

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.

FLORIDA'S MOTION FOR A PRELIMINARY INJUNCTION

The COVID-19 pandemic is a great tragedy. But that tragedy has been made worse by leaders who refuse to account for the human cost of shutting down society. Livelihoods have been destroyed, some of them permanently. Now, thankfully, vaccines are available to any adults who want them, and businesses have learned how to mitigate the spread of the virus. Most industries are now back to business, and it is long past time for the rest to follow suit.

The cruise industry in Florida cannot do so. It has been locked down for over a year. And this lockdown was not enacted pursuant to the State's police power, by the United States Congress, or even by the politically accountable President. Rather, it was imposed by the Centers for Disease Control and

Prevention (“CDC”) pursuant to a limited delegation from Congress to inspect and disinfect property and animals.

Congress did not, in granting those limited powers, authorize the CDC to shut down a multi-billion-dollar industry for over a year. The plain text of the CDC’s authority does not authorize these acts, even without applying the major-questions doctrine or clear-statement rule—both of which would apply to such radical power claimed by unaccountable federal bureaucrats. In any event, the CDC’s actions—including its refusal to account for vaccines, other interventions, and the success of cruise industries abroad during the pandemic—violate the Administrative Procedure Act (“APA”).

This Court should preliminarily enjoin the CDC’s unlawful acts and allow the approximately 159,000 Floridians whose livelihoods depend on the cruise industry to get back to work. Without this Court’s intervention, Florida will lose millions, if not billions, of dollars. And if companies like Carnival follow through on their threat to move operations abroad, the State of Florida may never be the same.

BACKGROUND

Florida’s Cruise Industry. The cruise industry is an essential part of Florida’s economy. In 2019, the industry’s direct expenditures in Florida generated “nearly 159,000 total jobs paying \$8.1 billion in income.” Ex. 1 at 14, 46. Of all cruise embarkations in the United States, about 60% embark from

Florida. *Id.* at 9, 12, 18, 45. In 2019, around 13.6 million cruise passengers and crew members came ashore in Florida. *Id.* at 14. These visitors spend money in Florida's local economies, and many Florida businesses depend on them. *Id.* at 45–47; Ex. 2 at 6–7.

The COVID-19 Pandemic. Beginning in early 2020, the COVID-19 pandemic devastated the cruise industry, as it did many industries. Outbreaks aboard cruise ships were a significant concern, and experts, public officials, and medical personnel had a limited understanding of the virus, how to treat it, and how to prevent its transmission. In March 2020, many cruise ships in the U.S. voluntarily ceased operations. ECF 1-3 at 9.

That same month the CDC began issuing nationwide lockdown orders against the cruise industry, just as many states issued lockdown orders against their citizens. *See* ECF 1-4. The CDC renewed its March Order on April 9, July 16, and September 30. *See* ECF 1-5, 1-6, 1-7. The cruise industry has been “ravaged,” with “companies reporting billions of dollars in losses, causing some of them to downsize their fleets and sell ships for scrap.” Ex. 3 at 2.

The October 30 Conditional Sailing Order. On October 30, 2020, the CDC offered the cruise industry a glimmer of hope. Just as many other industries have learned lessons during the pandemic and now operate with safety protocols, Exs. 4, 5, 6 (recommending measures like social distancing, mask wearing, and frequent cleaning for hotels, casinos, and sporting

events), the CDC indicated that the cruise industry could do the same. In its Conditional Sailing Order, the CDC purported to lift its lockdown order. It found that the “benefits of” opening “outweigh the costs of not allowing cruise ships to sail” so long as “cruise ships have taken the necessary precautions to mitigate risk.” ECF 1-3 at 16. But the Order has been “nothing more than an extension of a cruise ban wrapped as a present.” Ex. 7 at 7.

The Order begins by incorporating the findings of the earlier lockdown orders, and it expressly relies on what occurred on cruise ships at the beginning of the pandemic when the entire world was struggling to control and understand the spread of COVID-19. ECF 1-3 at 8, 12. It also expressly bases its conclusions on the lack of an available vaccine. *Id.* at 8. The Order then praises the cruise industry for taking “steps to improve their public health response to COVID-19.” *Id.* at 13.

Next, the Order discusses the CDC’s “Request for Information” in July 2020, which appears to be the CDC’s attempt to solicit feedback from the public without formally committing to notice and comment. *Id.* at 14. The Order then discusses the alternatives the CDC considered. It appears to have considered only two: (1) outright free rein for cruise ships with no oversight and no COVID-19 safety protocols and (2) continuing its lockdowns. *Id.* at 15–16.

After discussing these “alternatives,” the Order explains its “plan” for reopening. This plan involves four phases: (1) “establishment of laboratory

testing of crew onboard cruise ships in U.S. waters,” (2) “simulated voyages designed to test a cruise ship operator’s ability to mitigate COVID-19 on cruise ships,” (3) “a certification process,” and (4) “a return to passenger voyages in a manner that mitigates the risk of COVID-19.” *Id.* at 16–17. And unlike the previous orders, which were for a short time, the Conditional Sailing Order is effective for a year, until November 1, 2021. *Id.* at 41. So unless cruise companies can complete the four-phase process, the CDC will lock them down until at least November 1, 2021.

The federal government recognizes the scope of these decisions. The Order provides that if it “qualifies as a rule” then the Office of Information and Regulatory Affairs (“OIRA”) “has determined that [the Order] would be a major rule” under the Congressional Review Act, 5 U.S.C. § 804(2). ECF 1-3 at 19.

Much has changed since the CDC promulgated the Order in October 2020. *First*, multiple vaccines are now widely available. Over 50% of American adults have received one vaccine dose and 33% are fully vaccinated.¹ And the CDC now admits that fully vaccinated people who cruise in other countries “do not need to self-quarantine after cruise travel.” Ex. 8 at 2.

¹ CDC, *COVID-19 Vaccinations in the United States*, <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited April 22, 2021).

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