

Florida Win Against Vaccine Passports for Cruises: Court Orders Preliminary Injunction Against CDC Mandate

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On Friday, the state of Florida won a court victory against the United State government's Centers for Disease Control and Prevention (CDC). The court decision restrained the CDC's effort to require, in the name of countering coronavirus, that cruise lines implement vaccine passport requirements and various other CDC-defined mandates on cruises.

Florida Governor Ron DeSantis has been pursuing a two-prong effort against a mandate from the CDC that cruise lines impose vaccine passport requirements for cruises. As I [wrote](#) about earlier this month, DeSantis has been both threatening fines against cruise lines that require cruise participants to have taken experimental coronavirus vaccines and challenging in court the legality of the CDC mandate.

The court effort that challenges vaccine passport requirements, plus many other CDC mandates, for cruises yielded victory on Friday when a US district court judge ruled on behalf of Florida. The court ordered a preliminary injunction against enforcement of the CDC's mandate that cruise lines impose vaccine passport requirements, and the court struck enforcement of the many other mandates on cruises

contained in the “conditional sailing order” the CDC created in the name of countering coronavirus.

The Friday court decision in the case – State of Florida v. Becerra – may be read [here](#).

Below is a rundown of some of the discussion in the decision by US District Judge Steven D. Merryday of the Tampa Division of the US District Court for the Middle District of Florida.

The court’s decision pointed out the uniquely oppressive action that the US government, via the CDC, has taken over the last year-plus in shutting down cruises only to allow them to start up again under extensive restrictions in the CDC’s conditional sailing order, including the implementation of vaccine passport requirements. The decision states:

Never has CDC (or a predecessor) detained a vessel for more than fifteen months; never has CDC implemented a widespread or industry-wide detention of a fleet of vessels in American waters; never has CDC conditioned pratique as extensively and burdensomely as the conditional sailing order; and never has CDC imposed restrictions that have summarily dismissed the effectiveness of state regulation and halted for an extended time an entire multi-billion dollar industry nationwide. In a word, never has CDC implemented measures as extensive, disabling, and exclusive as those under review in this action.

“Pratique” is health clearance for a ship to use a port.

After discussing in detail the regulatory power of the CDC relative to cruises and disease, the decision concludes that “none of the regulations invoked by CDC justifies the conditional sailing order.” The CDC’s conditional sailing order is the means by which the CDC is imposing a variety of mandates on cruise operations, including those related to vaccine passports, all purportedly intended to counter

coronavirus. The CDC has said no cruises can occur without adherence to the conditional sailing order.

The CDC's expansive power assertion through the conditional sailing order fits in with an assertion of widespread power the decision notes the government agency asserts:

CDC claims a remarkable and generally unbounded power of the director of CDC to act athwart the president; to close industries; to restrict the movement of citizens in an out of their country, their state, their county, and city, and their home. And recent history demonstrates that the power of the director of CDC, unless and until corrected by the judiciary, can oust the ability of a state to exercise the police power – all without formal notice and comment from the public and continuing from year-to-year.

A government agency seeking to exercise such extensive power can run afoul of constitutional restraints. The decision argues:

Without the elemental distinctions, including the separation of powers, prescribed in the Constitution, what remains is neither constitutional nor a republic. The administrative state is nowhere expressed or adumbrated in the Constitution, which grants the entire legislative power to elected representatives, whom the Constitution contemplates will govern in fact and for their governing remain electorally accountable to those who selected and empowered them. Unaccountable administrative law, unbounded by ascertainable directives from the legislative branch, is not the product of an ascendant and robust constitutional republic.

The CDC's conditional sailing order, the court decision concludes, "is arbitrary and capricious because the order imposes vague and shifting (but binding) legal requirements and because the order fails to offer any reasoned explanation

about the inadequacy of local measures.”

In discussing the likelihood of irreparable harm to Florida from the CDC restrictions on cruises that must be established before a grant a preliminary injunction to Florida, the decision concludes that the restrictions “impose an imminent and irreparable financial injury on Florida”:

The likelihood of Florida’s irreparable injury is not materially affected by the fact that some cruises are undertaking to comply with the conditional sailing order. As of June 4, 2021, CDC lists only eleven cruise ships ready to begin phase two (of four phases) simulated voyages. CDC has scheduled these voyages to begin no earlier than June 20, 2021, and several begin in August 2021. (Doc. 72-1 at 2–4) Even under CDC’s timeline, few cruise ships, if any, appear poised to qualify by late summer to sail with a satisfactory complement of passengers. For all other ships, the summer season remains almost assuredly lost. The conditional sailing order not only impedes immediate cruising, but the conditional sailing order threatens the economic feasibility of scheduling cruises under restricted sailing. Ships obtaining a conditional sailing certificate remain subject to “restricted passenger voyages,” which, among other things, prevent a cruise ship from offering an “itinerary longer than [seven] days.” (Doc. 1-3 at 33) The restrictions burden the cruise industry’s capacity for profitable sailing. (Doc. 56 at 4–5) In sum, Florida plausibly alleges that the conditional sailing order cripples the cruise industry’s ability to begin sailing and to sail in a manner that avoids economic loss as a result of sailing. (Doc. 25 at 22) Owing to a disabled cruise industry, both obstacles impose an imminent and irreparable financial injury on Florida.

Cruises were, of course, [a big deal in the Florida economy](#) before they were shut off last year in the coronavirus panic.

After discussing other measures taken by various parties to reduce the threat from coronavirus, cruise lines own interests in providing safety protections, and the fact that cruises are taking place elsewhere in the world while remaining stopped in America, the court concluded with awarding a preliminary injunction for Florida as of July 18:

Because of (1) Florida's probability of success on the merits, (2) the imminent threat of irreparable injury to Florida, (3) the comparative injury depending on whether an injunction issues, and (4) the imminent and material threat to the public interest, Florida's motion for preliminary injunction is GRANTED, and CDC is PRELIMINARILY ENJOINED from enforcing against a cruise ship arriving in, within, or departing from a port in Florida the conditional sailing order and the later measures (technical guidelines, manuals, and the like). However, the preliminary injunction is STAYED until 12:01 a.m. EDT on JULY 18, 2021, at which time the conditional sailing order and the measures promulgated under the conditional sailing order will persist as only a non-binding "consideration," "recommendation" or "guideline," the same tools used by CDC when addressing the practices in other similarly situated industries, such as airlines, railroads, hotels, casinos, sports venues, buses, subways, and others.

The court decision does, however, also leave open for the CDC the option to propose, by July 2, a more limited injunction for the court to consider, along with Florida's response, at a hearing. Such a proposed order, though, the court says must be consistent with "both permitting cruise ships to sail timely and remaining within CDC's authority as interpreted" in the court's Friday decision. The court, in its Friday decision, also directed Florida and the CDC to return to related mediation.

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