

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

STATE OF FLORIDA,

*Plaintiff,*

v.

Case No. 8:21-cv-839-SDM-AAS

BECERRA, *et al.*,

*Defendants.*

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**FLORIDA'S EMERGENCY MOTION TO  
ENFORCE THE PRELIMINARY INJUNCTION**

Pursuant to Local Rule 3.01, Federal Rule of Civil Procedure 65, and this Court's "inherent power to punish contempt," *United States v. Griffin*, 84 F.3d 820, 828 (7th Cir. 1996) (collecting cases), Florida moves to enforce this Court's preliminary injunction. This request is designated as an emergency because, as detailed below, Defendants' violation of this Court's injunction purports to demand compliance by the cruise industry within the next two days. Florida requests a ruling as soon as possible.

This Court first entered its preliminary injunction on June 18, 2021. Dkt. 91. Yesterday evening, July 23, the injunction went into effect. Dkt. 107. Despite its pattern of delay throughout this case, Defendant the CDC, within hours, sent a "dear colleague letter" to cruise ship operators departing from Florida. Ex. 1. The letter asks each operator to confirm whether it will continue

to follow the Conditional Sailing Order on a “voluntary basis.” *Id.* It then states that, if any ship refuses to do so, that ship—unlike ships that do agree to comply on a voluntary basis—will be subject to additional requirements, including requirements imposed pursuant to 42 U.S.C. § 264, the same statute at issue in this case. Ex. 1.

Importantly, the letter purports to create a deadline of Monday, July 26 at 5 pm to respond. *Id.* If a ship does not respond by then, the CDC will treat the ship “as choosing to not follow the CSO’s provisions on a voluntary basis.” *Id.*

The CDC’s attempt to coerce the cruise industry to comply with the now enjoined Conditional Sailing Order violates this Court’s injunction for at least two reasons.

*First*, the federal government cannot avoid injunctions issued by federal courts by claiming the enjoined requirements are now “voluntary,” and then threatening new government enforcement against those who refuse to “voluntarily” comply, but not those who agree to voluntarily comply. To hold otherwise would provide a roadmap for the executive branch—in all or nearly all cases—to avoid the checks and balances provided by the judiciary, a central feature of our constitutional republic.

*Second*, even if the Court finds that the CDC is not violating the text of the injunction, the CDC cannot evade liability for “civil contempt because the

plan or scheme which they adopted was not specifically enjoined. Such a rule would give tremendous impetus to the program of experimentation with disobedience of the law.” *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 192 (1949).

For these reasons, Florida asks this Court for an order clarifying that the CDC’s letter violates this Court’s injunction and a show cause order asking Defendants to explain why they should not be held in contempt. Given the arbitrary deadline the CDC has imposed on the cruise industry, Florida asks that the Court require a response from Defendants within 24 hours.

Respectfully submitted,

Ashley Moody  
ATTORNEY GENERAL

John Guard  
CHIEF DEPUTY ATTORNEY GENERAL

/s/ James H. Percival  
James H. Percival\* (FBN 1016188)  
DEPUTY ATTORNEY GENERAL  
\*Lead Counsel

Jason H. Hilborn (FBN 1008829)  
ASSISTANT SOLICITOR GENERAL

Anita Patel (FBN 70214)  
SENIOR ASSISTANT ATTORNEY GENERAL

Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3300  
(850) 410-2672 (fax)  
james.percival@myfloridalegal.com  
jason.hilborn@myfloridalegal.com

*Counsel for the State of Florida*

July 24, 2021

**Local Rule 3.01(g) Certification**

Immediately after becoming aware of the dear colleague letter, counsel for Florida, at 9 am this morning, contacted counsel for Defendants. Counsel did not make themselves available until 12 pm, at which time they stated that (1) rescission of the letter was off the table; and (2) they needed time to consult

with their clients. Florida's view is that the letter—which treats cruise ships that comply with the enjoined Order differently from those that do not—must be rescinded in its entirety because any act by the CDC attaching consequences to the failure to comply with the Order violates this Court's injunction. Given Defendants' ongoing violation of this Court's injunction and the arbitrary deadline they imposed on the cruise industry, Florida was unwilling to further delay this filing, which does not seek an immediate order finding Defendants in contempt, but only a show cause order.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24th day of July, 2021, a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which provides notice to all parties.

*/s/ James H. Percival*  
James H. Percival



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Public Health Service

Centers for Disease Control  
and Prevention

July 23, 2021

Dear Cruise Industry Colleagues,

As you are aware, the Conditional Sailing Order (CSO) specifies public health measures onboard cruise ships including screening and diagnostic testing of passengers and crew; emergency response plans relating to medical and housing capacity for isolation and quarantine; simulated voyages to test the cruise ship operator's health and safety protocols;<sup>1</sup> and a certification process for ships that meet CDC's requirements for safer sailing.

As per the Preliminary Injunction Order, entered by the U.S. District Court for the Middle District of Florida on June 18, 2021, and the U.S. Court of Appeals for the Eleventh Circuit's Order of July 23, 2021, *sua sponte* vacating its previous order of July 17, 2021, and denying appellants' "Time-Sensitive Motion for Stay Pending Appeal and Administrative Stay," the CSO and accompanying measures, such as technical instructions, are currently nonbinding recommendations for cruise ships arriving in, located within, or departing from a port in Florida. However, CDC will continue to operate the CSO as a voluntary program for such ships.

Accordingly, cruise ship operators are requested to inform the CDC Maritime Unit of any ships operating out of Florida ports that will continue to follow all of the CSO's provisions on a voluntary basis. Please email this information to [eocevent349@cdc.gov](mailto:eocevent349@cdc.gov) by **5:00 PM EDT on July 26, 2021**. The CDC Maritime Unit will consider any ships operating out of Florida ports as choosing to not follow the CSO's provisions on a voluntary basis for which a response is not received by this deadline.

For ships operating out of Florida ports and choosing to not follow the CSO's provisions on a voluntary basis, the following requirements – which are necessary to protect the public's health, and which remain unaffected by the Preliminary Injunction Order – immediately apply:

- Ships must [report individual cases of illness or death](#),<sup>2</sup> including COVID-19 cases, to the CDC Quarantine Station per 42 CFR §§ 71.21, 71.35.
- Ships remain subject to inspection under 42 CFR § 71.31(a) to prevent the introduction, transmission, or spread of communicable diseases; this includes, for example, inspections when the ship has on board individuals reportable under 42 CFR § 71.21.

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<sup>1</sup> In lieu of conducting a simulated voyage, cruise ship operator responsible officials, at their discretion, may sign and submit to CDC an attestation under 18 U.S.C. § 1001 that 95 percent of crew (excluding any newly embarking crew in quarantine) are fully vaccinated and submit to CDC a clear and specific vaccination plan and timeline to limit cruise ship sailings to 95 percent of passengers who have been confirmed by the cruise ship operator as fully vaccinated prior to sailing.

<sup>2</sup> Cruise ship operators are also advised to report COVID-like illness to the quarantine station.

- If sanitary measures are required under 42 CFR part 71 to prevent the introduction, transmission, or spread of communicable diseases, CDC may detain the ship under 42 CFR §§ 71.31(b), 71.32(b), pending the completion of such measures.
- Under CDC's color-coding system, ships choosing to not follow the CSO's provisions on a voluntary basis will be designated as "Gray." This means that CDC cannot confirm that the cruise ship operator's health and safety protocols align with CDC's standards for protecting passengers, crew, port personnel, and communities against the public health risks posed by COVID-19.
- Because CDC cannot confirm that the cruise ship operator's health and safety protocols align with CDC's standards, CDC will cease its exercise of enforcement discretion concerning the requirements of CDC's [Mask Order](#) for ships choosing to not follow the CSO's provisions. Accordingly, like other conveyances, these ships will immediately be required to comply with the requirements of CDC's [Mask Order](#). For more information about this Order and Frequently Asked Questions, please see [Requirement for Face Masks on Public Transportation Conveyances and at Transportation Hubs](#).

CDC continues to believe that the CSO's public health measures—informed by the best available public health science and developed with input from cruise industry colleagues—represent the most effective way of continuing to protect the public's health. For that reason, CDC urges cruise ship operators to continue to follow the CSO's public health measures. Regardless, we are committed to continuing our partnership to ensure a safer and healthier sailing environment for your passengers and crew.

Sincerely,



CAPT Aimee Treffeletti, USPHS  
Maritime Unit  
Global Migration Task Force