



Written by [Veronika Kyrylenko](#) on November 7, 2022

## SCOTUS Upholds TSA Mask-mandate Authority

Last Monday, the U.S. Supreme Court affirmed that the Transportation Security Administration (TSA) has the authority to enforce mask mandates on travelers. While the ruling doesn't entail the automatic return of mask mandates, it effectively leaves the door open for such.

[The TSA was sued](#) by California lawyer and frequent flyer Jonathan Corbett, who argued that the administration did not possess the statutory authority to mandate masks.

[The U.S. Court of Appeals](#) for the District of Columbia Circuit found no merit in Corbett's claim, and ruled the TSA had broad authority to maintain "security and safety" during emergency situations such as the pandemic, including the mask requirements. The court stated:



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We hold that the Mask Directives are reasonable and permissible regulations adopted by TSA to promote safety and security in the transportation system against threats posed by COVID-19. We therefore reject Petitioner's claim that TSA's Mask Directives are *ultra vires*, defer to the agency's interpretation of the [Aviation and Transportation Security] Act and deny the petition for review.

Therefore, the TSA's mandates — formally the "Mask Directives" — that instructed airport operators, domestic aircraft operators, foreign air carriers, and surface transportation operators to require passengers and employees older than 2 to wear a mask "covering the nose and mouth" and "at all times" were legitimate, according to the D.C. court.

The lawyer requested SCOTUS to overturn the ruling, but the court denied his petition to review the case.

There's a [separate lawsuit](#) challenging the travel mask mandates. It was filed against President Joe Biden, who made the mandates one of his urgent priorities once he took office. The Centers for Disease Control and Prevention (CDC) issued a mask mandate for travelers on January 29, 2021, which was repeatedly extended. The suit was filed last July by the Health Freedom Defense Fund, as well as two individuals, Ana Carolina Daza and Sarah Pope.

On April 18, Judge Kathryn Kimball Mizelle of the Middle District of Florida [ruled](#) that the CDC overstepped its authority when it issued the mandate:

Because "our system does not permit agencies to act unlawfully even in pursuit of desirable ends," the court declares unlawful and vacates the mask mandate.



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Following the ruling, the TSA [stopped](#) requiring masks on public transit. The CDC posted a [similar update](#), saying that while it “continues to recommend” mask wearing, the original order is “no longer in effect” and the agency won’t enforce it.

According to the explanation provided to [VERIFY](#) by Lindsay Wiley, a law professor at UCLA, the outcome of *Corbett v. TSA* means that the administration could issue an entirely new directive that would not rely on CDC guidance:

The TSA’s Security Directives and Emergency Amendment requiring face coverings (and all subsequent renewals) included language indicating that TSA’s directives were ‘enforcing’ the CDC’s January 2021 order requiring masks on public conveyances and in transportation hubs. In this sense, the TSA directives did not rely exclusively on TSA’s own statutory authority; they incorporated CDC’s authority as well.

She added, “In April 2022, when the district court decision in *Health Freedom Defense Fund v. Biden* invalidated CDC’s order, that arguably put the TSA’s directives on shakier ground, since they directly referenced the CDC’s order in addition to citing TSA’s independent statutory authority.”

As reported by [The New American](#), America’s major airlines — Alaska, American, Delta, Hawaiian, JetBlue, United, and Southwest — pleaded with the Biden administration in March to drop the mask mandates for travelers, suggesting that the combination of advanced air filters on planes, widespread vaccinations, and immunity against Covid made masks unnecessary to protect travelers and staff. Also in March, the U.S. Travel Association, whose members include big hotel chains, airlines, and tourism boards, similarly urged the Biden administration to end the mandates.

While the CDC continues to recommend mask wearing for travelers, there are [no reliable studies](#) to support their use. Speaking with [The New American](#) in July, [Stephen Petty](#), a certified industrial hygienist, safety professional, and one of the top testifying experts on personal protective equipment (PPE) and exposure control in the country, explained in detail why surgical masks and N95 respirators not only do not protect people from Covid, but, in fact, may increase their chances of catching the virus and undermine their health.





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