

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

FAMILY RESEARCH COUNCIL ACTION,  
INC., *et al.*,

*Plaintiffs,*

v.

JOSEPH R. BIDEN, JR., in his official capacity  
as President of the United States, *et al.*,

*Defendants.*

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

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs respectfully inform the Court that on May 3, 2022, the CDC reaffirmed its Mask Mandate, declaring that wearing masks is “safer for everyone.” *CDC Recommendations for Masks and Travel*, CDC (May 3, 2022), <https://www.cdc.gov/media/releases/2022/s0503-covid-19-travel.html>. No future date for reevaluation was included. It exhorts independent actors—which includes airlines and airports—to mandate masks: “We also encourage operators of public transportation and transportation hubs to support mask wearing by all people, including employees.” *Id.* CDC says its decision “is based on the currently available data.” *Id.* CDC’s one-sentence claim does not discuss that data, link to data, or set forth any reasoning. For APA purposes, saying something was considered “is not a substitute for considering it.” *Texas v. Biden*, 20 F.4th 928, 993 (5th Cir. 2021) (internal quotation marks omitted).

Given that CDC has doubled down, TSA and other agencies could resume masking at any time, and the collateral consequences of local actors like LAX following CDC’s Mask Mandate,

Plaintiffs continue to face a substantial threat of irreparable harm. A preliminary injunction is still warranted.

May 4, 2022

Respectfully submitted,

/s/ Kenneth A. Klukowski

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*\*Pro hac vice application forthcoming*

*Counsel for Plaintiffs*

### **CERTIFICATE OF SERVICE**

On May 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).

/s/ Kenneth A. Klukowski

Kenneth A. Klukowski

*Attorney for Plaintiffs*