

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

FAMILY RESEARCH COUNCIL ACTION, INC.,  
MATTHEW KRAUSE, DONNA BRAMSON, and S.P.,  
a minor, by his next friend and father, Anthony Perkins,

*Plaintiffs,*

v.

JOSEPH R. BIDEN, JR., in his official capacity  
as President of the United States, U.S. DEPARTMENT OF  
TRANSPORTATION, PETER P. BUTTIGIEG, in his official  
capacity as Secretary of Transportation, FEDERAL  
AVIATION ADMINISTRATION, STEPHEN M. DICKSON,  
in his official capacity as Administrator of the FAA, U.S.  
DEPARTMENT OF HEALTH AND HUMAN SERVICES,  
XAVIER BECERRA, in his official capacity as Secretary of  
Health and Human Services, CENTERS FOR DISEASE  
CONTROL AND PREVENTION, ROCHELLE P.  
WALENSKY, in her official capacity as Director of the CDC,  
SHERRI A. BERGER, in her official capacity as Chief of Staff  
of the CDC, U.S. DEPARTMENT OF HOMELAND  
SECURITY, ALEJANDRO MAYORKAS, in his official  
capacity as Secretary of Homeland Security,  
TRANSPORTATION SECURITY ADMINISTRATION,  
DAVID P. PEKOSKE, in his official capacity as Administrator  
of the TSA, and the UNITED STATES OF AMERICA,

*Defendants.*

Civil Action No.:  
4:22-cv-00209-O

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER  
OR, ALTERNATIVELY, FOR EXPEDITED BRIEFING ON  
PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 7.1, Plaintiffs respectfully move the Court to issue a temporary restraining order enjoining Defendants from

enforcing its COVID-19 Mask Mandate, or in the alternative to expedite briefing and argument for Plaintiffs' Motion for Preliminary Injunction.

On March 31, 2022, Plaintiffs asked this Court for a preliminary injunction against Defendants' "Mask Mandate" that President Biden directed agencies to impose in Executive Order 13998. ECF Nos. 10 & 11. The next day, on April 1, 2022, the lead agency in imposing the Mask Mandate, the Centers for Disease Control and Prevention (CDC), declared that the public health risk from COVID-19 has abated to such an extent that public health safeguards on America's southern border are no longer warranted. That being so, the Mask Mandate should end immediately.

At least one Plaintiff has flights on April 16, 2022, that were booked prior to this litigation's commencing. They will suffer irreparable harm if the Mask Mandate is not ended prior to that date. Accordingly, Plaintiffs must ask this Court for a temporary restraining order prior to April 16, 2022, or in the alternative to expedite the briefing and argument on Plaintiffs' Motion for Preliminary Injunction, to allow time for this Court to reach a decision on either motion prior to April 16, 2022.

As originally stated in Plaintiffs' Motion for Preliminary Injunction: Defendants here have imposed a mandate upon almost every person—with certain narrow exemptions not relevant here—to wear a mask whenever inside an airport or aboard a commercial airplane. But the evidence in hand demonstrates that (1) masks are not effective at stopping the spread of COVID-19, (2) wearing face masks can carry downside risks, especially for children, and (3) people are at extremely low risk of contracting COVID-19 on an airplane in any event. The Mask Mandate is therefore arbitrary and capricious.

Plaintiffs in this case—including an association representing over 26,000 members—regularly fly on airplanes. They do not wish to wear masks on airplanes and in airports, and would

not do so were they not required to do so by the Mask Mandate. With over 26,000 members represented in this case, only a nationwide injunction can provide relief.

Accordingly, to prevent irreparable injury, the Court should grant this Motion and temporarily restrain or preliminarily enjoin Defendants from requiring the wearing of masks on airplanes and in airports.

April 4, 2022

Respectfully submitted,

/s/ Kenneth A. Klukowski

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*\*Pro hac vice applications forthcoming*

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

On April 4, 2022, I filed the foregoing document with the clerk of court for the United States District Court, Northern District of Texas, by using the Court's CM/ECF filing system. I hereby certify that I have served the document on all counsel of record by a manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Additionally, I communicated with Michael J. Gerardi who informed me that he was one of the attorneys for Defendants, and that he would be assisting in representing Defendants in this matter.

Notice and a copy of the foregoing has been provided to counsel for Defendants via email and by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following:

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/s/ Kenneth A. Klukowski  
Kenneth A. Klukowski  
*Attorney for Plaintiffs*

**CERTIFICATE OF CONFERENCE**

On April 4, 2022, I communicated by email with Stephen Pezzi and Michael Gerardi, attorneys for Defendants, regarding the relief sought in the foregoing motion. Agreement could not be reached regarding injunctive relief because Defendants are opposed to any such relief. Accordingly, the foregoing is presented to the Court as opposed.

/s/ Kenneth A. Klukowski  
Kenneth A. Klukowski  
*Attorney for Plaintiff*

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**[PROPOSED] ORDER**

Upon consideration of Plaintiffs' Motion for Temporary Restraining Order, and the entire record herein, the Court finds that the Plaintiffs are likely to succeed on the merits of their claims under the Administrative Procedure Act and that Plaintiffs will suffer irreparable harm absent an injunction. Accordingly, it is hereby:

ORDERED that Plaintiffs' Motion for Temporary Restraining Order is GRANTED; and it is

ORDERED that Defendants are hereby enjoined from requiring any person to wear a mask on the face while on a commercial aircraft; and it is

ORDERED that Defendants are hereby enjoined from requiring any person to wear a mask on the face while in an airport.

SO ORDERED.

DATE: \_\_\_\_\_

\_\_\_\_\_  
United States District Judge