the mask-tolerant COPD patients, significant increases in heart rate, respiratory rate and end-expiratory carbon dioxide partial pressure PETCO₂ could be objectified even at rest, after only 10 min of mask-wearing ($p < 0.001$), accompanied by a decrease in oxygen saturation SpO₂ ($p < 0.001$) [23]. The results of this study with an evidence level IIa are indicative for COPD mask wearers.

In another retrospective comparative study on COPD and surgical masks, examiners were able to demonstrate statistically an increase in arterial partial pressure of carbon dioxide (PaCO₂) of approximately +8 mmHg ($p < 0.005$) and a concomitant mask-related increase in systolic blood pressure of +11 mmHg ($p < 0.02$) [25]. This increase is relevant in hypertensive patients, but also in healthy people with borderline blood pressure values as pathological value range triggered by mask-wearing can be induced.

In 39 hemodialysis patients with end-stage renal disease, a type N95 mask (FFP2 equivalent) caused a significant drop in blood oxygen partial pressure (PaO₂) in 70% of patients at rest (on hemodialysis) within only 4 h ($p = 0.006$). Despite a compensatory increased respiratory rate ($p < 0.001$), malaise with chest pain occurred ($p < 0.001$) and even resulted in hypoxemia (drop in oxygen below the normal limit) in 19% of the subjects [34]. The researchers concluded from their findings that elderly or patients with reduced cardiopulmonary function have a higher risk of developing a severe respiratory failure while wearing a mask [34].

In a review paper on the risks and benefits of masks worn during the COVID-19 crisis, other authors provide an equally critical assessment of mandatory mask use for patients with pneumonia, both with and without COVID-19 pneumonia disease [16].

3.3. Neurological Side Effects and Dangers

In a scientific evaluation of syncope in the operating theatre, 36 of 77 affected persons (47%) were associated with wearing a mask [62]. However, other factors could not be ruled out as contributory causes.

In their level III evidence review, neurologists from Israel, the UK and the USA state that a mask is unsuitable for epileptics because it can trigger hyperventilation [63]. The use of a mask significantly increases the respiratory rate by about plus 15 to 20% [15,21,23,34,64]. However, an increase in breathing frequency leading to hyperventilation is known to be used for provocation in the diagnosis of epilepsy and causes seizure-equivalent EEG changes in 80% of patients with generalized epilepsy and in up to 28% of focal epileptics [65].

Physicians from New York studied the effects of wearing masks of the surgical-type mask and N95 among medical personnel in a sample of 343 participants (surveyed using standardized, anonymized questionnaires). Wearing the masks caused detectable physical adverse effects such as impaired cognition (24% of wearers) and headaches in 71.4% of the participants. Of these, 28% persisted and required medication. Headache occurred in 15.2% under 1 h of wear, in 30.6% after 1 h of wear and in 29.7% after 3 h of wear. Thus, the effect intensified with increasing wearing time [37].

Confusion, disorientation and even drowsiness (Likert scale questionnaire) and reduced motoric abilities (measured with a linear position transducer) with reduced reactivity and overall impaired performance (measured with the Roberge Subjective Symptoms-during-Work Scale) as a result of mask use have also been documented in other studies [19,23,29,32,36,37].

The scientists explain these neurological impairments with a mask-induced latent drop in blood gas oxygen levels O_2 (towards hypoxia) or a latent increase in blood gas carbon dioxide levels CO_2 (towards hypercapnia) [36]. In view of the scientific data, this connection also appears to be indisputable [38–41].

In a mask experiment from 2020, significant impaired thinking ($p < 0.03$) and impaired concentration ($p < 0.02$) were found for all mask types used (fabric, surgical and N95 masks) after only 100 min of wearing the mask [29]. The thought disorders correlated significantly with a drop in oxygen saturation ($p < 0.001$) during mask use.

Initial headaches ($p < 0.05$) were experienced by up to 82% of 158, 21–35 year-old mask wearers in another study of N95 respiratory protection with one third (34%) experiencing headaches up to four times daily. Participants wore the mask for 18.3 days over a 30-day period with a mean of 5.9 h per day [66].

Significantly increased headache ($p < 0.05$) could be observed not only for N95 but also for surgical masks in participants of another observational study of health care workers [67].

In another study, the researchers classified 306 users with an average age of 43 years and wearing different types of masks, of whom 51% had an initial headache as a specific symptom related exclusively to increased surgical and N95 mask use (1 to 4 h, $p = 0.008$) [68].

Researchers from Singapore were able to demonstrate in a trial involving 154 healthy N95 health service mask wearers that a significant increase in mask-induced blood carbon dioxide levels (measured by end-expiratory partial pressure of carbon dioxide $PETCO_2$) and a measurably greater vasodilatation with an increase in cerebral artery flow in the cerebri media resulted. This was associated with headaches in the trial group ($p < 0.001$) [27].

According to the researchers, the aforementioned changes also contribute to headaches during the prolonged use of masks with a shift towards hypoxia and hypercapnia. Furthermore, stress and mechanical factors such as the irritation of cervical nerves in the neck and head area caused by the tight mask straps pressuring the nerve strands also contribute to headaches [66].

In the analysis of the primary studies, we were able to detect an association between the N95 mask and headaches. In six out of 10 studies, the significant headache appeared in conjunction with the N95 mask (60% of all studies, Figure 2).

3.4. Psychological Side Effects and Dangers

According to an experimental study, wearing surgical masks and N95 masks can also lead to a reduced quality of life owing to reduced cardiopulmonary capacity [31]. Masks, along with causing physiological changes and discomfort with progressive length of use, can also lead to significant discomfort ($p < 0.03$ to $p < 0.0001$) and a feeling of exhaustion ($p < 0.05$ to 0.0001) [69].

Besides the shift in blood gases towards hypercapnia (increase in CO_2) and hypoxia (decrease in O_2), detailed under general physiological effects (Section 3.1), masks also restrict the cognitive abilities of the individual (measured using a Likert scale survey) accompanied by a decline in psycho-motoric abilities and consequently a reduced responsiveness (measured using a linear position transducer) as well as an overall reduced performance capability (measured with the Roberge Subjective Symptoms-during-Work Scale) [29,32,38,39,41].

The mask also causes an impaired field of vision (especially affecting the ground and obstacles on the ground) and also presents an inhibition to habitual actions such as eating, drinking, touching, scratching and cleaning the otherwise uncovered part of the face, which is consciously and subconsciously perceived as a permanent disturbance, obstruction and restriction [36]. Wearing masks, thus, entails a feeling of deprivation of freedom and loss of autonomy and self-determination, which can lead to suppressed anger and subconscious constant distraction, especially as the wearing of masks is mostly dictated and ordered by others [70,71]. These perceived interferences of integrity, self-determination and autonomy, coupled with discomfort, often contribute to substantial distraction and may ultimately be combined with the physiologically mask-related decline in psycho-motoric abilities, reduced responsiveness and an overall impaired cognitive performance. It leads to misjudging situations as well as delayed, incorrect and inappropriate behavior and a decline in the effectiveness of the mask wearer [36,37,39–41].

The use of masks for several hours often causes further detectable adverse effects such as headaches, local acne, mask-associated skin irritation, itching, sensations of heat and dampness, impairments and discomfort predominantly affecting the head and face [19,29,35–37,71–73]. However, the head and face are significant for well-being due to their large representation in the sensitive cerebral cortex (homunculus) [36].

According to a questionnaire survey, masks also frequently cause anxiety and psycho-vegetative stress reactions in children—as well as in adults—with an increase in psychosomatic and stress-related illnesses and depressive self-experience, reduced participation, social withdrawal and lowered health-related self-care [74]. Over 50% of the mask wearers studied had at least mild depressive feelings [74]. Additional fear-inducing and often exaggerated media coverage can further intensify this. A recent retrospective analysis of the general media in the context of the 2014 Ebola epidemic showed a scientific truth content of only 38% of all publicly published information [75]. Researchers classified a total of 28% of the information as provocative and polarizing and 42% as exaggerating risks. In addition, 72% of the media content aimed to stir up health-related negative feelings. The feeling of fear, combined with insecurity and the primal human need to belong [76], causes a social dynamic that seems partly unfounded from a medical and scientific point of view.

The mask, which originally served purely hygienic purpose, has been transformed into a symbol of conformity and pseudo-solidarity. The WHO, for example, lists the advantages of the use of masks by healthy people in public to include a potentially reduced stigmatization of mask wearers, a sense of contribution to preventing the spread of the virus and a reminder to comply with other measures [2].

3.5. Psychiatric Side Effects and Dangers

As explained earlier, masks can cause increased rebreathing with an accumulation of carbon dioxide in the wearer due to increased dead space volume [16–18,20] (Figure 3), with often statistically significant measurable elevated blood carbon dioxide (CO₂) levels in sufferers [13,15,17,19–28] (Figure 2). However, changes that lead to hypercapnia are known to trigger panic attacks [77,78]. This makes the significantly measurable increase in CO₂ caused by wearing a mask clinically relevant.

Interestingly, breath provocation tests by inhaling CO₂ are used to differentiate anxiety states in panic disorders and premenstrual dysphoria from other psychiatric clinical pictures. Here, absolute concentrations of 5% CO₂ already suffice to trigger panic reactions within 15–16 min [77]. The normal exhaled air content of CO₂ is about 4%.

It is obvious from experimental studies on masked subjects that concentration changes in the respiratory gases in the above-mentioned range with values above 4% could occur during rebreathing with prolonged mask use [18,23].

The activation of the locus coeruleus by CO₂ is used to generate panic reactions via respiratory gases [78,79]. This is because the locus coeruleus is an important part of the system of vegetative noradrenergic neurons, a control center in the brainstem, which reacts to an appropriate stimulus and changes in the gas concentrations in the blood by releasing the stress hormone noradrenaline [78].

From the physiological, neurological and psychological side effects and dangers described above (Sections 3.1, 3.3 and 3.4), additional problems can be derived for the use of masks in psychiatric cases. People undergoing treatment for dementia, paranoid schizophrenia, personality disorders with anxiety and panic attacks, but also panic disorders with claustrophobic components, are difficult to reconcile with a mask requirement, because even small increases in CO₂ can cause and intensify panic attacks [44,77–79].

According to a psychiatric study, patients with moderate to severe dementia have no understanding of COVID-19 protection measures and have to be persuaded to wear masks constantly [80].

According to a comparative study, patients with schizophrenia have a lower acceptance of mask-wearing (54.9% agreement) than ordinary practice patients (61.6%) [81]. The extent to which mask-wearing can lead to an exacerbation of schizophrenia symptoms has not yet been researched in detail.

When wearing masks, confusion, impaired thinking, disorientation (standardized recording via special rating and Likert scales, $p < 0.05$) and in some cases a decrease in maximum speed and reaction time (measured with the linear-position transducer, $p < 0.05$) were observed [19,32,36,38–41]. Psychotropic drugs reduce psycho-motoric functions in psychiatric patients. This can become clinically relevant especially with regard to the further reduced ability to react and the additional increased susceptibility to accidents of such patients when wearing masks.

In order to avoid an unintentional CO₂-triggered anesthesia [39], fixed and medically sedated patients, without the possibility of continuous monitoring, should not be masked according to the criteria of the Centers for Disease Control and Prevention, USA (CDC). This is because of the possible CO₂ retention described above, as there is a risk of unconsciousness, aspiration and asphyxia [16,17,20,38,82,83].

3.6. Gynaecological Side Effects and Dangers

As a critical variable, a low blood carbon dioxide level in pregnant women is maintained via an increased respiratory minute volume, stimulated by progesterone [22]. For a pregnant woman and her unborn child, there is a metabolic need for a fetal–maternal carbon dioxide (CO₂) gradient. The mother's blood carbon dioxide level should always be lower than that of the unborn child in order to ensure the diffusion of CO₂ from the fetal blood into the maternal circulation via the placenta.

Therefore, mask-related phenomena described above (Sections 3.1 and 3.2), such as the measurable changes in respiratory physiology with increased breathing resistance,

increased dead space volume (Figure 3) and the retention of exhaled carbon dioxide (CO₂) are of importance. If CO₂ is increasingly rebreathed under masks, this manifestation could, even with subliminal carbon dioxide increases, act as a disturbing variable of the fetal–maternal CO₂ gradient increasing over time of exposure and, thus, develop clinical relevance, also with regard to a reduced compensation reserve of the expectant mothers [20,22,28].

In a comparative study, 22 pregnant women wearing N95 masks during 20 min of exercise showed significantly higher percutaneous CO₂ values, with average PtcCO₂ values of 33.3 mmHg compared to 31.3 mmHg than in 22 pregnant women without masks ($p = 0.04$) [22]. The heat sensation of the expectant mothers was also significantly increased with masks, with $p < 0.001$ [22].

Accordingly, in another intervention study, researchers demonstrated that breathing through an N95 mask (FFP2 equivalent) impeded gas exchange in 20 pregnant women at rest and during exercise, causing additional stress on their metabolic system [28]. Thus, under an N95 mask, 20 pregnant women showed a decrease in oxygen uptake capacity VO₂ of about 14% (statistically significant, $p = 0.013$) and a decrease in carbon dioxide output capacity VCO₂ of about 18% (statistically significant, $p = 0.001$). Corresponding significant changes in exhaled oxygen and carbon dioxide equivalents were also documented with increases in exhaled carbon dioxide (FeCO₂) ($p < 0.001$) and decreases in exhaled oxygen (FeO₂) ($p < 0.001$), which were explained by an altered metabolism due to respiratory mask obstruction [28].

In experiments with predominantly short mask application times, neither the mothers nor the fetuses showed statistically significant increases in heart rates or changes in respiratory rates and oxygen saturation values. However, the exact effects of prolonged mask use in pregnant women remain unclear overall. Therefore, in pregnant women, extended use of surgical and N95 masks is viewed critically [20].

In addition, it is unclear whether the substances contained in industrially manufactured masks that can be inhaled over longer periods of time (e.g., formaldehyde as an ingredient of the textile and thiram as an ingredient of the ear bands) are teratogenic [20,84].

3.7. Dermatological Side Effects and Dangers

Unlike garments worn over closed skin, masks cover body areas close to the mouth and nose, i.e., body parts that are involved with respiration.

Inevitably, this leads not only to a measurable temperature rise [15,44,85], but also to a severe increase in humidity due to condensation of the exhaled air, which in turn changes the natural skin milieu considerably of perioral and perinasal areas [36,61,82]. It also increases the redness, pH-value, fluid loss through the skin epithelium, increased hydration and sebum production measurably [73]. Preexisting skin diseases are not only perpetuated by these changes, but also exacerbated. In general, the skin becomes more susceptible to infections and acne.

The authors of an experimental study were able to prove a disturbed barrier function of the skin after only 4 h of wearing a mask in 20 healthy volunteers, both for surgical masks and for N95 masks [73]. In addition, germs (bacteria, fungi and viruses) accumulate on the outside and inside of the masks due to the warm and moist environment [86–89]. They can cause clinically relevant fungal, bacterial or viral infections. The unusual increase in the detection of rhinoviruses in the sentinel studies of the German Robert Koch Institute (RKI) from 2020 [90] could be another indication of this phenomenon.

In addition, a region of the skin that is not evolutionarily adapted to such stimuli is subjected to increased mechanical stress. All in all, the above-mentioned facts cause the unfavorable dermatological effects with mask related adverse skin reactions like acne, rashes on the face and itch symptoms [91].

A Chinese research group reported skin irritation and itching when using N95 masks among 542 test participants and also a correlation between the skin damage that occurred and the time of exposure (68.9% at ≤ 6 h/day and 81.7% at >6 h/day) [92].

A New York study evaluated in a random sample of 343 participants the effects of frequent wearing of surgical mask type and N95 masks among healthcare workers during the COVID-19 pandemic. Wearing the masks caused headache in 71.4% of participants, in addition to drowsiness in 23.6%, detectable skin damage in 51% and acne in 53% of mask users [37].

On the one hand, direct mechanical skin lesions occur on the nose and cheekbones due to shear force, especially when masks are frequently put on and taken off [37,92].

On the other hand, masks create an unnaturally moist and warm local skin environment [29,36,82]. In fact, scientists were able to demonstrate a significant increase in humidity and temperature in the covered facial area in another study in which the test individuals wore masks for one hour [85]. The relative humidity under the masks was measured with a sensor (Atmo-Tube, San Francisco, CA, USA). The sensation of humidity and temperature in the facial area is more crucial for well-being than other body regions [36,44]. This can increase discomfort under the masks. In addition, the increase in temperature favors bacterial optimization.

The pressure of the masks also causes an obstruction of the flow physiology of lymph and blood vessels in the face, with the consequence of increased disturbance of skin function [73] and ultimately also contributing to acne in up to 53% of all wearers and other skin irritations in up to 51% of all wearers [36,37,82].

Other researchers examined 322 participants with N95 masks in an observational study and detected acne in up to 59.6% of them, itching in 51.4% and redness in 35.8% as side effects [72].

In up to 19.6% (273) of the 1393 wearers of different masks (community masks, surgical, N95 masks), itching could be objectified in one study, in 9% even severely. An atopic predisposition (allergy tendency) correlated with the risk of itching. The length of use was significantly related to the risk of itching ($p < 0.0001$) [93].

In another dermatological study from 2020, 96.9% of 876 users of all mask types (community masks, surgical masks, N95 masks) confirmed adverse problems with a significant increase in itching (7.7%), accompanied by fogging-up of glasses (21.3%), flushing (21.3%), slurred speech (12.3%) and difficulty breathing (35.9%) ($p < 0.01$) [71].

Apart from an increased incidence of acne [37,72,91] under masks, contact eczema and urticaria [94] are generally described in connection with hypersensitivities to ingredients of the industrially manufactured masks (surgical mask and N95) such as formaldehyde (ingredient of the textile) and thiram (ingredient of the ear bands) [73,84]. The hazardous substance thiram, originally a pesticide and corrosive, is used in the rubber industry as a optimization accelerator. Formaldehyde is a biocide and carcinogen and is used as a disinfectant in the industry.

Even isolated permanent hyperpigmentation as a result of post-inflammatory or pigmented contact dermatitis has been described by dermatologists after prolonged mask use [72,91].

3.8. ENT and Dental Side Effects and Dangers

There are reports from dental communities about negative effects of masks and are accordingly titled "mask mouth" [95]. Provocation of gingivitis (inflammation of the gums), halitosis (bad breath), candidiasis (fungal infestation of the mucous membranes with *Candida albicans*) and cheilitis (inflammation of the lips), especially of the corners of the mouth, and even plaque and caries are attributed to the excessive and improper use of masks. The main trigger of the oral diseases mentioned is an increased dry mouth due to a reduced saliva flow and increased breathing through the open mouth under the mask. Mouth breathing causes surface dehydration and reduced salivary flow rate (SFR) [95]. Dry mouth is scientifically proven due to mask wear [29]. The bad habit of breathing through the open mouth while wearing a mask seems plausible because such breathing pattern compensates for the increased breathing resistance, especially when inhaling through the masks [60,61]. In turn, the outer skin moisture [71,73,85] with altered

skin flora, which has already been described under dermatological side effects (Section 3.7), is held responsible as an explanation for the inflammation of the lips and corners of the mouth (cheilitis) [95]. This clearly shows the disease-promoting reversal of the natural conditions caused by masks. The physiological internal moisture with external dryness in the oral cavity converts into internal dryness with external moisture.

ENT physicians recently discovered a new form of irritant rhinitis due to N95 mask use in 46 patients. They performed endoscopies and nasal irrigations on mask wearers, which were subsequently assessed pathologically. Clinical problems were recorded with standardized questionnaires. They found statistically significant evidence of mask-induced rhinitis and itching and swelling of the mucous membranes as well as increased sneezing ($p < 0.01$). Endoscopically, it showed an increased secretion and evidence of inhaled mask polypropylene fibers as the trigger of mucosal irritation [96].

In a study of 221 health care workers, ENT physicians objectified a voice disorder in 33% of mask users. The VHI-10 score of 1 to 10, which measures voice disorders, was on average 5.72 higher in these mask users (statistically significant with $p < 0.001$). The mask not only acted as an acoustic filter, provoking excessively loud speech, it also seems to trigger impaired vocal cord coordination because the mask compromises the pressure gradients required for undisturbed speech [43]. The researchers concluded from their findings that masks could pose a potential risk of triggering new voice disorders as well as exacerbating existing ones.

3.9. Sports Medicine Side Effects and Dangers

According to the literature, performance-enhancing effects of masks regarding cardiovascular optimization and improvement of oxygen uptake capacity cannot be proven.

For example, in an experimental reference study (12 subjects per group), the training mask that supposedly mimics altitude training (ETM: elevation training mask) only had training effects on the respiratory muscles. However, mask wearers showed significantly lower oxygen saturation values (SpO₂%) during exercise (SpO₂ of 94% for mask wearers versus 96% for mask-less, $p < 0.05$) [33], which can be explained by an increased dead space volume and increased resistance during breathing. The measured oxygen saturation values were significantly lower than the normal values in the group of mask wearers, which indicates a clinical relevance.

The proven adaptation effect of the respiratory muscles in healthy athletes [33] clearly suggests that masks have a disruptive effect on respiratory physiology.

In another intervention study on mask use in weightlifters, researchers documented statistically significant effects of reduced attention (questionnaire recording, Likert scale) and a slowed maximum speed of movement detectable by means of sensors (both significant at $p < 0.001$), leading the researchers to conclude that mask use in sport is not without risks. As a secondary finding, they also detected a significant decrease in oxygen saturation SpO₂ when performing special weight-lifting exercises ("back squats") in the mask group after only 1 min of exercise compared to the mask-free group ($p < 0.001$) [32]. The proven tendency of the masks to shift the chemical parameter oxygen saturation SpO₂ in a pathological direction (lower limit value 95%) may well have clinical relevance in untrained or sick individuals.

Sports medicine confirmed an increase in carbon dioxide (CO₂) retention, with an elevation in CO₂ partial pressure in the blood with larger respiratory dead space volumes [14].

In fact, dead space-induced CO₂ retention while wearing a mask during exercise was also experimentally proven. The effects of a short aerobic exercise under N95 masks were tested on 16 healthy volunteers. A significantly increased end-expiratory partial pressure of carbon dioxide (PETCO₂) with plus 8 mmHg ($p < 0.001$) was found [24]. The increase in blood carbon dioxide (CO₂) in the mask wearers under maximum load was plus 14% CO₂ for surgical masks and plus 23% CO₂ for N95 masks, an effect that may well have clinical relevance in the pre-diseased, elderly and children, as these values strongly approached the pathological range [24].

In an interesting endurance study with eight middle-aged subjects (19–66), the gas content for O₂ and CO₂ under the masks was determined before and after exercise. Even at rest, the oxygen availability under the masks was 13% lower than without the masks and the carbon dioxide (CO₂) concentration was 30 times higher. Under stress (Ruffier test), the oxygen concentration (% O₂) below the mask dropped significantly by a further 3.7%, while the carbon dioxide concentration (% CO₂) increased significantly by a further 20% (statistically significant with $p < 0.001$). Correspondingly, the oxygen saturation of the blood (SpO₂) of the test persons also decreased significantly from 97.6 to 92.1% ($p < 0.02$) [18]. The drop in the oxygen saturation value (SpO₂) to 92%, clearly below the normal limit of 95%, is to be classified as clinically relevant and detrimental to health.

These facts are an indication that the use of masks also triggers the effects described above leading to hypoxia and hypercapnia in sports. Accordingly, the WHO and Centers for Disease Control and Prevention, GA, USA (CDC) advise against wearing masks during physical exercise [82,97].

3.10. Social and Sociological Side Effects and Dangers

The results of a Chilean study with health care workers show that masks act like an acoustic filter and provoke excessively loud speech. This causes a voice disorder [43]. The increased volume of speech also contributes to increased aerosol production by the mask wearer [98]. These experimental data measured with the Aerodynamic Particle Sizer (APS, TSI, model 332, TSI Incorporated, Minnesota, MI, USA) are highly relevant.

Moreover, mask wearers are prevented from interacting normally in everyday life due to impaired clarity of speech [45], which tempts them to get closer to each other.

This results in a distorted prioritization in the general public, which counteracts the recommended measures associated with the COVID-19 pandemic. The WHO prioritizes social distancing and hand hygiene with moderate evidence and recommends wearing a mask with weak evidence, especially in situations where individuals are unable to maintain a physical distance of at least 1 m [3].

The disruption of non-verbal communication due to the loss of facial expression recognition under the mask can increase feelings of insecurity, discouragement and numbness as well as isolation, which can be extremely stressful for the mentally and hearing-impaired [16].

Experts point out that masks disrupt the basics of human communication (verbal and nonverbal). The limited facial recognition caused by masks leads to a suppression of emotional signals. Masks, therefore, disrupt social interaction, erasing the positive effect of smiles and laughter but at the same time greatly increasing the likelihood of misunderstandings because negative emotions are also less evident under masks [42].

A decrease in empathy perception through mask use with disruption of the doctor-patient relationship has already been scientifically proven on the basis of a randomized study (statistically significant, with $p = 0.04$) [99]. In this study, the Consultation Empathy Care Measure, the Patient Enablement Instrument (PEI) Score and a Satisfaction Rating Scale were assessed in 1030 patients. The 516 doctors, who wore masks throughout, conveyed reduced empathy towards the patients and, thus, nullified the positive health-promoting effects of a dynamic relationship. These results demonstrate a disruption of interpersonal interaction and relationship dynamics caused by masks.

The WHO guidance on the use of masks in children in the community, published in August 2020, points out that the benefits of mask use in children must be weighed up against the potential harms, including social and communicational concerns [100].

Fears that widespread pandemic measures will lead to dysfunctional social life with degraded social, cultural and psychological interactions have also been expressed by other experts [6–8,42].

3.11. Social and Occupational Medicine Side Effects and Hazards

In addition to mask-specific complaints such as a feeling of heat, dampness, shortness of breath and headache, various physiological phenomena were documented, such as the significant increase in heart and respiratory rate, the impairment of lung function parameters, the decrease in cardiopulmonary capacity (e.g., lower maximum blood lactate response) [15,19,21,23,29–31], as well as the changes in oxygen and carbon dioxide both in the end-expiratory and the air under the mask that was measured in the blood of the individuals [13,15,18,19,21–25,27–34]. The significant changes were measurable after only a few minutes of wearing a mask and in some cases reached magnitudes of minus 13% reduced O₂ concentration and 30-fold increased CO₂ concentration of the inhaled air under masks ($p < 0.001$) [18]. The changes observed were not only statistically significant, but also clinically relevant; the subjects also showed pathological oxygen saturation after exposure to masks ($p < 0.02$) [18].

Shortness of breath during light exertion (6 min walking) under surgical masks has been recorded with statistical significance in 44 healthy subjects in a prospective experimental intervention study ($p < 0.001$) [101]. Here, the complaints were assessed using a subjective, visual analogue scale.

In another study from 2011, all tested masks caused a significantly measurable increase in discomfort and a feeling of exhaustion in the 27 subjects during prolonged usage ($p < 0.0001$) [69].

These symptoms lead to additional stress for the occupational mask wearer and, thus, in relation to the feeling of exhaustion, contribute to the self-perpetuating vicious circle caused by the vegetative sympathetic activation, which further increases the respiratory and heart rate, blood pressure and increased sense of exhaustion [16,20,35,83].

Other studies showed that the psychological and physical effects of the masks can lead to an additional reduction in work performance (measured with the Roberge Subjective Symptoms-during-Work Scale, a Likert scale of 1–5) via increased feelings of fatigue, dissatisfaction and anxiety [58,102,103].

Wearing masks over a longer period of time also led to physiological and psychological impairments in other studies and, thus, reduced work performance [19,36,58,69]. In experiments on respiratory-protective equipment, an increase in the dead space volume by 350 mL leads to a reduction in the possible performance time by approx. –19%, furthermore to a decrease in breathing comfort by –18% (measured via a subjective rating scale) [58]. In addition, the time spent working and the flow of work is interrupted and reduced by putting on and taking off the masks and changing them. The reduced work performance has been recorded in the literature found as described above (especially in Sections 3.1 and 3.2) but has not been quantified further in detail [36,58].

Surgical mask type and N95 protective equipment frequently caused adverse effects in medical personnel such as headaches, breathing difficulties, acne, skin irritation, itching, decreased alertness, decreased mental performance and feelings of dampness and heat [19,29,37,71,85]. Subjective, work performance-reducing, mask-related impairments in users, measured with special survey scores and Likert scales, have also been described in other studies [15,21,27,32,35,43,66–68,72,96,99].

In Section 3.7 on dermatology, we already mentioned a paper that demonstrated a significant temperature increase of 1.9 °C on average (to over 34.5 °C) in the mask-covered facial area ($p < 0.05$) [85]. Due to the relatively larger representation in the sensitive cerebral cortex (homunculus), the temperature sensation in the face is more decisive for the feeling of well-being than other body regions [36,44]. The perception of discomfort when wearing a mask can, thus, be intensified. Interestingly, in our analysis, we found a combined occurrence of the physical variable temperature rise under the mask and the symptom respiratory impairment in seven of eight studies concerned, with a mutual significantly measured occurrence in 88%. We also detected a combined occurrence of significantly measured temperature rise under the mask and significantly measured fatigue in 50% of the relevant primary studies (three of six papers, Figure 2). These clustered associations of

temperature rise with symptoms of respiratory impairment and fatigue suggest a clinical relevance of the detected temperature rise under masks. In the worst case scenario, the effects mentioned can reinforce each other and lead to decompensation, especially in the presence of COPD, heart failure and respiratory insufficiency.

The sum of the disturbances and discomforts that can be caused by a mask also contributes to distraction (see also psychological impairment). These, in conjunction with a decrease in psycho-motoric skills, reduced responsiveness and overall impaired cognitive performance (all of which are pathophysiological effects of wearing a mask) [19,29,32,39–41] can lead to a failure to recognize hazards and, thus, to accidents or avoidable errors at work [19,36,37]. Of particular note here are mask-induced listlessness ($p < 0.05$), impaired thinking ($p < 0.05$) and concentration problems ($p < 0.02$) as measured by a Likert scale (1–5) [29]. Accordingly, occupational health regulations take action against such scenarios. The German Industrial Accident Insurance (DGUV) has precise and extensive regulations for respiratory protective equipment where they document the limitation of wearing time, levels of work intensity and defined instruction obligation [104].

The standards and norms prescribed in many countries regarding different types of masks to protect their workers are also significant from an occupational health point of view [105]. In Germany, for example, there are very strict safety specifications for masks from other international countries. These specify the requirements for the protection of the wearer [106]. All these standards and the accompanying certification procedures were increasingly relaxed with the introduction of mandatory masks for the general public. This meant that non-certified masks such as community masks were also used on a large scale in the work and school sectors for longer periods during the pandemic measures [107]. Most recently, in October 2020, the German Social Accident Insurance (DGUV) recommended the same usage time limits for community masks as for filtering half masks, namely, a maximum of three shifts of 120 min per day with recovery breaks of 30 min in between. In Germany, FFP2 (N95) masks must be worn for 75 min, followed by a 30-minute break. An additional suitability examination by specialized physicians is also obligatory and stipulated for occupationally used respirators [104].

3.12. Microbiological Consequences for Wearer and Environment: Foreign/Self-Contamination

Masks cause retention of moisture [61]. Poor filtration performance and incorrect use of surgical masks and community masks, as well as their frequent reuse, imply an increased risk of infection [108–110]. The warm and humid environment created by and in masks without the presence of protective mechanisms such as antibodies, the complement system, defense cells and pathogen-inhibiting and on a mucous membrane paves the way for unimpeded growth and, thus, an ideal growth and breeding ground for various pathogens such as bacteria and fungi [88] and also allows viruses to accumulate [87]. The warm and humid mask microclimate favors the accumulation of various germs on and underneath the masks [86], and the germ density is measurably proportional to the length of time the mask is worn. After only 2 h of wearing the mask, the pathogen density increases almost tenfold in experimental observation studies [87,89].

From a microbiological and epidemiological point of view, masks in everyday use pose a risk of contamination. This can occur as foreign contamination but also as self-contamination. On the one hand, germs are sucked in or attach themselves to the masks through convection currents. On the other hand, potential infectious agents from the nasopharynx accumulate excessively on both the outside and inside of the mask during breathing [5,88]. This is compounded by contact with contaminated hands. Since masks are constantly penetrated by germ-containing breath and the pathogen reproduction rate is higher outside mucous membranes, potential infectious pathogens accumulate excessively on the outside and inside of masks. On and in the masks, there are quite serious, potentially disease-causing bacteria and fungi such as *E. coli* (54% of all germs detected), *Staphylococcus aureus* (25% of all germs detected), *Candida* (6%), *Klebsiella* (5%), *Enterococci* (4%),

Pseudomonads (3%), Enterobacter (2%) and Micrococcus (1%) even detectable in large quantities [88].

In another microbiological study, the bacterium *Staphylococcus aureus* (57% of all bacteria detected) and the fungus *Aspergillus* (31% of all fungi detected) were found to be the dominant germs on 230 surgical masks examined [86].

After more than six hours of use, the following viruses were found in descending order on 148 masks worn by medical personnel: adenovirus, bocavirus, respiratory syncytial virus and influenza viruses [87].

From this aspect, it is also problematic that moisture distributes these potential pathogens in the form of tiny droplets via capillary action on and in the mask, whereby further proliferation in the sense of self- and foreign contamination by the aerosols can then occur internally and externally with every breath [35]. In this regard, it is also known from the literature that masks are responsible for a proportionally disproportionate production of fine particles in the environment and, surprisingly, much more so than in people without masks [98].

It was shown that all mask-wearing subjects released significantly more smaller particles of size 0.3–0.5 μm into the air than mask-less people, both when breathing, speaking and coughing (fabric, surgical, N95 masks, measured with the Aerodynamic Particle Sizer, APS, TS, model 3329) [98]. The increase in the detection of rhinoviruses in the sentinel studies of the German RKI from 2020 [90] could be a further indication of this phenomenon, as masks were consistently used by the general population in public spaces in that year.

3.13. Epidemiological Consequences

The possible side effects and dangers of masks described in this paper are based on studies of different types of masks. These include the professional masks of the surgical mask type and N95/KN95 (FFP2 equivalent) that are commonly used in everyday life, but also the community fabric masks that were initially used. In the case of N95, the N stands for National Institute for Occupational Safety and Health of the United States (NIOSH), and 95 indicates the 95 per cent filtering capacity for fine particles up to at least 0.3 μm [82].

A major risk of mask use in the general public is the creation of a false sense of security with regard to protection against viral infections, especially in the sense of a falsely assumed strong self-protection. Disregarding infection risks may not only neglect aspects of source control, but also result in other disadvantages. Although there are quite a few professional positive accounts of the widespread use of masks in the general populace [111], most of the serious and evident scientific reports conclude that the general obligation to wear masks conveys a false sense of security [4,5]. However, this leads to a neglect of those measures that, according to the WHO, have a higher level of effectiveness than mask-wearing: social distancing and hand hygiene [2,112]. Researchers were able to provide statistically significant evidence of a false sense of security and more risky behavior when wearing masks in an experimental setting [112].

Decision makers in many countries informed their citizens early on in the pandemic in March 2020 that people without symptoms should not use a medical mask, as this created a false sense of security [113]. The recommendation was ultimately changed in many countries. At least Germany pointed out that wearers of certain types of masks such as the common fabric masks (community masks) cannot rely on them to protect them or others from transmission of SARS-CoV-2 [114].

However, scientists not only complain about the lack of evidence for fabric masks in the scope of a pandemic [16,110], but also about the high permeability of fabric masks with particles and the potential risk of infection they pose [108,109]. Ordinary fabric masks with a 97% penetration for particle dimensions of $\geq 0.3 \mu\text{m}$ are in stark contrast to medical-type surgical masks with a 44% penetration. In contrast, the N95 mask has a penetration rate of less than 0.01% for particles $\geq 0.3 \mu\text{m}$ in the laboratory experiment [108,115].

For the clinical setting in hospitals and outpatient clinics, the WHO guidelines recommend only surgical masks for influenza viruses for the entire patient treatment except for the strongly aerosol-generating measures, for which finer filtering masks of the type N95 are suggested. However, the WHO's endorsement of specific mask types is not entirely evidence-based due to the lack of high-quality studies in the health sector [108,109,116,117].

In a laboratory experiment (evidence level IIa study), it was demonstrated that both surgical masks and N95 masks have deficits in protection against SARS-CoV-2 and influenza viruses using virus-free aerosols [118]. In this study, the FFP2-equivalent N95 mask performed significantly better in protection (8–12 times more effective) than the surgical mask, but neither mask type established reliable, hypothesis-generated protection against corona and influenza viruses. Both mask types could be penetrated unhindered by aerosol particles with a diameter of 0.08 to 0.2 μm . Both the SARS-CoV-2 pathogens with a size of 0.06 to 0.14 μm [119] and the influenza viruses with 0.08 to 0.12 μm are unfortunately well below the mask pore sizes [118].

The filtering capacity of the N95 mask up to 0.3 μm [82] is usually not achieved by surgical masks and community masks. However, aerosol droplets, which have a diameter of 0.09 to 3 μm in size, are supposed to serve as a transport medium for viruses. These also penetrate the medical masks by 40%. Often, there is also a poor fit between the face and the mask, which further impairs their function and safety [120]. The accumulation of aerosol droplets on the mask is problematic. Not only do they absorb nanoparticles such as viruses [6], but they also follow the airflow when inhaling and exhaling, causing them to be carried further. In addition, a physical decay process has been described for aerosol droplets at increasing temperatures, as also occurs under a mask [15,44,85]. This process can lead to a decrease in size of the fine water droplets up to the diameter of a virus [121,122]. The masks filter larger aerosol droplets but cannot retain viruses themselves and such smaller, potentially virus-containing aerosol droplets of less than 0.2 μm and hence cannot stop the spread of virus [123].

Similarly, in an in vivo comparative studies of N95 and surgical masks, there were no significant differences in influenza virus infection rates [124,125]. Although this contrasts with encouraging in vitro laboratory results with virus-free aerosols under non-natural conditions, even with fabric masks [126], it should be noted that under natural in-vivo conditions, the promising filtration functions of fabric masks based on electrostatic effects also rapidly diminish under increasing humidity [127]. A Swiss textile lab test of various masks available on the market to the general public recently confirmed that most mask types filter aerosols insufficiently. For all but one of the eight reusable fabric mask types tested, the filtration efficacy according to EN149 was always less than 70% for particles of 1 μm in size. For disposable masks, only half of all eight mask types tested were efficient enough at filtering to retain 70% of particles 1 μm in size [128].

A recent experimental study even demonstrated that all mask-wearing people (surgical, N95, fabric masks) release significantly and proportionately smaller particles of size 0.3 to 0.5 μm into the air than mask-less people, both when breathing, speaking and coughing [98]. According to this, the masks act like nebulizers and contribute to the production of very fine aerosols. Smaller particles, however, spread faster and further than large ones for physical reasons. Of particular interest in this experimental reference study was the finding that a test subject wearing a single-layer fabric mask was also able to release a total of 384% more particles (of various sizes) when breathing than a person without [98].

It is not only the aforementioned functional weaknesses of the masks themselves that lead to problems, but also their use. This increases the risk of a false sense of security. According to the literature, mistakes are made by both healthcare workers and lay people when using masks as hygienically correct mask use is by no means intuitive. Overall, 65% of healthcare professionals and as many as 78% of the general population, use masks incorrectly [116]. With both surgical masks and N95 masks, adherence to the rules of use is impaired and not adequately followed due to reduced wearability with heat discomfort and skin irritation [29,35,116,129]. This is exacerbated by the accumulation of carbon dioxide

due to the dead space (especially under the N95 masks) with the resulting headaches described [19,27,37,66–68,83]. Increased heart rate, itching and feelings of dampness [15,29,30,35,71] also lead to reduced safety and quality during use (see also social and occupational health side effects and hazards). For this reason, (everyday) masks are even considered a general risk for infection in the general population, which does not come close to imitating the strict hygiene rules of the hospitals and doctors' offices: the supposed safety, thus, becomes a safety risk itself [5].

In a meta-analysis of evidence level Ia commissioned by the WHO, no effect of masks in the context of influenza virus pandemic prevention could be demonstrated [130]. In 14 randomized controlled trials, no reduction in the transmission of laboratory-confirmed influenza infections was shown. Due to the similar size and distribution pathways of the virus species (influenza and Corona, see above), the data can also be transferred to SARS-CoV-2 [118]. Nevertheless, a combination of occasional mask-wearing with adequate hand-washing caused a slight reduction in infections for influenza in one study [131]. However, since no separation of hand hygiene and masks was achieved in this study, the protective effect can rather be attributed to hand hygiene in view of the aforementioned data [131].

A recently published large prospective Danish comparative study comparing mask wearers and non-mask wearers in terms of their infection rates with SARS-CoV2 could not demonstrate any statistically significant differences between the groups [132].

3.14. Paediatric Side Effects and Hazards

Children are particularly vulnerable and may be more likely to receive inappropriate treatment or additional harm. It can be assumed that the potential adverse mask effects described for adults are all the more valid for children (see Section 3.1 to Section 3.13: physiological internal, neurological, psychological, psychiatric, dermatological, ENT, dental, sociological, occupational and social medical, microbiological and epidemiological impairments and also Figures 2 and 3).

Special attention must be paid to the respiration of children, which represents a critical and vulnerable physiological variable due to higher oxygen demand, increased hypoxia susceptibility of the CNS, lower respiratory reserve, smaller airways with a stronger increase in resistance when the lumen is narrowed. The diving reflex caused by stimulating the nose and upper lip can cause respiratory arrest to bradycardia in the event of oxygen deficiency.

The masks currently used for children are exclusively adult masks manufactured in smaller geometric dimensions and had neither been specially tested nor approved for this purpose [133].

In an experimental British research study, the masks frequently led to feelings of heat ($p < 0.0001$) and breathing problems ($p < 0.03$) in 100 school children between 8 and 11 years of age especially during physical exertion, which is why the protective equipment was taken off by 24% of the children during physical activity [133]. The exclusion criteria for this mask experiment were lung disease, cardiovascular impairment and claustrophobia [133].

Scientists from Singapore were able to demonstrate in their level Ib study published in the renowned journal "nature" that 106 children aged between 7 and 14 years who wore FFP2 masks for only 5 min showed an increase in the inspiratory and expiratory CO₂ levels, indicating disturbed respiratory physiology [26].

However, a disturbed respiratory physiology in children can have long-term disease-relevant consequences. Slightly elevated CO₂ levels are known to increase heart rate, blood pressure, headache, fatigue and concentration disorders [38].

Accordingly, the following conditions were listed as exclusion criteria for mask use [26]: any cardiopulmonary disease including but not limited to: asthma, bronchitis, cystic fibrosis, congenital heart disease, emphysema; any condition that may be aggravated by physical exertion, including but not limited to: exercise-induced asthma; lower respiratory tract infections (pneumonia, bronchitis within the last 2 weeks), anxiety disorders,

diabetes, hypertension or epilepsy/attack disorder; any physical disability due to medical, orthopedic or neuromuscular disease; any acute upper respiratory illness or symptomatic rhinitis (nasal obstruction, runny nose or sneezing); any condition with deformity that affects the fit of the mask (e.g., increased facial hair, craniofacial deformities, etc.).

It is also important to emphasize the possible effects of masks in neurological diseases, as described earlier (Section 3.3).

Both masks and face shields caused fear in 46% of children (37 out of 80) in a scientific study. If children are given the choice of whether the doctor examining them should wear a mask they reject this in 49% of the cases. Along with their parents, the children prefer the practitioner to wear a face visor (statistically significant with $p < 0.0001$) [134].

A recent observational study of tens of thousands of mask-wearing children in Germany helped the investigators objectify complaints of headaches (53%), difficulty concentrating (50%), joylessness (49%), learning difficulties (38%) and fatigue in 37% of the 25,930 children evaluated. Of the children observed, 25% had new onset anxiety and even nightmares [135]. In children, the threat scenarios generated by the environment are further maintained via masks, in some cases, even further intensified, and in this way, existing stress is intensified (presence of subconscious fears) [16,35,136,137].

This can in turn lead to an increase in psychosomatic and stress-related illnesses [74,75]. For example, according to an evaluation, 60% of mask wearers showed stress levels of the highest grade 10 on a scale of 1 to a maximum of 10. Less than 10% of the mask wearers surveyed had a stress level lower than 8 out of a possible 10 [74].

As children are considered a special group, the WHO also issued a separate guideline on the use of masks in children in the community in August 2020, explicitly advising policy makers and national authorities, given the limited evidence, that the benefits of mask use in children must be weighed up against the potential harms associated with mask use. This includes feasibility and discomfort, as well as social and communication concerns [100].

According to experts, masks block the foundation of human communication and the exchange of emotions and not only hinder learning but deprive children of the positive effects of smiling, laughing and emotional mimicry [42]. The effectiveness of masks in children as a viral protection is controversial, and there is a lack of evidence for their widespread use in children; this is also addressed in more detail by the scientists of the German University of Bremen in their thesis paper 2.0 and 3.0 [138].

3.15. Effects on the Environment

According to WHO estimates of a demand of 89 million masks per month, their global production will continue to increase under the Corona pandemic [139]. Due to the composition of, e.g., disposable surgical masks with polymers such as polypropylene, polyurethane, polyacrylonitrile, polystyrene, polycarbonate, polyethylene and polyester [140], an increasing global challenge, also from an environmental point of view, can be expected, especially outside Europe, in the absence of recycling and disposal strategies [139]. The aforementioned single use polymers have been identified as a significant source of plastic and plastic particles for the pollution of all water cycles up to the marine environment [141].

A significant health hazard factor is contributed by mask waste in the form of microplastics after decomposition into the food chain. Likewise, contaminated macroscopic disposable mask waste—especially before microscopic decay—represents a widespread medium for microbes (protozoa, bacteria, viruses, fungi) in terms of invasive pathogens [86–89,142]. Proper disposal of bio-contaminated everyday mask material is insufficiently regulated even in western countries.

4. Discussion

The potential drastic and undesirable effects found in multidisciplinary areas illustrate the general scope of global decisions on masks in general public in the light of combating the pandemic. According to the literature found, there are clear, scientifically recorded adverse effects for the mask wearer, both on a psychological and on a social and physical level.

Neither higher level institutions such as the WHO or the European Centre for Disease Prevention and Control (ECDC) nor national ones, such as the Centers for Disease Control and Prevention, GA, USA (CDC) or the German RKI, substantiate with sound scientific data a positive effect of masks in the public (in terms of a reduced rate of spread of COVID-19 in the population) [2,4,5].

Contrary to the scientifically established standard of evidence-based medicine, national and international health authorities have issued their theoretical assessments on the masks in public places, even though the compulsory wearing of masks gives a deceptive feeling of safety [5,112,143].

From an infection epidemiological point of view, masks in everyday use offer the risk of self-contamination by the wearer from both inside and outside, including via contaminated hands [5,16,88]. In addition, masks are soaked by exhaled air, which potentially accumulates infectious agents from the nasopharynx and also from the ambient air on the outside and inside of the mask. In particular, serious infection-causing bacteria and fungi should be mentioned here [86,88,89], but also viruses [87]. The unusual increase in the detection of rhinoviruses in the sentinel studies of the German RKI from 2020 [90] could be an indication of this phenomenon. Clarification through further investigations would therefore be desirable.

Masks, when used by the general public, are considered by scientists to pose a risk of infection because the standardized hygiene rules of hospitals cannot be followed by the general public [5]. On top of that, mask wearers (surgical, N95, fabric masks) exhale relatively smaller particles (size 0.3 to 0.5 μm) than mask-less people and the louder speech under masks further amplifies this increased fine aerosol production by the mask wearer (nebulizer effect) [98].

The history of modern times shows that already in the influenza pandemics of 1918–1919, 1957–58, 1968, 2002, in SARS 2004–2005 as well as with the influenza in 2009, masks in everyday use could not achieve the hoped-for success in the fight against viral infection scenarios [67,144]. The experiences led to scientific studies describing as early as 2009 that masks do not show any significant effect with regard to viruses in an everyday scenario [129,145]. Even later, scientists and institutions rated the masks as unsuitable to protect the user safely from viral respiratory infections [137,146,147]. Even in hospital use, surgical masks lack strong evidence of protection against viruses [67].

Originally born out of the useful knowledge of protecting wounds from surgeons' breath and predominantly bacterial droplet contamination [144,148,149], the mask has been visibly misused with largely incorrect popular everyday use, particularly in Asia in recent years [150]. Significantly, the sociologist Beck described the mask as a cosmetic of risk as early as 1992 [151]. Unfortunately, the mask is inherent in a vicious circle: strictly speaking, it only protects symbolically and at the same time represents the fear of infection. This phenomenon is reinforced by the collective fear mongering, which is constantly nurtured by main stream media [137].

Nowadays, the mask represents a kind of psychological support for the general population during the virus pandemic, promising them additional anxiety-reduced freedom of movement. The recommendation to use masks in the sense of "source control" not out of self-protection but out of "altruism" [152] is also very popular with the regulators as well as the population of many countries. The WHO's recommendation of the mask in the current pandemic is not only a purely infectiological approach, but is also clear on the possible advantages for healthy people in the general public. In particular, a reduced potential stigmatization of mask wearers, the feeling of a contribution made to preventing the spread of the virus, as well as the reminder to adhere to other measures are mentioned [2].

It should not go unmentioned that very recent data suggest that the detection of SARS-CoV-2 infection does not seem to be directly related to popular mask use. The groups examined in a retrospective comparative study (infected with SARS-CoV-2 and not infected) did not differ in their habit of using masks: approximately 70% of the subjects in both groups always wore masks and another 14.4% of them frequently [143].

In a Danish prospective study on mask-wearing carried out on about 6000 participants and published in 2020, scientists found no statistically significant difference in the rates of SARS-CoV-2 infection when comparing the group of 3030 mask wearers with the 2994 mask-less participants in the study ($p = 0.38$) [132].

Indeed, in the case of viral infections, masks appear to be not only less effective than expected, but also not free of undesirable biological, chemical, physical and psychological side effects [67]. Accordingly, some experts claim that well-intentioned unprofessionalism can be quite dangerous [6].

The dermatological colleagues were the first to describe common adverse effects of mask-wearing in larger collectives. Simple, direct physical, chemical and biological effects of the masks with increases in temperature, humidity and mechanical irritation caused acne in up to 60% of wearers [37,71–73,85]. Other significantly documented consequences were eczema, skin damage and overall impaired skin barrier function [37,72,73].

These direct effects of mask use are an important pointer to further detrimental effects affecting other organ systems.

In our work, we have identified scientifically validated and numerous statistically significant adverse effects of masks in various fields of medicine, especially with regard to a disruptive influence on the highly complex process of breathing and negative effects on the respiratory physiology and gas metabolism of the body (see Figures 2 and 3). The respiratory physiology and gas exchange play a key role in maintaining a health-sustaining balance in the human body [136,153]. According to the studies we found, a dead space volume that is almost doubled by wearing a mask and a more than doubled breathing resistance (Figure 3) [59–61] lead to a rebreathing of carbon dioxide with every breathing cycle [16–18,39,83] with—in healthy people mostly—a subthreshold but, in sick people, a partly pathological increase in the carbon dioxide partial pressure (PaCO₂) in the blood [25,34,58]. According to the primary studies found, these changes contribute reflexively to an increase in respiratory frequency and depth [21,23,34,36] with a corresponding increase in the work of the respiratory muscles via physiological feedback mechanisms [31,36]. Thus, it is not, as initially assumed, purely positive training through mask use. This often increases the subliminal drop in oxygen saturation SpO₂ in the blood [23,28–30,32], which is already reduced by increased dead space volume and increased breathing resistance [18,31].

The overall possible resulting measurable drop in oxygen saturation O₂ of the blood on the one hand [18,23,28–30,32] and the increase in carbon dioxide (CO₂) on the other [13,15,19,21–28] contribute to an increased noradrenergic stress response, with heart rate increase [29,30,35] and respiratory rate increase [15,21,23,34], in some cases also to a significant blood pressure increase [25,35].

In panic-prone individuals, stress-inducing noradrenergic sympathetic activation can be partly directly mediated via the carbon dioxide (CO₂) mechanism at the locus coeruleus in the brainstem [39,78,79,153], but also in the usual way via chemo-sensitive neurons of the nucleus solitarius in the medulla [136,154]. The nucleus solitarius [136] is located in the deepest part of the brainstem, a gateway to neuronal respiratory and circulatory control [154]. A decreased oxygen (O₂) blood level there causes the activation of the sympathetic axis via chemoreceptors in the carotids [155,156].

Even subthreshold changes in blood gases such as those provoked when wearing a mask cause reactions in these control centers in the central nervous system. Masks, therefore, trigger direct reactions in important control centers of the affected brain via the slightest changes in oxygen and carbon dioxide in the blood of the wearer [136,154,155].

A link between disturbed breathing and cardiorespiratory diseases such as hypertension, sleep apnea and metabolic syndrome has been scientifically proven [56,57]. Interestingly, decreased oxygen/O₂ blood levels and also increased carbon dioxide/CO₂ blood levels are considered the main triggers for the sympathetic stress response [38,136]. The aforementioned chemo-sensitive neurons of the nucleus solitarius in the medulla are considered to be the main responsible control centers [136,154,155]. Clinical effects of prolonged mask-wearing would, thus, be a conceivable intensification of chronic stress re-

actions and negative influences on the metabolism leading towards a metabolic syndrome.

The mask studies we found show that such disease-relevant respiratory gas changes (O_2 and CO_2) [38,136] are already achieved by wearing a mask [13,15,18,19,21–34].

A connection between hypoxia, sympathetic reactions and leptin release is scientifically known [136].

Additionally important is the connection of breathing with the influence on other bodily functions [56,57], including the psyche with the generation of positive emotions and drive [153]. The latest findings from neuro-psychobiological research indicate that respiration is not only a function regulated by physical variables to control them (feedback mechanism), but rather independently influences higher-level brain centers and, thus, also helps to shape psychological and other bodily functions and reactions [153,157,158].

Since masks impede the wearer's breathing and accelerate it, they work completely against the principles of health-promoting breathing [56,57] used in holistic medicine and yoga. According to recent research, undisturbed breathing is essential for happiness and healthy drive [157,159], but masks work against this.

The result of significant changes in blood gases in the direction of hypoxia (drop in oxygen saturation) and hypercapnia (increase in carbon dioxide concentration) through masks, thus, has the potential to have a clinically relevant influence on the human organism even without exceeding normal limits.

According to the latest scientific findings, blood-gas shifts towards hypoxia and hypercapnia not only have an influence on the described immediate, psychological and physiological reactions on a macroscopic and microscopic level, but additionally on gene expression and metabolism on a molecular cellular level in many different body cells. Through this, the drastic disruptive intervention of masks in the physiology of the body also becomes clear down to the cellular level, e.g., in the activation of hypoxia-induced factor (HIF) through both hypercapnia and hypoxia-like effects [160]. HIF is a transcription factor that regulates cellular oxygen supply and activates signaling pathways relevant to adaptive responses. e.g., HIF inhibits stem cells, promotes tumor cell growth and inflammatory processes [160]. Based on the hypoxia- and hypercapnia-promoting effects of masks, which have been comprehensively described for the first time in our study, potential disruptive influences down to the intracellular level (HIF-a) can be assumed, especially through the prolonged and excessive use of masks. Thus, in addition to the vegetative chronic stress reaction in mask wearers, which is channeled via brain centers, there is also likely to be an adverse influence on metabolism at the cellular level. With the prospect of continued mask use in everyday life, this also opens up an interesting field of research for the future.

The fact that prolonged exposure to latently elevated CO_2 levels and unfavorable breathing air compositions has disease-promoting effects was recognized early on. As early as 1983, the WHO described "Sick Building Syndrome" (SBS) as a condition in which people living indoors experienced acute disease-relevant effects that increased with time of their stay, without specific causes or diseases [161,162]. The syndrome affects people who spend most of their time indoors, often with subliminally elevated CO_2 levels, and are prone to symptoms such as increased heart rate, rise in blood pressure, headaches, fatigue and difficulty concentrating [38,162]. Some of the complaints described in the mask studies we found (Figure 2) are surprisingly similar to those of Sick Building Syndrome [161]. Temperature, carbon dioxide content of the air, headaches, dizziness, drowsiness and itching also play a role in Sick Building Syndrome. On the one hand, masks could themselves be responsible for effects such as those described for Sick Building Syndrome when used for a longer period of time. On the other hand, they could additionally intensify these effects when worn in air-conditioned buildings, especially when masks are mandatory indoors. Nevertheless, there was a tendency towards higher systolic blood pressure values in mask wearers in some studies [21,31,34], but statistical significance was only found in two studies [25,35]. However, we found more relevant and significant evidence of heart

rate increase, headache, fatigue and concentration problems associated with mask wearers (Figure 2) indicating the clinical relevance of wearing masks.

According to the scientific results and findings, masks have measurably harmful effects not only on healthy people, but also on sick people and their relevance is likely to increase with the duration of use [69]. Further research is needed here to shed light on the long-term consequences of widespread mask use with subthreshold hypoxia and hypercapnia in the general population, also regarding possible exacerbating effects on cardiorespiratory lifestyle diseases such as hypertension, sleep apnea and metabolic syndrome. The already often elevated blood carbon dioxide (CO₂) levels in overweight people, sleep apnea patients and patients with overlap-COPD could possibly increase even further with everyday masks. Not only a high body mass index (BMI) but also sleep apnea are associated with hypercapnia during the day in these patients (even without masks) [19,163]. For such patients, hypercapnia means an increase in the risk of serious diseases with increased morbidity, which could then be further increased by excessive mask use [18,38].

The hypercapnia-induced effects of sympathetic stress activation are even cycle phase-dependent in women. Controlled by a progesterone mechanism, the sympathetic reaction, measured by increased blood pressure in the luteal phase, is considerably stronger [164]. This may also result in different sensitivities for healthy and sick women to undesirable effects masks have, which are related to an increase in carbon dioxide (CO₂).

In our review, negative physical and psychological changes caused by masks could be objectified even in younger and healthy individuals.

The physical and chemical parameters did not exceed the normal values in most cases but were statistically significantly measurable ($p < 0.05$) tending towards pathological ranges. They were accompanied by physical impairments (see Figure 2). It is well known that subthreshold stimuli are capable of causing pathological changes when exposed to them for a long time: not only a single high dose of a disturbance, but also a chronically persistent, subthreshold exposure to it often leads to illness [38,46–48,50–54]. The scientifically repeatedly measurable physical and chemical mask effects were often accompanied by typical subjective complaints and pathophysiological phenomena. The fact that these frequently occur simultaneously and together indicates a syndrome under masks.

Figure 2 sums up the significant mask-dependent physiological, psychological, somatic and general pathological changes and their frequent occurrence together is striking. Within the framework of the quantitative evaluation of the experimental studies, we were actually able to prove a statistically significant correlation of the observed side effects of fatigue and oxygen depletion under mask use with $p < 0.05$. In addition, we found a frequent, simultaneous and joint occurrence of further undesirable effects in the scientific studies (Figure 2). Statistically significant associations of such co-occurring, adverse effects have already been described in primary studies [21,29]. We detected a combined occurrence of the physical parameter temperature rise under the mask with the symptom respiratory impairment in seven of the nine studies concerned (88%). We found a similar result for the decrease in oxygen saturation under mask and the symptom respiratory impairment with a simultaneous detection in six of the eight studies concerned (67%). We detected a combined occurrence of carbon dioxide rise under N95 mask use in nine of the 11 scientific papers (82%). We found a similar result for oxygen drop under N95 mask use with simultaneous co-occurrence in eight of 11 primary papers (72%). The use of N95 masks was also associated with headache in six of the 10 primary studies concerned (60%). A combined occurrence of the physical parameters temperature rise and humidity under masks was even found 100% within six of the six studies with significant measurements of these parameters (Figure 2).

Since the symptoms were described in combination in mask wearers and were not observed in isolation in the majority of cases, we refer to them as general Mask-Induced Exhaustion Syndrome (MIES) because of the consistent presentation in numerous papers from different disciplines. These include the following, predominantly statistically significantly

($p < 0.05$) proven pathophysiological changes and subjective complaints, which often occur in combination as described above (see also Section 3.1 to Section 3.11, Figures 2–4):

- Increase in dead space volume [22,24,58,59] (Figure 3, Sections 3.1 and 3.2).
- Increase in breathing resistance [31,35,61,118] (Figure 3, Figure 2: Column 8).
- Increase in blood carbon dioxide [13,15,19,21–28] (Figure 2: Column 5).
- Decrease in blood oxygen saturation [18,19,21,23,28–34] (Figure 2: Column 4).
- Increase in heart rate [15,19,23,29,30,35] (Figure 2: Column 12).
- Decrease in cardiopulmonary capacity [31] (Section 3.2).
- Feeling of exhaustion [15,19,21,29,31–35,69] (Figure 2: Column 14).
- Increase in respiratory rate [15,21,23,34] (Figure 2: Column 9).
- Difficulty breathing and shortness of breath [15,19,21,23,25,29,31,34,35,71,85,101,133] (Figure 2: Column 13).
- Headache [19,27,37,66–68,83] (Figure 2: Column 17).
- Dizziness [23,29] (Figure 2: Column 16).
- Feeling of dampness and heat [15,16,22,29,31,35,85,133] (Figure 2: Column 7).
- Drowsiness (qualitative neurological deficits) [19,29,32,36,37] (Figure 2: Column 15).
- Decrease in empathy perception [99] (Figure 2: Column 19).
- Impaired skin barrier function with acne, itching and skin lesions [37,72,73] (Figure 2: Column 20–22).

It can be deduced from the results that the effects described in healthy people are all more pronounced in sick people, since their compensatory mechanisms, depending on the severity of the illness, are reduced or even exhausted. Some existing studies on and with patients with measurable pathological effects of the masks support this assumption [19,23,25,34]. In most scientific studies, the exposure time to masks in the context of the measurements/investigations was significantly less (in relation to the total wearing and duration of use) than is expected of the general public under the current pandemic regulations and ordinances.

The exposure time limits are little observed or knowingly disregarded in many areas today as already mentioned in Section 3.11 on occupational medicine. The above facts allow the conclusion that the described negative effects of masks, especially in some of our patients and the very elderly, may well be more severe and adverse with prolonged use than presented in some mask studies.

From a doctor's viewpoint, it may also be difficult to advise children and adults who, due to social pressure (to wear a mask) and the desire to feel they belong, suppress their own needs and concerns until the effects of masks have a noticeable negative impact on their health [76]. Nevertheless, the use of masks should be stopped immediately at the latest when shortness of breath, dizziness or vertigo occur [23,25]. From this aspect, it seems sensible for decision makers and authorities to provide information, to define instruction obligations and offer appropriate training for employers, teachers and other persons who have a supervisory or caregiving duty. Knowledge about first aid measures could also be refreshed and expanded accordingly in this regard.

Elderly, high-risk patients with lung disease, cardiac patients, pregnant women or stroke patients are advised to consult a physician to discuss the safety of an N95 mask as their lung volume or cardiopulmonary performance may be reduced [23]. A correlation between age and the occurrence of the aforementioned symptoms while wearing a mask has been statistically proven [19]. Patients with reduced cardiopulmonary function are at increased risk of developing serious respiratory failure with mask use according to the referenced literature [34]. Without the possibility of continuous medical monitoring, it can be concluded that they should not wear masks without close monitoring. The American Asthma and Allergy Society has already advised caution in the use of masks with regard to the COVID-19 pandemic for people with moderate and severe lung disease [165]. Since the severely overweight, sleep apnea patients and overlap-COPD sufferers are known to be prone to hypercapnia, they also represent a risk group for serious adverse health effects under extensive mask use [163]. This is because the potential of masks to produce additional

CO₂ retention may not only have a disruptive effect on the blood gases and respiratory physiology of sufferers, but may also lead to further serious adverse health effects in the long term. Interestingly, in an animal experiment an increase in CO₂ with hypercapnia leads to contraction of smooth airway muscles with constriction of bronchi [166]. This effect could explain the observed pulmonary decompensations of patients with lung disease under masks (Section 3.2) [23,34].

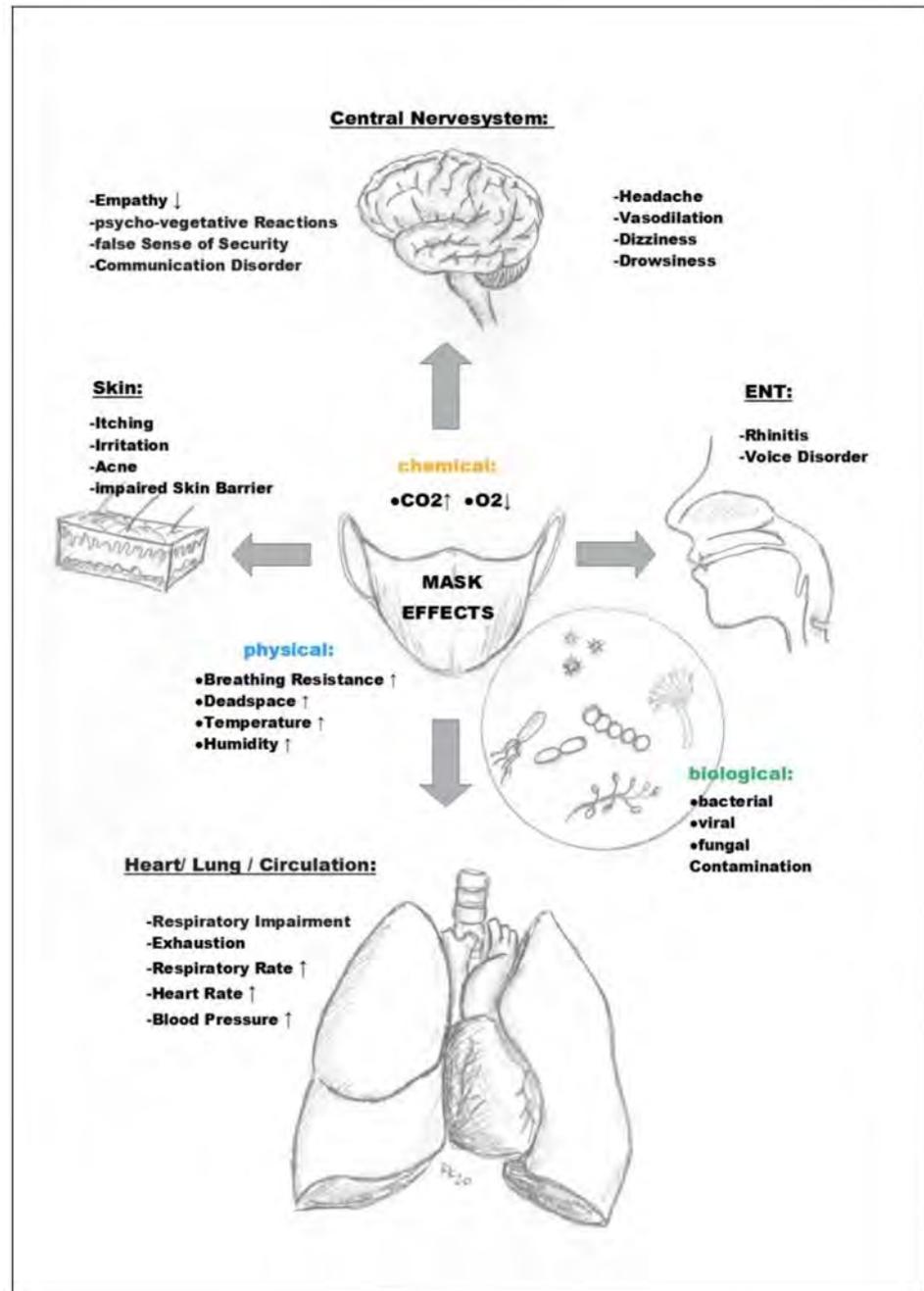


Figure 4. Unfavorable mask effects as components of Mask-Induced Exhaustion Syndrome (MIES). The chemical, physical and biological effects, as well as the organ system consequences mentioned, are all documented with statistically significant results in the scientific literature found (Figure 2). The term drowsiness is used here to summarize any qualitative neurological deficits described in the examined scientific literature.

Patients with renal insufficiency requiring dialysis are, according to the literature available, further candidates for a possible exemption from the mask requirement [34].

According to the criteria of the Centers for Disease Control and Prevention, GA, USA (CDC), sick and helpless people who cannot remove a mask on their own should be exempted from the mask requirement [82].

Since it can be assumed that children react even more sensitively to masks, the literature suggests that masks are a contraindication for children with epilepsies (hyperventilation as a trigger for seizures) [63]. In the field of pediatrics, special attention should also be paid to the mask symptoms described under psychological, psychiatric and sociological effects with possible triggering of panic attacks by CO₂ rebreathing in the case of predisposition and also reinforcement of claustrophobic fears [77–79,167]. The mask-related disturbance of verbal [43,45,71] and non-verbal communication and, thus, of social interaction is particularly serious for children. Masks restrict social interaction and block positive perceptions (smiling and laughing) and emotional mimicry [42]. The proven mask-induced mild to moderate cognitive impairment with impaired thinking, decreased attention and dizziness [19,23,29,32,36,37,39–41,69], as well as the psychological and neurological effects [135], should be additionally taken into account when masks are compulsory at school and in the vicinity of both public and non-public transport, also regarding the possibility of an increased risk of accidents (see also occupational health side effects and hazards) [19,29,32,36,37]. The exclusion criteria mentioned in pediatric studies on masks (see pediatric impairments, Section 3.14) [26,133] should also apply to an exclusion of these children from the general mask obligation in accordance with the scientific findings for the protection of the sick children concerned. The long-term sociological, psychological and educational consequences of a comprehensive masking requirement extended to schools are also unpredictable with regard to the psychological and physical development of healthy children [42,135]. Interestingly, according to the Corona Thesis Paper of the University of Bremen children “are infected less often, they become ill less often, the lethality is close to zero, and they also pass on the infection less often”, according to the Thesis Paper 2.0 of the German University of Bremen on page 6 [138]. Studies conducted under real-life conditions with outcome endpoints showing hardly any infections, hardly any morbidity, hardly any mortality and only low contagiousness in children are clearly in the majority, according to Thesis Paper 3.0 of the German University of Bremen [138]. A recent German observational study (5600 reporting pediatricians) also showed a surprisingly low incidence of COVID-19 disease in children [168]. The infection of adults with SARS-CoV-2 by children has been considered in only one suspected case, but could not be proven with certainty, since the parents also had numerous contacts and exposure factors for viral infections due to their occupation. In this case, the circulating headlines in the public media that children contribute more to the incidence of infection are to be regarded as anecdotal.

In pregnant women, the use of masks during exertion or at rest over long periods of time is to be regarded as critical as little research has been done on this [20]. If there is clear scientific evidence of increased dead space ventilation with possible accumulation of CO₂ in the mother’s blood, the use of masks by pregnant women for more than 1 h, as well as under physical stress, should be avoided in order to protect the unborn child [20,22]. The hypercapnia-promoting masks could act as a confounder of the fetal/maternal CO₂ gradient in this case (Section 3.6) [20,22,28].

According to the literature cited in the Section 3.5 on psychiatric side effects (personality disorders with anxiety and panic attacks, claustrophobia, dementia and schizophrenia), masking should only be done, if at all, with careful consideration of the advantages and disadvantages. Attention should be paid to possible provocation of the number and severity of panic attacks [77–79].

~~In patients with headaches, a worsening of symptoms can be expected with prolonged mask use (see also Section 3.3., neurological side effects) [27,66–68]. As a result of the increase in blood carbon dioxide (CO₂) when the mask is used, vasodilatation occurs in the central nervous system and the pulsation of the blood vessels decreases [27]. In this connection, it is also interesting to note radiological experiments that demonstrate an increase in brain volume under subthreshold, but still within normal limits of CO₂ increase~~

in the blood by means of structural MRI. The blood carbon dioxide increase was produced in seven subjects via rebreathing with resulting median carbon dioxide concentration of 42 mmHg and an interquartile range of 39.44 mmHg, corresponding to only a subthreshold increase given the normal values of 32–45 mmHg. In the experiment, there was a significant increase in brain parenchymal volume measurable under increased arterial CO₂ levels ($p < 0.02$), with a concomitant decrease in CSF spaces ($p < 0.04$), entirely in accordance with the Monroe–Kelly doctrine, according to which the total volume within the skull always remains the same. The authors interpreted the increase in brain volume as an expression of an increase in blood volume due to a CO₂ increase-induced dilation of the cerebral vessels [169]. The consequences of such equally subthreshold carbon dioxide (CO₂) increases even under masks [13,15,18,19,22,23,25] are unclear for people with pathological changes inside the skull (aneurysms, tumors, etc.) with associated vascular changes [27] and brain volume shifts [169] especially due to longer exposure while wearing a mask, but could be of great relevance due to the blood gas-related volume shifts that take place.

In view of the increased dead space volume, the long-term and increased accumulation and rebreathing of other respiratory air components apart from CO₂ is also unexplained, both in children and in old and sick people. Exhaled air contains over 250 substances, including irritant or toxic gases such as nitrogen oxides (NO), hydrogen sulfide (H₂S), isoprene and acetone [170]. For nitrogen oxides [47] and hydrogen sulfide [46], pathological effects relevant to disease have been described in environmental medicine even at a low but chronic exposure [46–48]. Among the volatile organic compounds in exhaled air, acetone and isoprene dominate in terms of quantity, but allyl methyl sulfide, propionic acid and ethanol (some of bacterial origin) should also be mentioned [171]. Whether such substances also react chemically with each other underneath masks and in the dead space volume created by masks (Figure 3), and with the mask tissue itself, and in what quantities these and possible reaction products are rebreathed, has not yet been clarified. In addition to the blood gas changes described above (O₂ drop and CO₂ rise), these effects could also play a role with regard to undesirable mask effects. Further research is needed here and is of particular interest in the case of prolonged and ubiquitous use of masks.

The WHO sees the integration of individual companies and communities that produce their own fabric masks as a potential social and economic benefit. Due to the global shortage of surgical masks and personal protective equipment, it sees this as a source of income and points out that the reuse of fabric masks can reduce costs and waste and contribute to sustainability [2]. In addition to the question of certification procedures for such fabric masks, it should also be mentioned that due to the extensive mask obligation, textile (artificial) substances in the form of micro- and nanoparticles, some of which cannot be degraded in the body, are chronically absorbed into the body through inhalation to an unusual extent. In the case of medical masks, disposable polymers such as polypropylene, polyurethane, polyacrylonitrile, polystyrene, polycarbonate, polyethylene and polyester should be mentioned [140]. ENT physicians have already been able to detect such particles in the nasal mucosa of mask wearers with mucosal reactions in the sense of a foreign body reaction with rhinitis [96]. In the case of community masks, other substances from the textile industry are likely to be added to those mentioned above. The body will try to absorb these substances through macrophages and scavenger cells in the respiratory tract and alveoli as part of a foreign body reaction, whereby toxin release and corresponding local and generalized reactions may occur in an unsuccessful attempt to break them down [172]. Extensive respiratory protection in permanent long-term use (24/7), at least from a theoretical point of view, also potentially carries the risk of leading to a mask-related pulmonary [47] or even generalized disorder, as is already known from textile workers chronically exposed to organic dusts in the Third World (byssinosis) [172].

For the general public, from a scientific angle, it is necessary to draw on the long-standing knowledge of respiratory protection in occupational medicine in order to protect children in particular from harm caused by uncertified masks and improper use.

The universal undefined and extended mask requirement—without taking into account multiple predispositions and susceptibilities—contradicts the claim of an increasingly important individualized medicine with a focus on the unique characteristics of each individual [173].

A systematic review on the topic of masks is necessary according to the results of our scoping review. The primary studies often showed weaknesses in operationalization, especially in the evaluation of cognitive and neuropsychological parameters. Computerized test procedures will be useful here in the future. Mask research should also set itself the future goal of investigating and defining subgroups for whom respiratory protection use is particularly risky.

5. Limitations

Our approach with a focus on negative effects is in line with Villalonga-Olives and Kawachi [12]. With the help of such selective questioning in the sense of dialectics, new insights can be gained that might otherwise have remained hidden. Our literature search focused on adverse negative effects of masks, in particular to point out risks especially for certain patient groups. Therefore, publications presenting only positive effects of masks were not considered in this review.

For a compilation of studies with harmless results when using masks, reference must, therefore, be made to reviews with a different research objective, whereby attention must be paid to possible conflicts of interest there. Some of the studies excluded by us lacking negative effects have shown methodological weaknesses (small, non-uniform experimental groups, missing control group even without masks due to corona constraints, etc.) [174]. In other words, if no negative concomitant effects were described in publications, it does not necessarily mean that masks have exclusively positive effects. It is quite possible that negative effects were simply not mentioned in the literature and the number of negative effects may well be higher than our review suggests.

We only searched one database, so the number of papers on negative mask effects may be higher than we reported.

In order to be able to describe characteristic effects for each mask type even more extensively, we did not have enough scientific data on the respective special designs of the masks. There is still a great need for research in this area due to the current pandemic situation with extensive mandatory masking.

In addition, the experiments evaluated in this paper do not always have uniform measurement parameters and study variables and, depending on the study, take into account the effect of masks at rest or under stress with subjects having different health conditions. Figure 2, therefore, represents a compromise. The results of the primary studies on mask use partially showed no natural variation in parameters, but often showed such clear correlations between symptoms and physiological changes, so that a statistical correlation analysis was not always necessary. We found a statistically significant correlation of oxygen deprivation and fatigue in 58% of the studies ($p < 0.05$). A statistically significant correlation evidence for other parameters has been previously demonstrated in primary studies [21,29].

The most commonly used personal particulate matter protective equipment in the COVID-19 pandemic is the N95 mask [23]. Due to its characteristics (better filtering function, but greater airway resistance and more dead space volume than other masks), the N95 mask is able to highlight negative effects of such protective equipment more clearly than others (Figure 3). Therefore, a relatively frequent consideration and evaluation of N95 masks within the studies found (30 of the 44 quantitatively evaluated studies, 68%) is even advantageous within the framework of our research question. Nevertheless, it remains to be noted that the community masks sold on the market are increasingly similar to the protective equipment that has been better investigated in scientific studies, such as surgical masks and N95 masks, since numerous manufacturers and users of community masks are striving to approximate the professional standard (surgical mask, N95/FFP2). Recent

study results on community masks indicate similar effects for respiratory physiology as described for medical masks: in a recent publication, fabric masks (community masks) also provoked a measurable increase in carbon dioxide P_{tCO_2} in wearers during exertion and came very close to surgical masks in this effect [21].

Most of the studies cited in our paper included only short observation and application periods (mask-wearing durations investigated ranged from 5 min [26] to 12 h [19]. In only one study, a maximum observation period of an estimated 2-month period was chosen [37]. Therefore, the actual negative effects of masks over a longer application period might be more pronounced than presented in our work.

6. Conclusions

On the one hand, the advocacy of an extended mask requirement remains predominantly theoretical and can only be sustained with individual case reports, plausibility arguments based on model calculations and promising in vitro laboratory tests. Moreover, recent studies on SARS-CoV-2 show both a significantly lower infectivity [175] and a significantly lower case mortality than previously assumed, as it could be calculated that the median corrected infection fatality rate (IFR) was 0.10% in locations with a lower than average global COVID-19 population mortality rate [176]. In early October 2020, the WHO also publicly announced that projections show COVID-19 to be fatal for approximately 0.14% of those who become ill—compared to 0.10% for endemic influenza—again a figure far lower than expected [177].

On the other hand, the side effects of masks are clinically relevant.

In our work, we focused exclusively on the undesirable and negative side effects that can be produced by masks. Valid significant evidence of combined mask-related changes were objectified ($p < 0.05$, $n \geq 50\%$), and we found a clustered and common occurrence of the different adverse effects within the respective studies with significantly measured effects (Figure 2). We were able to demonstrate a statistically significant correlation of the observed adverse effect of hypoxia and the symptom of fatigue with $p < 0.05$ in the quantitative evaluation of the primary studies. Our review of the literature shows that both healthy and sick people can experience Mask-Induced Exhaustion Syndrome (MIES), with typical changes and symptoms that are often observed in combination, such as an increase in breathing dead space volume [22,24,58,59], increase in breathing resistance [31,35,60,61], increase in blood carbon dioxide [13,15,17,19,21–30,35], decrease in blood oxygen saturation [18,19,21,23,28–34], increase in heart rate [23,29,30,35], increase in blood pressure [25,35], decrease in cardiopulmonary capacity [31], increase in respiratory rate [15,21,23,34,36], shortness of breath and difficulty breathing [15,17,19,21,23,25,29,31,34,35,60,71,85,101,133], headache [19,27,29,37,66–68,71,83], dizziness [23,29], feeling hot and clammy [17,22,29,31,35,44,71,85,133], decreased ability to concentrate [29], decreased ability to think [36,37], drowsiness [19,29,32,36,37], decrease in empathy perception [99], impaired skin barrier function [37,72,73] with itching [31,35,67,71–73,91–93], acne, skin lesions and irritation [37,72,73], overall perceived fatigue and exhaustion [15,19,21,29,31,32,34,35,69] (Figures 2–4).

Wearing masks does not consistently cause clinical deviations from the norm of physiological parameters, but according to the scientific literature, a long-term pathological consequence with clinical relevance is to be expected owing to a longer-lasting effect with a subliminal impact and significant shift in the pathological direction. For changes that do not exceed normal values, but are persistently recurring, such as an increase in blood carbon dioxide [38,160], an increase in heart rate [55] or an increase in respiratory rate [56,57], which have been documented while wearing a mask [13,15,17,19,21–30,34,35] (Figure 2), a long-term generation of high blood pressure [25,35], arteriosclerosis and coronary heart disease and of neurological diseases is scientifically obvious [38,55–57,160]. This pathogenetic damage principle with a chronic low-dose exposure with long-term effect, which leads to disease or disease-relevant conditions, has already been extensively studied and described in many areas of environmental medicine [38,46–54]. Extended

mask-wearing would have the potential, according to the facts and correlations we have found, to cause a chronic sympathetic stress response induced by blood gas modifications and controlled by brain centers. This in turn induces and triggers immune suppression and metabolic syndrome with cardiovascular and neurological diseases.

We not only found evidence in the reviewed mask literature of potential long-term effects, but also evidence of an increase in direct short-term effects with increased mask-wearing time in terms of cumulative effects for: carbon dioxide retention, drowsiness, headache, feeling of exhaustion, skin irritation (redness, itching) and microbiological contamination (germ colonization) [19,22,37,66,68,69,89,91,92].

Overall, the exact frequency of the described symptom constellation MIES in the mask-using populace remains unclear and cannot be estimated due to insufficient data.

Theoretically, the mask-induced effects of the drop in blood gas oxygen and increase in carbon dioxide extend to the cellular level with induction of the transcription factor HIF (hypoxia-induced factor) and increased inflammatory and cancer-promoting effects [160] and can, thus, also have a negative influence on pre-existing clinical pictures.

In any case, the MIES potentially triggered by masks (Figures 3 and 4) contrasts with the WHO definition of health: “health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” [178].

All the scientific facts found in our work expand the knowledge base for a differentiated view of the mask debate. This gain can be relevant for decision makers who have to deal with the issue of mandatory mask use during the pandemic under constant review of proportionality as well as for physicians who can advise their patients more appropriately on this basis. For certain diseases, taking into account the literature found in this study, it is also necessary for the attending physician to weigh up the benefits and risks with regard to a mask obligation. With an overall strictly scientific consideration, a recommendation for mask exemption can become justifiable within the framework of a medical appraisal (Figure 5).

Increased risk of adverse effects when using masks:		
Internal diseases COPD Sleep Apnea Syndrome advanced renal Failure Obesity Cardiopulmonary Dysfunction Asthma	Psychiatric illness Claustrophobia Panic Disorder Personality Disorders Dementia Schizophrenia helpless Patients fixed and sedated Patients	Neurological Diseases Migraines and Headache Sufferers Patients with intracranial Masses Epilepsy
Pediatric Diseases Asthma Respiratory diseases Cardiopulmonary Diseases Neuromuscular Diseases Epilepsy	ENT Diseases Vocal Cord Disorders Rhinitis and obstructive Diseases	Occupational Health Restrictions moderate / heavy physical Work
	Dermatological Diseases Acne Atopic	Gynecological restrictions Pregnant Women

Figure 5. Diseases/predispositions with significant risks, according to the literature found, when using masks. Indications for weighing up medical mask exemption certificates.

In addition to protecting the health of their patients, doctors should also base their actions on the guiding principle of the 1948 Geneva Declaration, as revised in 2017. According to this, every doctor vows to put the health and dignity of his patient first and, even under threat, not to use his medical knowledge to violate human rights and civil liberties [9]. Within the framework of these findings, we, therefore, propagate an explicitly medically judicious, legally compliant action in consideration of scientific factual reality [2,4,5,16,130,132,143,175–177] against a predominantly assumption-led claim to a general effectiveness of masks, always taking into account possible unwanted individual ef-

fects for the patient and mask wearer concerned, entirely in accordance with the principles of evidence-based medicine and the ethical guidelines of a physician.

The results of the present literature review could help to include mask-wearing in the differential diagnostic pathophysiological cause consideration of every physician when corresponding symptoms are present (MIES, Figure 4). In this way, the physician can draw on an initial complaints catalogue that may be associated with mask-wearing (Figure 2) and also exclude certain diseases from the general mask requirement (Figure 5).

For scientists, the prospect of continued mask use in everyday life suggests areas for further research. In our view, further research is particularly desirable in the gynecological (fetal and embryonic) and pediatric fields, as children are a vulnerable group that would face the longest and, thus, most profound consequences of a potentially risky mask use. Basic research at the cellular level regarding mask-induced triggering of the transcription factor HIF with potential promotion of immunosuppression and carcinogenicity also appears to be useful under this circumstance. Our scoping review shows the need for a systematic review.

The described mask-related changes in respiratory physiology can have an adverse effect on the wearer's blood gases sub-clinically and in some cases also clinically manifest and, therefore, have a negative effect on the basis of all aerobic life, external and internal respiration, with an influence on a wide variety of organ systems and metabolic processes with physical, psychological and social consequences for the individual human being.

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Petitioner's Exhibit 3

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

December 9, 2021

Anthony Eades
19499 Cedar Gate Dr.
Warsaw, MO 65355

RE: Eades v. TSA
Application for stay

Dear Mr. Eades:

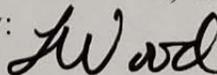
Your application for stay received December 9, 2021 is herewith returned for the following reason(s):

You failed to comply with Rule 23.3 of the ~~Rules of this Court~~ which requires that you first seek the same relief in the appropriate lower courts and attach copies of the orders from the lower courts to your application filed in this Court.

As your petition for review is pending in the United States Court of Appeals for the D.C. Circuit, you must first seek in the D.C. Circuit the same relief you seek here, namely, a stay pending the D.C. Circuit's review of your pending petition for review and the timely filing and disposition by this Court of a petition for writ of certiorari.

If you resubmit your application after exhausting this requirement, the application should be directed to Chief Justice Roberts, as the Circuit Justice for the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,
Scott S. Harris, Clerk

By: 

Laurie Wood
(202) 479-3031

Enclosures

Petitioner's Exhibit 4

Two Major Airline CEOs Question the Need for Masks on Planes

By Chris Isidore, CNN Business

Updated 11:29 PM ET, Wed December 15, 2021

New York (CNN Business) **The CEOs of two of the nation's major airlines say they don't think wearing masks on planes does much to help limit exposure to Covid.**

The comments from American Airlines (AAL) CEO Doug Parker — the nation's largest carrier — and Southwest (LUV) CEO Gary Kelly came during a hearing about the financial support that airlines received from the federal government in 2020 and 2021. But the topic of masks arose via a question from Sen. Roger Wicker, the ranking Republican on the Senate committee holding the hearing.

"I think the case is very strong that masks don't add much, if anything, in the air cabin environment. It is very safe and very high quality compared to any other indoor setting," said Kelly.

Both Kelly and Parker, who each have announced plans to retire as CEOs in the coming months, mentioned that high-grade HEPA air filters on planes capture virtually all airborne contamination and air quality is helped by how frequently cabin air is exchanged with fresh air from outside the cabin.

"I concur. An aircraft is the safest place you can be," said Parker. "It's true of all of our aircraft — they all have the same HEPA filters and air flow."

After the hearing, American Airlines tried to walk back Parker's remarks. It issued a statement claiming that his concurrence with Kelly was on the point about the quality of the air in the aircraft cabin, not mask requirements.

Sara Nelson, the president of the Association of Flight Attendants, testified at the hearing that not all aircraft are equipped with the same quality of air filters. For example, some older planes do not have HEPA filters, she said.

The mask requirement is still a source of controversy. Much of the steep rise of in incidents involving unruly passengers over the last two years have revolved around passengers being ordered to wear masks.

"I think that is probably for the medical community to decide rather than me," Nelson added. "What I will add is that **the studies that have been done [on masks]...were done with mannequins that were sitting straight forward with masks on, not removing them, not eating.**"

"It is important to recognize that the safe, controlled environment on planes...includes the HEPA filters that are not on all aircraft," she concluded.

Masks on planes are required by the federal government, following the guidance of the Centers for Disease Control. The DOT did not immediately respond to a request for comment on the testimony. The remarks by Kelly and Parker were criticized by one committee member, Sen. Ed Markey, a Massachusetts Democrat.

"I'm shocked that some of the CEOs here today have suggested we no longer need masks mandates on planes," he said. "In the face of Omicron, children under five who still cannot be vaccinated....and that we still allow unvaccinated people on planes." He said it was "immoral" to take the position that people on planes could be forced to sit next to unvaccinated people who are not wearing masks.

Nelson, who Markey was questioning, agreed that while she hopes that one day masks will not be required, she does not support lifting the mask mandate at this time.

"I believe that the government has taken a very responsible approach to this," she said. "We believe it should continue to stay in place. It's a workplace safety issue. We do need a consistent message though. It troubles me too to hear different messages. I would hope we are going to stay on the same messages and follow the medical experts and do what's necessary to keep everybody safe."

Nelson said that the confidence in the safety of air travel is the reason people are willing to buy airline tickets in near pre-pandemic levels today. She said that the mask mandate is one of the factors leading to that confidence by airline passengers.

<https://www.cnn.com/2021/12/15/business/airline-ceos-question-masks-on-plane-rule/index.html>

Petitioner's Exhibit 5

[dallasnews.com](https://www.dallasnews.com)

Southwest Airlines CEO says face masks 'don't add much' with airplane filtration systems

By Kyle Arnold 3:55 PM on Dec 15, 2021 CST

4-5 minutes

Update: American Airlines CEO Doug Parker initially said "I concur" with comments from Gary Kelly in Wednesday's U.S. Senate Hearing, but American later clarified that Parker "concurred with the comments made by other witnesses about the high quality of aircraft cabin air, and did not intend to cast doubt on the necessity of face masks on planes."

Southwest Airlines CEO Gary Kelly told U.S. senators Wednesday that the air in airplane cabins is clean enough that face masks don't provide significant additional protection to passengers from COVID-19.

"I think the case is very strong that masks don't add much, if anything, in the air cabin," said Kelly, who runs Dallas-based Southwest. "The environment is very safe, very high quality compared to any other indoor setting."

"I concur," said Doug Parker, CEO of Fort Worth-based American Airlines. "The aircraft is the safest place you can be. That's true of all of our aircraft."

American later clarified that Parker's remarks were intended to agree with "the comments made by other witnesses about the high quality of aircraft cabin air, and did not intend to cast doubt on the necessity of face masks on planes," spokeswoman Stacy Day said.

The airline executives made the comments at a U.S. Senate committee hearing into how the airlines have used \$54 billion in federal grants since March 2020 to help them financially survive the pandemic.





Kelly's face mask comments contradict efforts by the Biden administration to require them on airplanes, in airports and on other forms of interstate transportation, such as buses and trains. President Joe Biden made airplane face mask mandates among his first executive orders when he took office in January and has since renewed the face mask mandate through March 18, 2022.

Airlines have been requiring face masks on airplanes since the summer of 2020 and then subsequently partnered with the Department of Defense and research universities such as Harvard to show that HEPA filtration systems on airplanes make it difficult for coronavirus to spread among passengers.

Over the last year, the Federal Aviation Administration and the Department of Transportation have noted a sharp uptick in reports of unruly passengers, often violent outbursts that have resulted in assaults on crew members such as flight attendants and gate agents. There have been 5,664 reports so far this year, according to the FAA's data through Dec. 14, and 4,072 of those incidents have been tied to mask-related problems.

Kelly, who announced he is retiring in February, is also the chairman of Airlines 4 America, the main trade group for major airlines.

Parker, in a statement provided to the committee ahead of the hearing, said: "Airlines have required masks since early in the pandemic as an additive health and safety measure, and our industry strongly supported the introduction of the federal mask mandate."

Scott Kirby, CEO of Chicago-based United Airlines, said several studies show that airplane cabins are safe. Those studies are often industry-funded.

“The conclusion of that is that effectively anywhere that you’re going to be indoors, the airplane is the safest place that you can be indoors,” Kirby said. “It’s because the air filters are safer than a theater, safer actually than an intensive care unit because we have HEPA-grade filters.”

Kirby said airplane filters cycle air 20 to 30 times an hour, as opposed to twice or three times an hour in a hospital ICU. The studies from airlines also show that the way the air flows in cabins, from the ceiling to the floor, also reduces the risk of COVID-19 spread among passengers.

However, those studies were conducted on mannequins and may not be sufficient to cover the complexity of humans, said Sara Nelson, president of the Association of Flight Attendants-CWA. She also said that not all passengers have been vaccinated or have access to vaccines.

Nelson said she believes the mask mandate should stay in place for now.

“The filtration system is different from airline to airline or from aircraft to aircraft, so not all aircraft have the HEPA filtration,” Nelson said. “What I will tell you is we look forward to the day that we no longer have the mask requirement. We are simply trying to get through this pandemic and have had to enforce this to keep everyone safe.”

Petitioner's Exhibit 6

[foxbusiness.com](https://www.foxbusiness.com)

Southwest CEO: 'Masks don't add much, if anything' against COVID-19 on planes

Breck Dumas

12-15-21

4-5 minutes

Southwest Airlines CEO Gary Kelly told a U.S. Senate panel on Wednesday that "masks don't add much, if anything" in fighting the spread of **COVID-19** on airplanes, calling into question the reasoning behind mask mandates on flights imposed both by airlines and the Biden administration.

Kelly made the comment during a **hearing** on airline oversight before the Senate Committee on Commerce, Science and Transportation, and **other industry chiefs** joined him in emphasizing that **commercial aircraft filtration systems** make them the safest indoor space there is.



Gary Kelly, chief executive officer of Southwest Airlines Co., speaks during a Senate Commerce, Science and Transportation Committee hearing in Washington, D.C., U.S., on Wednesday, Dec. 15, 2021. (Photographer: Chip Somodevilla/Getty Images/Bloomberg (Photographer: Chip Somodevilla/Getty Images/Bloomberg via Getty Images / Getty Images)

AIR TRAVELERS TO US SET TO FACE TOUGHER COVID-19 TESTING

Ranking member Sen. Roger Wicker, R-Miss., asked the CEOs about air quality on planes while posing the question, "Will we ever be able, do you think, to get on an airplane without masks?"

Speaking to discussions on air quality, Kelly said, "The statistics I recall is that 99.97% of airborne

pathogens are captured by the [high efficiency particulate air] filtering system, and it's turned over every two or three minutes."

"I think the case is very strong that masks don't add much, if anything, in the air cabin environment," Kelly said. "It's very safe, and very high quality compared to any other indoor setting."



Sen. Roger Wicker (R-Miss.) during hearing at the Senate Commerce, Science, and Transportation Committee on January 26, 2021, in Washington, DC. (Photo by Tom Williams-Pool/Getty Images) (Photo by Tom Williams-Pool/Getty Image / Getty Images)

FATHER SAYS AUTISTIC SON BANNED BY AIRLINE, DENIED MEDICAL MASK EXEMPTION: 'MIND-BLOWING'

Wicker then asked for a response from American Airlines CEO Doug Parker, who replied, "I concur. The aircraft is the safest place you can be – it's true of all of our aircraft. They all have these HEPA filters and the same airflow."

United Airlines CEO Scott Kirby told Wicker that, in fact, air quality on planes is "safer, actually, than an intensive care unit," adding that "being next to someone on an airplane – sitting next to them – is the equivalent of being 15 feet away from them in a typical building."

But most places in the U.S. no longer require masks indoors, save for certain [Democrat-controlled](#) jurisdictions and areas under federal oversight.

Airlines imposed mask requirements on their own in 2020 during the COVID-19 pandemic, and several [welcomed](#) President Biden's federal mandate for wearing masks on commercial flights after he took office. The federal rule was slated to expire in September, but the Transportation Security Administration [extended](#) it through Jan. 18.



President Joe Biden addresses the 76th Session of the U.N. General Assembly on September 21, 2021 at U.N. headquarters in New York City. . (Photo by Timothy A. Clary-Pool/Getty Images) ((Photo by Timothy A. Clary-Pool/Getty Images) / Getty Images)

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The mask requirements have caused major headaches for airlines in the way of compliance, with mask violations being the major cause of a sharp uptick in unruly behavior from passengers. In response, the FAA has upped the fines on violations for fliers who disrupt air travel and urged airlines to "[take more action](#)" on unruly passenger incidents.

Airlines have not pushed back publicly against the mandate.

When asked by FOX Business for further explanation on Kelly's comments, Southwest said in a statement, "Southwest Airlines continues to abide by the federal mask mandate for customers and employees both within the airport environment and onboard all Southwest aircraft."