

No. \_\_\_\_\_

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IN THE

# Supreme Court of the United States

AARON ABADI,

*Applicant,*

v.

DEPARTMENT OF TRANSPORTATION (“DOT”),

*Respondent.*

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On petition for writ of certiorari to review a judgment on a petition for review of agency failure to act, denied by **United States Court of Appeals for the DC Circuit.**

## PETITION FOR WRIT OF CERTIORARI

## APPENDIX

**Applicant:**

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**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 22-1012**

**September Term, 2021**

**Filed On:** April 14, 2022

In re: Aaron Abadi,

Petitioner

**BEFORE:** Millett, Pillard, and Wilkins, Circuit Judges

**ORDER**

Upon consideration of the court's order to show cause filed February 23, 2022, and the response thereto; the "petition for review of agency action," which was docketed as a petition for a writ of mandamus; the motion to reclassify the petition; and the motion for a preliminary injunction, it is

**ORDERED** that the order to show cause be discharged. It is

**FURTHER ORDERED** that the petition be dismissed for lack of jurisdiction. Petitioner states that his petition is not for a writ of mandamus but rather for review of an agency's failure to act. A claim under the Administrative Procedure Act for failure to act "can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphases in original). Petitioner has identified neither a legal requirement that the Department of Transportation ("DOT") resolve his complaints against airlines within a certain time period, nor a legal requirement that DOT take any other discrete action that it allegedly has failed to take. Accordingly, petitioner has not demonstrated any basis for this court to exercise jurisdiction over his petition for review of a failure to act. *See Pub. Citizen, Inc. v. FERC*, 839 F.3d 1165, 1172-74 (D.C. Cir. 2016); *In re Aiken Cty.*, 645 F.3d 428, 437-38 (D.C. Cir. 2011). Because petitioner has disclaimed mandamus relief, he also has not demonstrated any basis for this court to address a claim of unreasonable agency delay. *See Telecomms. Research & Action Ctr. v. FCC ("TRAC")*, 750 F.2d 70, 76 (D.C. Cir. 1984) (concluding that mandamus authority may be used to address claims of unreasonable delay in order to protect future jurisdiction). It is

**FURTHER ORDERED** that petitioner's remaining motions be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

**Per Curiam**

**Office of the Secretary, DOT****§ 382.19**

(1) This assurance must commit the contractor to compliance with all applicable provisions of this part in activities performed on behalf of the carrier.

(2) The assurance must also commit the contractor to implementing directives issued by your CROs under §§ 382.151 through 382.153.

(c) As a U.S. carrier, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' compliance with this part and for enforcing the assurances in your contracts with them.

(e) It is not a defense against an enforcement action by the Department under this part that your noncompliance resulted from action or inaction by a contractor.

**§ 382.17 May carriers limit the number of passengers with a disability on a flight?**

As a carrier, you must not limit the number of passengers with a disability who travel on a flight. (See also § 382.27(c)(6) of this part.)

[Docket OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009]

**§ 382.19 May carriers refuse to provide transportation on the basis of disability?**

(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in § 382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

(i) The nature, duration, and severity of the risk;

(ii) The probability that the potential harm to the health and safety of others will actually occur; and

(iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this part.

(4) If your actions are inconsistent with any of the provisions of this part, you are subject to enforcement action under subpart K of this part.

(d) If you refuse to provide transportation to a passenger on his or her originally-scheduled flight on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraph (c) of this section or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation.

**§ 382.21****§ 382.21 May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?**

(a) You must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you determine that the passenger's condition poses a direct threat:

- (1) Refuse to provide transportation to the passenger;
- (2) Delay the passenger's transportation (e.g., require the passenger to take a later flight);
- (3) Impose on the passenger any condition, restriction, or requirement not imposed on other passengers; or
- (4) Require the passenger to provide a medical certificate.

(b) In assessing whether the passenger's condition poses a direct threat, you must apply the provisions of § 382.19(c)(1)–(2) of this subpart.

(1) In making this assessment, you may rely on directives issued by public health authorities (e.g., the U.S. Centers for Disease Control or Public Health Service; comparable agencies in other countries; the World Health Organization).

(2) In making this assessment, you must consider the significance of the consequences of a communicable disease and the degree to which it can be readily transmitted by casual contact in an aircraft cabin environment.

*Example 1 to paragraph (b)(2):* The common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. Someone with a cold would not pose a direct threat.

*Example 2 to paragraph (b)(2):* AIDS has very severe health consequences but is not readily transmissible in an aircraft cabin environment. Someone would not pose a direct threat because he or she is HIV-positive or has AIDS.

*Example 3 to paragraph (b)(2):* SARS may be readily transmissible in an aircraft cabin environment and has severe health consequences. Someone with SARS probably poses a direct threat.

(c) If a passenger with a communicable disease meeting the direct threat criteria of this section gives you a medical certificate of the kind outlined in § 382.23(c)(2) describing measures for preventing transmission of the disease during the normal course of the

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flight, you must provide transportation to the passenger, unless you are unable to carry out the measures.

(d) If your action under this section results in the postponement of a passenger's travel, you must permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(e) If you take any action under this section that restricts a passenger's travel, you must, on the passenger's request, provide a written explanation within 10 days of the request.

**§ 382.23 May carriers require a passenger with a disability to provide a medical certificate?**

(a) Except as provided in this section, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) You may require a medical certificate for a passenger with a disability—

- (i) Who is traveling in a stretcher or incubator;
- (ii) Who needs medical oxygen during a flight; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely, without requiring extraordinary medical assistance during the flight.

(3) To be valid, a medical certificate under this paragraph must be dated within 10 days of the scheduled date of the passenger's initial departing flight.

*Example to paragraph (b)(3):* A passenger who schedules a flight from New York to London on January 15 with a return on April 15 would have to show a medical certificate dated January 5 or later. The passenger would not have to show a second medical certificate dated April 5 or later.

## Office of the Secretary, DOT

## § 382.27

(c)(1) You may also require a medical certificate for a passenger if he or she has a communicable disease or condition that could pose a direct threat to the health or safety of others on the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate must state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. A medical certificate under this paragraph must be dated within 10 days of the date of the flight for which it is presented.

(d) As a carrier, you may require that a passenger with a medical certificate undergo additional medical review by you if there is a legitimate medical reason for believing that there has been a significant adverse change in the passenger's condition since the issuance of the medical certificate or that the certificate significantly understates the passenger's risk to the health of other persons on the flight. If the results of this medical review demonstrate that the passenger, notwithstanding the medical certificate, is likely to be unable to complete the flight without requiring extraordinary medical assistance (e.g., the passenger has apparent significant difficulty in breathing, appears to be in substantial pain, etc.) or would pose a direct threat to the health or safety of other persons on the flight, you may take an action otherwise prohibited under § 382.21(a) of this part.

[Docket OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 75 FR 44887, July 30, 2010]

**§ 382.25 May a carrier require a passenger with a disability to provide advance notice that he or she is traveling on a flight?**

As a carrier, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on a flight.

**§ 382.27 May a carrier require a passenger with a disability to provide advance notice in order to obtain certain specific services in connection with a flight?**

(a) Except as provided in paragraph (b) of this section and §§ 382.133(c)(4) and (5) and 382.133 (d)(5) and (6), as a carrier you must not require a passenger with a disability to provide advance notice in order to obtain services or accommodations required by this Part.

(b) You may require a passenger with a disability to provide up to 72 hours' advance notice and check in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on international flights, 48 hours' advance notice and check-in one hour before the check-in time for the general public to receive carrier-supplied in-flight medical oxygen on domestic flights, and 48 hours' advance notice and check-in one hour before the check-in time for the general public to use his/her ventilator, respirator, CPAP machine or POC.

(c) You may require a passenger with a disability to provide up to 48 hours' advance notice and check in one hour before the check-in time for the general public to receive the following services and accommodations. The services listed in paragraphs (c)(1) through (c)(3) of this section are optional; you are not required to provide them, but you may choose to do so.

(1) Carriage of an incubator;

(2) Hook-up for a respirator, ventilator, CPAP machine or POC to the aircraft electrical power supply;

(3) Accommodation for a passenger who must travel in a stretcher;

(4) Transportation for an electric wheelchair on an aircraft with fewer than 60 seats;

(5) Provision of hazardous materials packaging for batteries or other assistive devices that are required to have such packaging;

(6) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(7) Provision of an on-board wheelchair on an aircraft with more than 60 seats that does not have an accessible lavatory.

**§ 382.29**

(8) Transportation of an emotional support or psychiatric service animal in the cabin;

(9) Transportation of a service animal on a flight segment scheduled to take 8 hours or more;

(10) Accommodation of a passenger who has both severe vision and hearing impairments (see § 382.29(b)(4)).

(d) If the passenger with a disability provides the advance notice you require, consistent with this section, for a service that you must provide (see paragraphs (c)(4) through (c)(10) of this section) or choose to provide (see paragraphs (c)(1) through (c)(3) of this section), you must provide the requested service or accommodation.

(e) Your reservation and other administrative systems must ensure that when passengers provide the advance notice that you require, consistent with this section, for services and accommodations, the notice is communicated, clearly and on time, to the people responsible for providing the requested service or accommodation.

(f) If a passenger with a disability provides the advance notice you require, consistent with this section, and the passenger is forced to change to another flight (e.g., because of a flight cancellation), you must, to the maximum extent feasible, provide the accommodation on the new flight. If the new flight is another carrier's flight, you must provide the maximum feasible assistance to the other carrier in providing the accommodation the passenger requested from you.

(g) If a passenger does not meet advance notice or check-in requirements you establish consistent with this section, you must still provide the service or accommodation if you can do so by making reasonable efforts, without delaying the flight.

[Docket OST-2004-19482, 73 FR 27665, May 13, 2008, as amended at 74 FR 11471, Mar. 18, 2009; 75 FR 44887, July 30, 2010]

**§ 382.29 May a carrier require a passenger with a disability to travel with a safety assistant?**

(a) Except as provided in paragraph (b) of this section, you must not require that a passenger with a disability travel with another person as a condi-

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tion of being provided air transportation.

(b) You may require a passenger with a disability in one of the following categories to travel with a safety assistant as a condition of being provided air transportation, if you determine that a safety assistant is essential for safety:

(1) A passenger traveling in a stretcher or incubator. The safety assistant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A passenger who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b) or the safety regulations of a foreign carrier's government, as applicable;

(3) A passenger with a mobility impairment so severe that the person is unable to physically assist in his or her own evacuation of the aircraft;

(4) A passenger who has both severe hearing and severe vision impairments, if the passenger cannot establish some means of communication with carrier personnel that is adequate both to permit transmission of the safety briefing required by 14 CFR 121.57(a)(3) and (a)(4), 14 CFR 135.117(b) or the safety regulations of a foreign carrier's government, as applicable, and to enable the passenger to assist in his or her own evacuation of the aircraft in the event of an emergency. You may require a passenger with severe hearing and vision impairment who wishes to travel without a safety assistant to notify you at least 48 hours in advance to provide this explanation. If the passenger fails to meet this notice requirement, however, you must still accommodate him or her to the extent practicable.

(c)(1) If you determine that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with a safety assistant, contrary to the individual's self-assessment that he or she is capable of traveling independently, you must not charge for the transportation of the safety assistant. You are not required to find or provide the safety assistant, however.

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(2) For purposes of paragraph (b)(4) of this section, you may require, contrary to the individual's self-assessment, that an individual with both severe hearing and vision impairments must travel with a safety assistant if you determine that—

(i) The means of communication that the individual has explained to you does not adequately satisfy the objectives identified in paragraph (b)(4) of this section; or

(ii) The individual proposes to establish communication by means of finger spelling and you cannot, within the time following the individual's notification, arrange for a flight crew member who can communicate using this method to serve the passenger's flight.

(3) If a passenger voluntarily chooses to travel with a personal care attendant or safety assistant that you do not require, you may charge for the transportation of that person.

(d) If, because there is not a seat available on a flight for a safety assistant whom the carrier has determined to be necessary, a passenger with a disability holding a confirmed reservation is unable to travel on the flight, you must compensate the passenger with a disability in an amount to be calculated as provided for instances of involuntary denied boarding under 14 CFR part 250, where part 250 applies.

(e) For purposes of determining whether a seat is available for a safety assistant, you must deem the safety assistant to have checked in at the same time as the passenger with a disability.

(f) Concern that a passenger with a disability may need personal care services (e.g., assistance in using lavatory facilities or with eating) is not a basis for requiring the passenger to travel with a safety assistant. You must explain this clearly in training or information you provide to your employees. You may advise passengers that your personnel are not required to provide such services.

**§ 382.31 May carriers impose special charges on passengers with a disability for providing services and accommodations required by this rule?**

(a) Except as otherwise provided in this part you must not, as a carrier, impose charges for providing facilities,

equipment, or services that this rule requires to be provided to passengers with a disability. You may charge for services that this part does not require.

(b) You may charge a passenger for the use of more than one seat if the passenger's size or condition (e.g., use of a stretcher) causes him or her to occupy the space of more than one seat. This is not considered a special charge under this section.

(c) If your web site that passengers use to make reservations or purchase tickets is not accessible to a passenger with a disability, you must not charge a fee to the passenger who is consequently unable to make a reservation or purchase a ticket on that site for using another booking method (e.g., making a reservation by phone). If a discount is made available to a passenger who books a flight using an inaccessible web site, you must make that discount available to a passenger with a disability who cannot use the web site and who purchases a ticket from you using another method.

**§ 382.33 May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?**

(a) As a carrier, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise permitted in this part (e.g., advance notice requirements for certain services permitted by § 382.27).

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

(1) Restricting passengers' movement within the terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation, services, or accommodations;

(3) Making passengers sit on blankets on the aircraft;

(4) Making passengers wear badges or other special identification (e.g., similar to badges worn by unaccompanied minors); or

(5) Otherwise mandating separate treatment for passengers with a disability, unless permitted or required by this part or other applicable Federal requirements.

**§ 382.35****§ 382.35 May carriers require passengers with a disability to sign waivers or releases?**

(a) As a carrier, you must not require passengers with a disability to sign a release or waiver of liability in order to receive transportation or to receive services or accommodations for a disability.

(b) You must not require passengers with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices, or for the loss of, death of, or injury to service animals. Carriers may note pre-existing damage to an assistive device to the same extent that carriers do this with respect to other checked baggage.

### **Subpart C—Information for Passengers**

**§ 382.41 What flight-related information must carriers provide to qualified individuals with a disability?**

As a carrier, you must provide the following information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of the aircraft expected to make a particular flight. The information you provide must be specific to the aircraft you expect to use for the flight unless it is unfeasible for you to do so (e.g., because unpredictable circumstances such as weather or a mechanical problem require substitution of another aircraft that could affect the location or availability of an accommodation). The required information is:

(a) The specific location of seats, if any, with movable armrests (i.e., by row and seat number);

(b) The specific location of seats (i.e., by row and seat number) that the carrier, consistent with this part, does not make available to passengers with a disability (e.g., exit row seats);

(c) Any aircraft-related, service-related or other limitations on the ability to accommodate passengers with a disability, including limitations on the availability of level-entry boarding to the aircraft at any airport involved with the flight. You must provide this information to any passenger who states that he or she uses a wheelchair

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for boarding, even if the passenger does not explicitly request the information.

(d) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other assistive devices commonly used by passengers with a disability, including storage in the cabin of a passenger's wheelchair as provided in §§ 382.67 and 382.123 of this part;

(e) Whether the aircraft has an accessible lavatory; and

(f) The types of services to passengers with a disability that are or are not available on the flight.

**§ 382.43 Must information and reservation services of carriers be accessible to individuals with hearing impairments?**

(a) If, as a carrier, you provide telephone reservation and information service to the public, you must make this service available to individuals who use a text telephone (TTY), whether via your own TTY, voice relay, or other available technology, as follows:

(1) You must provide access to TTY users during the same hours as the telephone service is available to the general public.

(2) You must ensure that the response time for answering calls and the level of service provided to TTY users is substantially equivalent to the response time and level of service provided to the general public (i.e., non-TTY users).

(3) You must not subject TTY users to charges exceeding those that apply to non-TTY users of telephone information and reservation service.

(4) In any medium in which you list the telephone number of your information and reservation service for the general public, you must also list your TTY number if you have one. If you do not have a TTY number, you must state how TTY users can reach your information and reservation service (e.g., via a voice relay service).

(5) If you are a foreign carrier, you must meet this requirement by May 13, 2010.

(b) The requirements of paragraph (a) do not apply to you in any country in

representatives", was executed by making the substitution for "the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives" to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 104-121, § 243(b)(2), substituted "his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the" for "his views with respect to the".

#### CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-121 effective on expiration of 90 days after Mar. 29, 1996, but inapplicable to interpretative rules for which a notice of proposed rulemaking was published prior to Mar. 29, 1996, see section 245 of Pub. L. 104-121, set out as a note under section 601 of this title.

### CHAPTER 7—JUDICIAL REVIEW

Sec.	
701.	Application; definitions.
702.	Right of review.
703.	Form and venue of proceeding.
704.	Actions reviewable.
705.	Relief pending review.
706.	Scope of review.

#### SHORT TITLE

The provisions of sections 551 to 559 of this title and this chapter were originally enacted by act June 11, 1946, ch. 423, 60 Stat. 237, popularly known as the "Administrative Procedure Act". That Act was repealed as part of the general revision of this title by Pub. L. 89-554 and its provisions incorporated into sections 551 to 559 of this title and this chapter.

#### § 701. Application; definitions

(a) This chapter applies, according to the provisions thereof, except to the extent that—

- (1) statutes preclude judicial review; or
- (2) agency action is committed to agency discretion by law.

(b) For the purpose of this chapter—

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia;

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F) courts martial and military commissions;

(G) military authority exercised in the field in time of war or in occupied territory; or

(H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix; and

(2) "person", "rule", "order", "license", "sanction", "relief", and "agency action" have the meanings given them by section 551 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 103-272, § 5(a), July 5, 1994, 108 Stat. 1373; Pub. L. 111-350, § 5(a)(3), Jan. 4, 2011, 124 Stat. 3841.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a) .....	5 U.S.C. 1009 (introductory clause).	June 11, 1946, ch. 324, § 10 (introductory clause), 60 Stat. 237.

In subsection (a), the words "This chapter applies, according to the provisions thereof," are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702-706.

Subsection (b) is added on authority of section 2 of the Act of June 11, 1946, ch. 324, 60 Stat. 237, as amended, which is carried into section 551 of this title.

In subsection (b)(1)(G), the words "or naval" are omitted as included in "military".

In subsection (b)(1)(H), the words "functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947" are omitted as executed. Reference to the "Selective Training and Service Act of 1940" is omitted as that Act expired on Mar. 31, 1947. Reference to the "Sugar Control Extension Act of 1947" is omitted as that Act expired on Mar. 31, 1948. References to the "Housing and Rent Act of 1947, as amended" and the "Veterans' Emergency Housing Act of 1946" have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by § 111(a)(1) of the Act of Sept. 21, 1961, Pub. L. 87-256, 75 Stat. 538, since § 111(c) of the Act provides that a reference in other Acts to a provision of law repealed by § 111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87-256.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### REFERENCES IN TEXT

Sections 1891-1902 of title 50, appendix, referred to in subsec. (b)(1)(H), were omitted from the Code as executed.

#### AMENDMENTS

2011—Subsec. (b)(1)(H). Pub. L. 111-350 struck out "chapter 2 of title 41;" after "title 12;".

1994—Subsec. (b)(1)(H). Pub. L. 103-272 substituted "subchapter II of chapter 471 of title 49; or sections" for "or sections 1622,".

#### § 702. Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: *Provided*, That any mandatory or

injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, §10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1976—Pub. L. 94-574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

#### § 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94-574, §1, Oct. 21, 1976, 90 Stat. 2721.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, §10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

#### AMENDMENTS

1976—Pub. L. 94-574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

#### § 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judi-

cial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 392.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, §10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

#### § 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

#### HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, §10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

#### § 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
  - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
  - (B) contrary to constitutional right, power, privilege, or immunity;
  - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
  - (D) without observance of procedure required by law;



## COVID-19

# Reinfection with COVID-19

Updated Aug. 6, 2021 [Print](#)

Cases of reinfection with COVID-19 have been reported, but remain rare.

In general, reinfection means a person was infected (got sick) once, recovered, and then later became infected again. Based on what we know from similar viruses, some reinfections are expected. We are still learning more about COVID-19. Ongoing COVID-19 studies will help us understand:

- How likely is reinfection
- How often reinfection occurs
- How soon after the first infection can reinfection take place
- How severe are cases of reinfection
- Who might be at higher risk for reinfection
- What reinfection means for a person's immunity
- If a person is able to spread COVID-19 to other people when reinfected

## Delta Variant

The Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID-19. It might cause more severe illness than previous strains in unvaccinated people.

- Vaccines continue to reduce a person's risk of contracting the virus that cause COVID-19, including this variant.
- Vaccines continue to be highly effective at preventing hospitalization and death, including against this variant.
- Fully vaccinated people with breakthrough infections from this variant appear to be infectious for a shorter period.
- Get vaccinated and wear masks indoors in public spaces to reduce the spread of this variant.

[About the Delta Variant](#)

[Variants in the US](#)

## What CDC is doing

CDC is actively working to learn more about reinfection to inform public health action. CDC developed recommendations for public health professionals to help decide when and how to test someone for suspected reinfection. CDC has also provided information for state and local health departments to help investigate suspected cases of reinfection. We will update this guidance as we learn more about reinfection.

## Important Ways to Slow the Spread of COVID-19

- Get a COVID-19 vaccine as soon as you can. Find a vaccine.
- Wear a mask that covers your nose and mouth to help protect yourself and others.
- Stay 6 feet apart from others who don't live with you.
- Avoid crowds and poorly ventilated indoor spaces.
- Wash your hands often with soap and water. Use hand sanitizer if soap and water aren't available.

## More Information

[How to Protect Yourself & Others](#)

[How Do I Find a COVID-19 Vaccine?](#)

[About Variants of the Virus that Causes COVID-19 | CDC](#)

[Choosing Safer Activities | CDC](#)

Last Updated Aug. 6, 2021

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

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**NOTICE OF ENFORCEMENT POLICY:  
ACCOMMODATION BY CARRIERS OF PERSONS WITH DISABILITIES  
WHO ARE UNABLE TO WEAR OR SAFELY WEAR MASKS WHILE ON  
COMMERCIAL AIRCRAFT**

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The Office of Aviation Consumer Protection (OACP), a unit within the Office of the General Counsel of the U.S. Department of Transportation (DOT or the Department), is issuing this Notice of Enforcement Policy to remind U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the public health risks associated with the Coronavirus Disease 2019 (COVID-19). OACP will exercise its prosecutorial discretion and provide airlines 45 days from the date of this notice to be in compliance with their obligation under the Air Carrier Access Act (ACAA)<sup>1</sup> and the Department's implementing regulation in 14 CFR Part 382 (Part 382) to provide reasonable accommodations to persons with disabilities who are unable to wear or safely wear masks, so long as the airlines demonstrate that they began the process of compliance as soon as this notice was issued.

To carry out the Executive Order on Promoting COVID-19 Safety in Domestic and International Travel (Executive Order),<sup>2</sup> the Centers for Disease Control and Prevention (CDC) issued an order on January 29, 2021 (CDC Order)<sup>3</sup> that, among other things, requires U.S. and foreign air carriers to use their best efforts to ensure that persons on flights to, within, or from<sup>4</sup> the United States wear a mask for the duration of travel, including when boarding and disembarking aircraft. The CDC Order exempts certain categories of persons from the mask-wearing mandate, including a person with a disability who cannot wear a mask, or who cannot safely wear a mask

<sup>1</sup> The ACAA, signed into law in 1986, prohibits discrimination by airlines against individuals with disabilities in commercial air transportation. The Americans with Disabilities Act, signed into law after the ACAA in 1990, prohibits discrimination against individuals with disabilities in employment, state or local government, public accommodations, commercial facilities, telecommunications, and transportation other than by commercial airlines.

<sup>2</sup> Exec. Order No. 13998, 86 FR 7205 (Jan. 26, 2021).

<sup>3</sup> Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2, 71.31(b), 71.32(b); Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (CDC Order), available at [https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC\\_GMTF\\_01-29-21-p.pdf](https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC_GMTF_01-29-21-p.pdf).

<sup>4</sup> CDC Order specifies that “[c]onveyance operators must also require all persons to wear masks on board conveyances departing from the United States and for the duration of their travel until the conveyance arrives at the foreign destination if at any time any of the persons onboard (passengers or conveyance operators) will return to the United States while this Order remains in effect.” CDC Order at 9.

because of the disability.<sup>5</sup> However, it allows airlines to impose requirements or conditions for carriage on the categories of persons exempted from the mask mandate, whether the person is a child under the age of two, a person for whom wearing a mask would create a risk to workplace safety, health, or job duty, or a person with a disability who is unable to wear or safely wear a mask because of the disability. Additionally, on January 31, 2021, the Transportation Security Administration (TSA) issued a Security Directive (SD) to aircraft operators on face mask requirements to implement the Executive Order and to support enforcement of the CDC Order mandating masks.<sup>6</sup> The Department supports actions by the airline industry to have procedures in place requiring passengers to wear masks in accordance with the CDC Order, CDC guidance, and TSA SD. At the same time, the ACAA and Part 382, which are enforced by OACP, require airlines to make reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear or safely wear a mask due to their disability. This Notice sets forth the enforcement policy that OACP will apply in determining, on a prospective basis, whether airlines are complying with the requirements of the ACAA and Part 382 when implementing procedures requiring mask-wearing by passengers.

### Background

SARS-CoV-2, the virus that causes COVID-19, spreads most often when an infected person coughs, sneezes, or talks, and droplets from the infected individual's mouth or nose are spread through the air and come in contact with people nearby.<sup>7</sup> Persons with COVID-19 infection may have symptoms of fever, cough, or shortness of breath,<sup>8</sup> or they may be asymptomatic<sup>9</sup> or pre-symptomatic<sup>10</sup> but still able to spread the virus.<sup>11</sup> CDC has made clear that appropriately worn masks reduce the spread of COVID-19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19.<sup>12</sup>

<sup>5</sup> CDC Order at 4 and 5 (noting that this is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to disability).

<sup>6</sup> TSA Security Directive 1544-21-02: Security Measures – Face Mask Requirements (January 31, 2021).

<sup>7</sup> See Ctrs. for Disease Control & Prevention, *How COVID Spreads*, CDC.gov (last updated Oct. 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>; Ctrs. for Disease Control & Prevention, *Considerations for Wearing Masks*, CDC.gov (last updated Dec. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>.

<sup>8</sup> Ctrs. for Disease Control & Prevention, *Symptoms of Coronavirus*, CDC.gov (last updated Dec. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

<sup>9</sup> An asymptomatic case is an individual infected with SARS-CoV-2, who does not exhibit symptoms during the course of infection. Ctrs. for Disease Control & Prevention, *COVID-19 Pandemic Planning Scenarios*, CDC.gov (last updated Sept. 10, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hep/planning-scenarios.html>.

<sup>10</sup> A pre-symptomatic case of COVID-19 is an individual infected with SARS-CoV-2, who has not exhibited symptoms at the time of testing, but who later exhibits symptoms during the course of the infection. *COVID-19 Pandemic Planning Scenarios*, *supra* note 8.

<sup>11</sup> See *How COVID Spreads* and *Considerations for Wearing Masks*, *supra* note 6.

<sup>12</sup> CDC Order at 6.

As of January 27, 2021, there have been over 99 million confirmed cases of COVID-19 globally and over 25 million confirmed cases of COVID-19 in the United States, with over 2 million deaths globally and over 400,000 deaths in the United States due to the disease.<sup>13</sup> To slow the spread of COVID-19, on January 21, 2021, President Biden issued Executive Order 13998, which directs the heads of certain Federal agencies to take immediate actions to require mask-wearing in domestic and international transportation. The Executive Order further provides that the heads of agencies may make categorical or case-by-case exceptions to policies developed under the order, consistent with applicable law, to the extent that doing so is necessary or required by law.

Pursuant to the Executive Order, on January 29, 2021, CDC issued an order directing conveyance operators, which includes airlines, to use best efforts to ensure that any person on the conveyance, such as an aircraft, wears a mask when boarding, disembarking, and for the duration of travel. Recognizing that there are specific instances when wearing a mask may not be feasible, the CDC Order exempts several categories of persons from the mask mandate, including “a person with a disability who cannot wear a mask, or who cannot safely wear a mask because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).” The Americans with Disabilities Act (ADA) defines a person with a disability to include a person who has a physical or mental impairment that substantially limits one or more major life activities.<sup>14</sup> To ensure that only qualified persons under the exemptions would be able to travel without a mask, the CDC Order permits operators of transportation conveyances, such as airlines, to impose requirements, or conditions for carriage, on persons requesting an exemption, including requiring a person seeking an exemption to request an accommodation in advance, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the operator. The CDC Order also permits operators to require protective measures, such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19 or seating or otherwise situating the individual in a less crowded section of the conveyance, e.g., aircraft.<sup>15</sup>

In response to COVID-19, U.S. and foreign air carriers generally have implemented policies requiring passengers to wear masks onboard aircraft even before the issuance of the Executive Order and the CDC Order. Some carriers have adopted policies that expressly allow “no exceptions” to the mask requirement other than for children under the age of two.<sup>16</sup> OACP has

<sup>13</sup> *Id.* at 5.

<sup>14</sup> 42 U.S.C. 12102(4). OACP notes that the definition of a person with a disability under the ADA is almost identical to the definition of a person with a disability under the Department’s ACAA regulation. See also CDC Order at 4 and 5.

<sup>15</sup> CDC Order at 4. CDC definitions for SARS-CoV-2 viral test and documentation of recovery are available in the Frequently Asked Questions at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>.

<sup>16</sup> It would a violation of the ACAA to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not to have an exemption for the limited number of individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others. See Ctrs. for Disease Control & Prevention, *Information for Pediatric Healthcare Providers*, CDC.gov (last updated Dec. 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>.

received complaints from persons who assert they have a disability that precludes their wearing a mask, and who contend that they were denied transport by an airline under a “no exceptions allowed” mask policy.

The CDC and other medical authorities recognize that individuals with certain medical conditions may have trouble breathing or other difficulties such as being unable to remove the mask without assistance if required to wear a mask that fits closely over the nose and mouth.<sup>17</sup> The CDC Order provides that a mask is not required in circumstances where an individual is “unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to wear the mask without assistance.”<sup>18</sup> The Order notes that individuals may remove masks “who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask.”<sup>19</sup> Also, individuals with acute illness may remove the mask if it “interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.”<sup>20</sup> CDC will issue additional guidance regarding persons who cannot wear a mask on the basis of disability.<sup>21</sup> Individuals who have a physical or mental impairment that substantially limits one or more major life activities are individuals with a disability for purposes of the ACAA and Part 382.<sup>22</sup>

#### Legal Authority

The ACAA prohibits U.S. and foreign air carriers from denying air transportation to or otherwise discriminating in the provision of air transportation against a person with a disability by reason of the disability.<sup>23</sup> When a policy or practice adopted by a carrier has the effect of denying service to or otherwise discriminating against passengers because of their disabilities, the Department’s disability regulations in Part 382 require the airline to modify the policy or practice as necessary to provide nondiscriminatory service to the passengers with disabilities, provided that the modifications would not constitute an undue burden or fundamentally alter the airline’s program.<sup>24</sup>

Part 382 allows an airline to refuse to provide air transportation to an individual whom the airline determines presents a disability-related safety risk, provided that the airline can demonstrate that

[ncov/hcp/pediatric-hcp.html](#) (stating that “[r]ecent evidence suggests that compared to adults, children likely have similar viral loads in their nasopharynx, similar secondary infections rates, and can spread the virus to others”).

<sup>17</sup> Considerations for Wearing Masks, *supra* note 6.

<sup>18</sup> CDC Order at 4.

<sup>19</sup> CDC Order at 4 (footnote 7).

<sup>20</sup> CDC Order at 4 (footnote 7).

<sup>21</sup> CDC Order at 5 (footnote 9).

<sup>22</sup> 49 U.S.C. 41705(a); 14 CFR 382.3.

<sup>23</sup> 49 U.S.C. 41705(a); 14 CFR 382.11.

<sup>24</sup> 14 CFR 382.13.

the individual would pose a “direct threat” to the health or safety of others onboard the aircraft, and that a less restrictive option is not feasible.<sup>25</sup> To support a determination that an individual poses such a direct threat, the airline must make “an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence,” in order to ascertain “(i) [t]he nature, duration, and severity of the risk; (ii) [t]he probability that the potential harm to the health and safety of others will actually occur; and (iii) [w]hether reasonable modifications of policies, practices, or procedures will mitigate the risk.”<sup>26</sup> If the airline has adequately determined, based on such an individualized assessment, that the passenger does pose a direct threat to the health or safety of others because of a disability-related condition, the airline “must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others,” and must, for example, “not refuse transportation to the passenger if [the airline] can protect the health and safety of others by means short of a refusal” to provide transportation.<sup>27</sup> Furthermore, the Department’s regulations permit the airline to impose reasonable conditions, restrictions, or requirements on a passenger who has a “medical condition” that may cause the passenger to pose a risk to the health and safety of others.<sup>28</sup>

#### Enforcement Policy

The authority to pursue or not to pursue enforcement action against airlines with respect to air travel consumer protection and civil rights requirements, including compliance with the ACAA, lies with OACP.<sup>29</sup>

In accordance with the CDC Order, as conveyance operators, airlines are required to implement face mask policies that treat passengers presumptively as potential carriers of the SARS-CoV-2 virus and, therefore, as presenting a potential threat to the health and safety of other passengers and the crew.<sup>30</sup> Notably, however, the CDC Order exempts from the mask mandate a person with a disability who cannot wear a mask, or who cannot safely wear a mask because of the

<sup>25</sup> 14 CFR 382.19(c)(1), (2).

<sup>26</sup> *Id.*

<sup>27</sup> 14 CFR 382.19(c)(2).

<sup>28</sup> 14 CFR 382.21(a)(3). The rule recognizes that a passenger with a communicable disease or infection, such as infection with the SARS-CoV-2 virus or other “medical condition,” may pose a direct threat to the health and safety of others onboard an aircraft, and the airline may be justified in refusing to transport the passenger or in requiring protective measures to mitigate the risk, consistent with the directives of public health authorities. 14 CFR 382.21(a)–(b).

<sup>29</sup> 49 U.S.C. 41705(c), 46301. The CDC Order requiring aircraft operators to mandate mask use will be enforced by the Transportation Security Administration under its statutory and regulatory authorities, including 49 U.S.C. 106, 114, 44902, 44903, and 46301; and 49 CFR 1542.303, 1544.305, and 1546.105.

<sup>30</sup> CDC Order at 5 (“The virus that causes COVID-19 spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet.”); *id.* at 7 (“Traveling on public conveyances increases a person’s risk of getting and spreading COVID-19 by bringing persons in close contact with others, often for prolonged periods, and exposing them to frequently touched surfaces.”).

disability. The Department also requires reasonable accommodations for persons with disabilities who are unable to wear masks or are unable to wear them safely.<sup>31</sup>

Airlines have expressed concerns to OACP that a significant number of passengers may claim medical exemption from the mask requirements without an apparent credible basis. The CDC Order permits airlines to impose requirements or conditions for carriage on a person requesting an exemption, including requiring a person seeking an exemption to request an accommodation in advance, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the airline.<sup>32</sup> Similarly, under the Department's disability regulation in 14 CFR Part 382, airlines may impose conditions, restrictions, or requirements on a passenger asserting that a medical condition prevents the passenger from wearing a face mask, because the passenger may pose a direct threat to the health or safety of others, as any passenger is a potential carrier of the SARS-CoV-2 virus.<sup>33</sup> In short, both the CDC Order and Part 382 permit airlines to require passengers to consult with the airline's medical expert and/or to provide medical evaluation documentation from the passenger's doctor sufficient to satisfy the airline that the passenger does, indeed, have a recognized medical condition precluding the wearing or safe wearing of a mask.

Airlines have also represented to OACP that, given the number of passengers making such claims, it is not practicable for airlines to make the required individualized assessment of appropriate mitigation measures at the airport on the day of the flight. Under the Department's disability regulation in Part 382, airlines must conduct an individualized assessment of the potential ways to mitigate the risk to others of allowing passengers with disabilities to fly without a mask.<sup>34</sup> However, Part 382, like the CDC Order, permits airlines to require passengers with disabilities who are unable to wear masks to request an accommodation in advance. Airlines may also require such passengers to check in early and to agree to undergo the required individualized assessment a reasonable period in advance of the scheduled flight, provided that the process is completed on the day of travel.

In addition, airlines may impose protective measures to reduce or prevent the risk to other passengers. For example, airlines may require protective measures, such as a negative result from a SARS-CoV-2 test,<sup>35</sup> taken at the passenger's own expense, during the days immediately

<sup>31</sup> 14 CFR 382.13.

<sup>32</sup> *Id.*

<sup>33</sup> 14 CFR 382.21(a)(3).

<sup>34</sup> 14 CFR 382.19(c)(1).

<sup>35</sup> On January 12, 2021, CDC issued an order requiring any passenger flying into the United States from a foreign country to provide, before boarding the flight, proof of a negative pre-departure test result for SARS-CoV-2, the virus that causes COVID-19, or documentation of recovery from COVID-19 after a previous SARS-CoV-2 infection. This order became effective on January 26, 2021. Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 70.2, 71.31(b): Requirement for Negative Pre-Departure COVID-19 Test Result or Documentation of Recovery From COVID-19 for All Airlines or Other Aircraft Passengers Arriving into the United States from Any Foreign Country, *available at* [https://www.cdc.gov/quarantine/pdf/global-airline-testing-order\\_2021-01-2\\_R3-signed-encrypted-p.pdf](https://www.cdc.gov/quarantine/pdf/global-airline-testing-order_2021-01-2_R3-signed-encrypted-p.pdf).

prior to the scheduled flight.<sup>36</sup> Further, the airline may arrange for additional, appropriate mitigation measures, including arranging for the passenger to sit in a less crowded section of the plane, to take a flight at times when airports are less crowded, and/or scheduling the passenger on a less crowded flight.

To ensure travelers are aware of the face mask requirements, airlines should use their best efforts to make this information easily available. The Department requires airlines provide information on request, to individuals with disabilities, about any service-related or other limitations on the airline's ability to accommodate passengers with a disability.<sup>37</sup> Also, CDC and TSA require airlines to provide passengers with prominent and adequate notice to facilitate awareness and compliance with the requirement that masks must be worn, subject to certain limited exemptions, to mitigate the spread of COVID-19 during air travel.<sup>38</sup> Airlines' obligation to provide information on the face mask requirements includes updating airlines' face mask policies on their websites to ensure accuracy and consistency with the ACAA, CDC Order and TSA SD.<sup>39</sup>

In recognition of the CDC Order, as well as airlines' efforts to minimize the potential for transmission of the virus onboard aircraft by implementing policies requiring passengers to wear masks onboard aircraft even before the issuance of the CDC Order, OACP will exercise its prosecutorial discretion and provide airlines an opportunity to follow the steps described herein to become compliant before taking further action.<sup>40</sup> Airlines are expected to review their face mask policies immediately and to revise them as necessary to comply with the ACAA and Department's disability regulation in Part 382. OACP will refrain from taking enforcement action against an airline for a period of up to 45 days from the date of this notice, so long as the airline demonstrates that it began the process of compliance as soon as this notice was issued. This timeframe should provide airlines with adequate time to review and revise their mask procedures as needed to comply with the law.<sup>41</sup>

<sup>36</sup> A positive test result for SARS-CoV-2, the virus that causes COVID-19, is a valid reason for an airline to deny transport to any individual, including an individual with a disability. CDC recommends isolation to separate people infected with SARS-CoV-2 from people who are not infected. *See* Ctrs. for Disease Control & Prevention, *Isolate if You are Sick*, CDC.gov (last updated Jan. 7, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html>.

<sup>37</sup> 14 CFR 382.41.

<sup>38</sup> CDC Order at 1; TSA SD at 2.

<sup>39</sup> *See* 14 CFR 399.79 (b)(2) (defining an airline's practice as "deceptive" to consumers within the meaning of section 41712 if it is likely to mislead a consumer, acting reasonably under the circumstances, with respect to a material matter).

<sup>40</sup> Every day, we are learning more about how COVID-19 spreads and affects people and communities. OACP will continue to follow the data and information provided by public health authorities, such as CDC, on actions necessary to limit the spread or impact of SARS-CoV-2 and will make changes to this notice as necessary to be consistent with current medical knowledge and the best available objective evidence.

<sup>41</sup> This document is a temporary notice of enforcement discretion. Regulated entities may rely on this notice as a safeguard from Departmental enforcement as described herein. To the extent that this notice includes guidance on how regulated entities may comply with existing regulations, it does not have the force and effect of law and is not meant to bind the regulated entities in any way.

Questions regarding this Notice may be addressed to the Office of Aviation Consumer Protection (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

By:

Blane A. Workie  
*Assistant General Counsel for*  
*Office of Aviation Consumer Protection*

Dated: February 5, 2021

*An electronic version of this document is available at <http://www.dot.gov/airconsumer>*



## Information, Guidance and Training on the Americans with Disabilities Act

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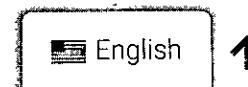
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### The ADA and Face Mask Policies

Updated: 8/27/2021

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## Introduction

The COVID-19 pandemic has changed our world in many ways. People with disabilities, people with chronic health conditions such as heart disease, lung disease, and diabetes, and people over the age 60, are at a higher risk of becoming infected and more likely to become seriously ill. Safety measures such as social distancing, vaccines, respiratory etiquette, and the wearing of face masks or cloth face coverings are our first line of defense to keep people safe from severe illness. [44]

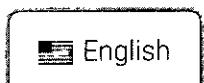
**Note:** In this document, the term "face mask" will be used for both face masks and cloth face coverings.



Wearing a face mask is one important way to slow the spread of COVID-19. [45]

On July 27, 2021, the Centers for Disease Control and Prevention (CDC) updated its guidance on face masks. The CDC recommends that face masks be worn by everyone, regardless of vaccination status, in areas of substantial and high transmission. Wearing a face mask increases protection from the Delta variant and lessens the chance of spreading it to others. [1][43] The CDC considers substantial transmission to be 50 to 100 new cases per 100,000 people over a seven-day period. High transmission is 100 or more cases per 100,000 people over seven days or in areas with 8% or higher positive test rates. [32]

Additionally, the CDC urges that fully vaccinated people who have compromised immune systems continue to wear a face mask. The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions. [33]



Wearing a face mask may be difficult for some people with a disability. State and local government agencies or private businesses that want customers to use a face mask may have questions and concerns. This fact sheet offers guidance to questions about the issue of face mask policies, reasons why a person with a disability might not be able to wear a face mask, and the legal rights a person has under the Americans with Disabilities Act (ADA).

### **May a federal, state or local government agency or a business require customers to wear a face mask?**

#### **NOTE: CDC Guidance**

The information from the Centers for Disease Control and Prevention (CDC) and other authorities has changed as the COVID-19 pandemic evolves and new variants emerge. Therefore, private businesses and government agencies should follow the most current information on maintaining safety by reviewing the [CDC Coronavirus \(COVID-19\) information](#) (cdc.gov).

You can also access more information at:

- [Accessible COVID-19 Resources from CDC guidance](#)  
Source: Center for Inclusive Design and Innovation (CIDI)
- [Older Adults and People with Disabilities: COVID-19 Resources](#)  
Source: Administration for Community Living (ACL)

#### **UPDATES**

##### **August 27, 2021 – State Mask Mandates**

The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions. As of August 27, 2021, ten states (California, Connecticut, Hawaii, Illinois, Louisiana, Nevada, New Mexico, New York, Oregon and Washington), the District of Columbia, and the territory of Puerto Rico have mask mandates in place. Also, on August 27, Oregon became the first state to reimpose a face-covering requirement for people in outdoor public settings, and Illinois' indoor mask order is being expanded to cover vaccinated people, effective August 30. [33]

##### **August 20, 2021 – Face Masks, Travel and Transportation**

The Centers for Disease Control and Prevention (CDC), Transportation Security Administration (TSA), and the U.S. Department of Transportation (DOT) remind people who chose to travel that they are still required to wear a face mask.



buses, trains, and other forms of public transportation traveling into, within, or outside of the United States. This includes all U.S. transportation hubs such as airports and stations for trains and buses. CDC guidance states that fully vaccinated people are safe to travel and can resume travel within the United States.<sup>[46]</sup> However, travel outside the United States poses additional risks. Fully vaccinated travelers might be at increased risk for getting and possibly spreading some COVID-19 variants.<sup>[47]</sup>

On Friday, August 20, 2021, the Transportation Security Administration (TSA) is extending the face mask requirement for individuals across all transportation networks throughout the United States, through January 18, 2022. The transportation network includes airports, onboard commercial aircraft, on over-the-road buses, and on commuter bus and rail systems.<sup>[48]</sup>

### **July 27, 2021 – Centers for Disease Control (CDC) Interim Public Health Recommendations for Fully Vaccinated People**

On July 27, 2021, the Centers for Disease Control and Prevention (CDC) updated its guidance on face masks for fully vaccinated people. The CDC recommends that face masks be worn by everyone, regardless of vaccination status.<sup>[1]</sup> The guidance specifically states that a fully vaccinated person should "wear a mask indoors in public if you are in an area of substantial or high transmission."<sup>[32]</sup>

CDC continues to urge people with compromised immune systems and people who live in households with people who have compromised immune systems to wear masks. The CDC recommends that fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 infection be tested 3-5 days after exposure and to wear face masks in indoor public settings for 14 days or until they receive a negative test result. Finally, the CDC recommends that all teachers, staff, students, and school visitors wear masks in school settings, regardless of vaccination status.<sup>[42]</sup>

### **July 19, 2021 – American Academy of Pediatrics (AAP) COVID-19 Guidance for Safe Schools**

On July 19, 2021, the American Academy of Pediatrics (AAP), the leading pediatrics organization in the United States, issued a face mask recommendation for schools that are re-opening this fall. The AAP advises that all staff and students over the age of 2 wear face masks when at school unless prohibited by a medical or developmental condition. The AAP guidance also strongly encourages all e

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individuals to receive the COVID-19 vaccine. Schools are urged to provide available and accessible vaccine resources for the whole community. 25

AAP endorsed the guidance from the Centers for Disease Control (CDC) that schools carry out multiple prevention strategies including social distancing, face masks, handwashing, quarantining, cleaning, disinfections, screening testing, building ventilation, and respiratory etiquette. These things help limit the transmission of respiratory pathogens that are airborne or spread by droplets. [39]

### **Respiratory Etiquette**

- Covering your mouth and nose when coughing or sneezing.
- Using tissues and throwing them away.
- Washing your hands or using hand sanitizer every time you touch your mouth or nose.
- Providing tissues and no-touch trash cans to throw them away
- Offering disposable face masks to customers and employees

The AAP, citing guidance from the World Health Organization (WHO), the United Nations Children's Fund (UNICEF), and the CDC, urges schools to be opened this fall. They state that there is no evidence of significantly increased community transmission by opening schools. The AAP also believes that "remote learning exposed inequities in education, was detrimental to the educational attainment of all students, and exacerbated a mental health crisis among children and adolescents". [40]

### **July 9, 2021 – Centers for Disease Control and Prevention (CDC) Guidance for COVID-19 Prevention in K-12 Schools**

On July 9, 2021, the Centers for Disease Control and Prevention (CDC) provided guidance that individuals who are not fully vaccinated (age 2 and older) should continue to wear face masks indoors and in crowded settings when physical distancing cannot be maintained. It is recommended that **schools** maintain 3 feet of physical distancing in classrooms. **Schools** should also carry out multiple strategies to prevent the spread of COVID-19. These strategies include: social distancing, face masks, handwashing, screening testing, ventilation, and respiratory etiquette. The CDC emphasized the importance of in-person instruction even when a school cannot implement all prevention strategies. [38]

### **June 10, 2021 – Face Masks, Travel and Transportation – Outdoor Areas**

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The Centers for Disease Control and Prevention (CDC) issued guidance that face masks are no longer required in **outdoor areas** where transportation is provided or at transportation hubs. Transportation includes: airplanes, trains, school buses, subways, buses, taxis, ride-shares, trolleys, cable cars, and ships and boats.

Transportation hub is any location where people await, board, or disembark from public transportation. In these cases, private vehicles are not considered transportation.

If transportation sites or transportation hubs have **outdoor areas** (such as on a ferry or an open-air trolley or bus), wearing a face mask is not required while outdoors **unless otherwise required** by the operator, federal, State, tribal, territorial, or local government. However, the CDC continues to recommend wearing of face masks in these areas by people who are not fully vaccinated to protect themselves and others. [37]



## February 1, 2021 – Face Masks, Travel and Transportation

A **federal order took effect requiring travelers to wear face masks**. According to the order from the Centers for Disease Control and Prevention (CDC), face masks must be worn by passengers on trains, buses, trains and subways, airplanes, ships, taxis and ride-share services as well as any other mode of transportation. The order also requires face masks at all transportation hubs including airports, bus terminals, seaports, train stations, and U.S. ports of entry. [30] This guidance follows President Biden's executive order requiring face masks to be worn on all federal properties. [31]

## March 11, 2020: Centers for Disease Control and Prevention (CDC) Face Mask Recommendation



The **World Health Organization (WHO) declared COVID-19 as a pandemic.**<sup>[2]</sup> The Centers for Disease Control and Prevention (CDC) noted that studies have shown that many people who do not have symptoms of COVID-19 can spread the virus to other people. Because it takes four to fourteen days for someone to show symptoms, they also may infect others without knowing it.<sup>[3]</sup> This means that the virus can be shared between people who are close to each other. For example, people who are speaking, coughing, or sneezing may spread the virus even if they do not have symptoms.  
<sup>[4]</sup> Therefore, the CDC recommends that people over age two wear a face mask in public or where it can be hard to stay six feet apart from others.<sup>[5]</sup>

### **Court Cases: ADA and Face Masks**

#### **Resurrection School v. Hertel**

In a ruling handed down on August 23, 2021, the Sixth Circuit Court of Appeals, upheld a district court ruling that refused to block a mask mandate put in place by the Michigan Department of Health and Human Services. Resurrection Catholic Elementary School sued Elizabeth Hertel, the Director of the Michigan Department of Health and Human Services, claiming the face mask mandate was a violation of their rights to free exercise of religion, equal protection, and due process, because face masks hide faces "made in God's image and likeness." Although the mask mandate in Michigan was lifted before this decision, the Sixth Circuit's decision is important in the event a new mask mandate is imposed. The court relied on a rational basis test, saying the state has a legitimate interest to keep the public safe and that the mandate applied to all elementary schools and did not single out religious education institutions.<sup>[49]</sup>

#### **Pletcher v. Giant Eagle Inc.**

In another case decided on October 23, 2020, in the Federal District Court for the Western District of Pennsylvania, the Court denied a preliminary injunction in the case of Pletcher v. Giant Eagle Inc. If granted, the injunction would have required Giant Eagle Inc. to change its policy of requiring all customers to wear a face mask or other face covering inside their store. In this case, sixty-nine plaintiffs filed a class action suit claiming Giant Eagle Groceries were in violation of Title III of the ADA by denying access to customers who claimed they could not wear a face mask due to their disabilities. In the ruling, U.S. District Judge Nora Barry Fischer determined that the store's face mask policy was a correct interpretation of the Pennsylvania Department of Health's order that face masks are to be worn in public spaces and that those who cannot wear a face mask may instead wear a face shield. Giant Eagle note

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defense that they had in place other modifications to policy and practice consistent with ADA Title III to accommodate customers with disabilities.<sup>[29]</sup>

### **Bunn v. Nike, Inc.**

In July 2020, Bunn v. Nike Inc., San Francisco Superior Court, resulted in a class action settlement for customers who are deaf or hard of hearing. The suit claimed that Nike's policy requiring all retail employees to wear face masks violated the ADA. In the settlement, Nike agreed to make the following changes to address the issues for customers who are deaf or hard of hearing: (1) reasonable modifications to policy, practice, and procedure by requiring employees to wear transparent face masks to provide effective communication; (2) providing guidance to employees about accommodating customers; and (3) posting signs at store entrances notifying customers they can request additional assistance.<sup>[41]</sup>

### **Is there a reason a person might not be able to wear a face mask?**

The Centers for Disease Control and Prevention (CDC) states that a person who has trouble breathing, is unconscious, incapacitated, or otherwise unable to remove the face mask without assistance should not wear a face mask or cloth face covering.<sup>[6]</sup>

### **Examples of a person with a disability who might not be able to wear a face mask**

- Individuals with asthma, chronic obstructive pulmonary disease (COPD), or other respiratory disabilities may not be able to wear a face mask because of difficult or impaired breathing. People with respiratory disabilities should consult their own medical professional for advice about using face masks. The Centers for Disease Control and Prevention (CDC) also states that anyone who has trouble breathing should not wear a face mask.<sup>[7]</sup>



- People with post-traumatic stress disorder (PTSD), claustrophobia (an abnormal fear of being in enclosed or narrow places), severe anxiety<sup>[8]</sup> may feel afraid or terrified when wearing a face mask. These individuals may not be able to stay calm or function when wearing a face mask.



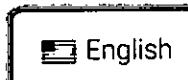
- Some people with autism are sensitive to touch and texture.<sup>[9]</sup> Covering the nose and mouth with fabric can cause sensory overload, feelings of panic, and extreme anxiety.
- A person who has cerebral palsy may have difficulty moving the small muscles in the hands, wrists, or fingers. Due to their limited mobility, they may not be able to tie the strings or put the elastic loops of a face mask over the ears. This means that the person may not be able to put on or remove a face mask without assistance.
- A person who uses mouth control devices such as a sip and puff to operate a wheelchair or assistive technology or uses their mouth or tongue to use assistive ventilators may be unable to wear a face mask.

**If a person with a disability is unable to wear a face mask, do I still have to allow them in my business or government agency?**

The number of federal, state and U.S. territories with face mask mandates changes in response to current outbreak conditions.<sup>[33]</sup> As of July 20, 2021, eight states (California, Connecticut, Hawaii, Illinois, Nevada, New Mexico, New York, and Washington), the District of Columbia, and the territory of Puerto Rico have mask mandates in place.

These mandates vary by state. For the most part, the mandates require face masks to be worn by people who are unvaccinated and not fully vaccinated inside public spaces, public transportation, workplaces, congregate settings and any situation that where six feet of social separation cannot occur. These mandates also include exemptions for children, people with disabilities or medical conditions, and situations where face masks interfere with effective communication.<sup>[26]</sup> These state mandates do not override the consideration of reasonable modifications to policy, practice, and procedure required by the Americans with Disabilities Act (ADA). Many private businesses have also developed policies requiring the use of face masks. The ADA does not have any rules that address the required use of face masks by state and

local governments or private business owners.



If a person with a disability is not able to wear a face mask, state and local government agencies and private businesses must consider **reasonable modifications** to a face mask policy so that the person with the disability can participate in, or benefit from, the programs offered or goods and services that are provided. A reasonable modification means changing policies, practices, and procedures, if needed, to provide goods, services, facilities, privileges, advantages, or accommodations to an individual with a disability.<sup>[10]</sup> It is important to focus on how to provide goods or services to a customer with a disability in an equal manner. This can be done by reasonably modifying your policies, practices, or procedures.

The requirement to modify a policy, practice, or procedure **does not include individuals without disabilities**, as they are not protected under the Americans with Disabilities Act (ADA).

### **Examples of reasonable modifications to a face mask policy**

- Allow a person to wear a scarf, loose face covering, or full face shield instead of a face mask.
- Allow customers to order online with curbside pick-up or no contact delivery in a timely manner.
- Allow customers to order by phone with curb-side pick-up or no contact delivery in a timely manner.
- Allow a person to wait in a car for an appointment and enter the building when called or texted.
- Offer appointments by telephone or video calls.

### **Are there any situations when an agency or business does not have to provide a reasonable modification to the face mask policy?**

There are three reasons under the Americans with Disabilities Act (ADA) that a state or local government agency or private business may not have to provide a reasonable modification.



## Fundamental Alteration

A state or local government agency or private business may not have to provide a reasonable modification if the modification would change the nature of the service, program, activity, goods, services, or facilities.<sup>[11][12]</sup>

A fundamental alteration is a change to such a degree that the original program, service, or activity is no longer the same.<sup>[13]</sup>

- **Example of a fundamental alteration:** A customer requests that a store deliver her items to her home as a reasonable modification so that she does not have to enter the store. The store does not offer a home delivery. Therefore, the store would not have to grant the request for home delivery since it would be a fundamental alteration of their services.

## Undue Burden

A state and local government agency or private business is not required to take any action that it can demonstrate would result in an undue financial or administrative burden. An undue burden is a significant difficulty or expense.<sup>[14][15]</sup>

- **Example of an undue burden:** A person would like to visit city library when no other customers are present. He requests that staff allow him in 30 minutes before the building opens. This might be an undue burden for the library due to limited staffing.

The requirements for showing an undue financial or administrative burden are different for a state or local government agency and a private business.

## State or Local Government Agency and Undue Burden

The head of a state or local government agency or his/her designee are the only ones who can make the decision as to whether a reasonable modification is an undue burden. The decision-maker must provide information in writing with the reasons why the modification is an undue burden.

In determining whether financial and administrative burdens are excessive, all financial resources used to fund the programs, services, or activities of the public entity must be considered. If an action would result in an undue burden, the



local government agency must look for other ways to ensure that individuals with disabilities receive the benefits and services of the program or activity.<sup>[27]</sup>

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## Private Business and Undue Burden

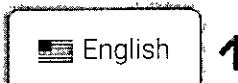
A private business must consider the following things to determine if an action or reasonable modification would result in an undue burden.

1. The nature and cost of the reasonable modification.
2. The overall financial resources of the business making the reasonable modifications; the number of people employed at the business; the effect on expenses and resources of the business; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site.
3. For businesses with multiple sites, consideration is given to the degree of geographic separateness and the administrative or financial relationship of the sites that will make the modification more difficult or expensive.
4. If applicable, the overall financial resources, size, number of employees, and type and location of facilities of the parent corporation or entity (if the business involved in the reasonable modification is part of a larger business).
5. If applicable, an assessment is made of the parent corporation or entity's type of operation, including the structure and functions of the workforce.<sup>[28]</sup>

## Direct Threat

A state or local government agency or private business may not have to provide a reasonable modification to the face mask policy if the individual with a disability poses a direct threat to the health or safety of others.

A direct threat is a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.<sup>[16][17]</sup> The determination that a person poses a direct threat to the health or safety of others may not be based on generalizations or stereotypes about the effects of a particular disability. It must be based on an individual assessment that considers the particular activity and the actual abilities



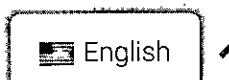
and disabilities of the individual.<sup>[18][19]</sup>

During a pandemic, state and local government agencies and businesses should use the most up to date information from the Centers for Disease Control and Prevention (CDC), the U.S. Department of Labor (DOL) Occupational Safety and Health Administration (OSHA), and the state public health agencies. Because the pandemic threat to health and safety will vary by region, you should consult your local public health agency for guidance.<sup>[20]</sup>

To limit a direct threat from the COVID-19 pandemic, a state or local government agency or private business may impose legitimate safety requirements necessary for safe operation. However, these groups must ensure that their safety requirements are based on real, specific risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.<sup>[21][22]</sup> These safety requirements must be consistent with the ADA regulations about direct threat and legitimate safety requirements, and consistent with advice from the CDC and public health authorities.

To limit a direct threat and have safety requirements in place to address the COVID-19 pandemic, state and local government agencies and businesses may:

- Develop policies and procedures for prompt identification and isolation of people with symptoms of COVID-19, including employees and customers.
- Offer face masks to employees and customers.
- Enforce social distancing guidelines.
- Inform customers about symptoms of COVID-19 and ask sick customers to minimize contact with workers and other customers until they are healthy again.
- Post signs with COVID-19 information in places that sick customers may visit (e.g., pharmacies, hospitals, public health agencies, grocery stores).
- Include COVID-19 information in automated messages sent when messages are sent to customers via phone messages, text, or email; and/or
- Limit customers in-person access by customers to the buildings operated by a state or local government agency or private business, as appropriate.

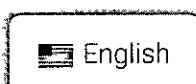


## How should I respond to a request for a reasonable modification to the face mask policy?

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The U.S. Department of Justice (DOJ) issued two settlement agreements that provide guidance on the reasonable modification decision-making process.<sup>[23][24]</sup>

1. A state or government agency should designate at least one person, and a back-up, who are authorized to receive and review requests for reasonable modifications. The decision-maker for a state or local government agency is the head of the public agency or their designee.<sup>[25]</sup> Although not required, private businesses are encouraged to designate a person to receive and review requests for reasonable modifications and make decisions.
2. After receiving a request for a reasonable modification, talk with the individual with a disability to learn why the person needs to modify the face mask policy and to find a solution that meets ADA requirements. Decisions about reasonable modifications should be made in a timely manner.
3. After the discussion, the government agency or private business may:
  1. Agree to the request. In most cases, because the interaction is brief, businesses such as department stores, grocery stores, and pharmacies or government agencies such as the courthouse or drivers' services, will be able to agree to the request. Generally, state and local governments may not ask for documentation of disability as the interactions are brief and in doing so would amount to unequal treatment of people with disabilities.
  2. Deny the request. If a request for modifications is denied, a state or local government agency or private business is encouraged to provide a written statement as to why the request was denied, provide a copy to the person with a disability, and keep a copy on file.
  3. In some unique circumstances where the interaction is not brief (e.g., a college or university that offers students extended residency in dormitories), the school may ask students with non-obvious disabilities for medical documentation about the person's disability that is narrowly tailored and is absolutely necessary to:
    1. Verify that the individual meets the ADA definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities); or
    2. Describe the needed modification; or
    3. Show the relationship between the individual's disability and the need for the requested modification.



## Medical Documentation

The U.S. Department of Justice (DOJ) nor other federal agencies with enforcement authority have not provided specific guidance about whether a store can or cannot ask for medical documentation about a person's inability to wear a face mask due to a disability. Generally, guidance from the U.S. Department of Justice has not allowed asking for documentation for accommodations at businesses where interactions are brief, such as grocery stores or pharmacies. Some places such as medical offices or hospitals may need the medical documentation because a person who is not wearing a face mask may infect other people who are sick.

## Best Practice Tip

Prepare a list of possible alternatives to a face mask/cloth face covering policy that you can share with people with disabilities who request a reasonable modification to your policy. See: [Examples of reasonable modifications to a face mask policy](#) for examples of policy modifications.

## Summary

As the COVID-19 pandemic continues, state and local government agencies and private businesses must make reasonable modifications to allow people with disabilities to access the goods and services they offer. Following ADA requirements for reasonable modifications within federal, state, and local health and safety guidelines will allow you to keep employees and customers safe, reduce new infections, and still provide goods and services to everyone.

## Resources

For more about your rights under the Americans with Disabilities Act (ADA) and how they apply to the coronavirus (COVID-19) pandemic: [ADA, Disability & COVID-19 Resources](#) (adacovid19.org)

For additional information on face coverings and the ADA:

- [Fact Sheet: Healthcare & Face Coverings: Reducing Communication Barriers for Deaf and Hard of Hearing Patients](#)  
Source: ADA National Network, Northwest ADA Center (adata.org)
- [Fact Sheet: Face Coverings and Businesses: Balancing the ADA with Public Health During COVID-19](#)

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Source: Northwest ADA Center ([nwadacenter.org](http://nwadacenter.org))

- **FAQs: The ADA, Small Business and Face Masks**

Source: Great Plains ADA Center ([gpadacenter.org](http://gpadacenter.org))

- **ADA Today Podcast: COVID-19, Face Mask Policies and ADA Title II and III**

Source: Mid-Atlantic ADA Center ([adainfo.org](http://adainfo.org))

- **Webinar Archive: Face Coverings and the ADA – Application of ADA Title III**

Source: ADA Audio Webinar Series: Great Lakes ADA Center

([accessibilityonline.org](http://accessibilityonline.org))

## ADA National Network

For questions and training on the Americans with Disabilities Act (ADA),

contact your regional ADA center at **1-800-949-4232**

or visit the [national website: adata.org](http://adata.org)

— All calls are confidential. **We do not give medical or legal advice.** [Refer

to: [Disclaimer](#)]

## Citation

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#### **Disclaimer:**

**These materials do not constitute legal advice and should not be relied upon in any individual case. Please consult an attorney licensed in your state for legal advice and/or representation.** These materials were prepared by the legal research staff of the Burton Blatt Institute (BBI) at Syracuse University in partnership with the Southeast ADA Center to highlight legal and policy developments relevant to civil rights protections and the impact of court decisions in the Southeast Region under the Americans with Disabilities Act (ADA). These materials are based on federal disability rights laws and court decisions in effect at the time of publication. Federal and state disability rights law can change at any time. In addition, state and local laws and regulations may provide different or additional protections. Materials are intended solely as informal guidance, and are neither a determination of your legal rights nor responsibilities under the ADA or other federal, state, and local laws, nor binding on any agency with enforcement responsibility under the ADA. The accuracy of any information contained herein is not warranted. Any links to external websites are provided as a courtesy and are not intended to nor do they constitute an endorsement of the linked materials.



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Name: Aaron Abadi | [REDACTED] | MRN: 9141633 | PCP: Yelena Karasina, MD

## Letter Details

## EXHIBIT B



**Yelena Karasina, MD**  
**NYU LANGONE AMBULATORY CARE WEST SIDE**  
355 WEST 52ND ST  
NEW YORK NY 10019-6239  
Phone: 646-754-2100  
Fax: 646-754-2148

December 3, 2020

Patient: **Mr. Aaron Abadi**  
Date of Birth: [REDACTED]  
Date of Visit: **12/3/2020**

To Whom it May Concern:

Mr. Aaron Abadi is suffering from extreme sensitivity to touch, mostly in the area of his head. For this reason he is unable to wear face mask or face shield, and should not be required to do so.

He has already recovered from COVID, and is not contagious.

Sincerely,

**Yelena Karasina, MD**

*This letter was initially viewed by Aaron Abadi at 12/7/2020 9:41 AM.*

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## AFTER VISIT SUMMARY

**Aaron Abadi** DoB: [REDACTED] Date: 5/6/2021 3:30 PM Location: Preston Robert Tisch Center for Men's Health 646-754-2000

---

### Instructions from Ian Lustbader, MD



Today's medication changes

START taking:

Accurate as of May 6, 2021 9:17 PM.

Review your updated medication list below.



Pick up these medications at CVS/pharmacy #2716 Cor of Nassau 129 Fulton St, New York, NY 10038-2716 212-233-5021 212-233-7153

Your estimated payment per fill: \$0

Address: 129 Fulton St, New York NY 10038-2716  
Phone: 212-233-5021



Labs ordered today

URINALYSIS (NO CULTURE) WITH REFLEX TO MICROSCOPY

Please complete by 5/6/2021



Return in about 6 months

(around 11/6/2021) for repeat labs, review meds, renew meds, follow up symptoms.

---

### Today's Visit



You saw Ian Lustbader, MD on Thursday May 6, 2021 for:

- [REDACTED]
- [REDACTED]
- [REDACTED]

The following issues were addressed:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Sensory integration disorder
- [REDACTED]
- [REDACTED]

Blood Pressure  
158/93

BMI  
28.05

Weight  
211 lb 10.3 oz

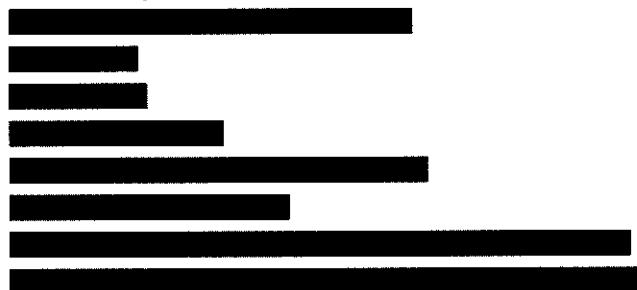
Height  
6' 0.84"

Temperature (Oral)  
98.3 °F

Pulse  
89

Oxygen Saturation  
98%

Done Today



Immunizations Given



## What's Next

JUL 28 2021 New Patient Appointment with John G Zampella, MD  
 Wednesday July 28 1:30 PM  
 Please arrive 15 minutes prior to your appointment time.  
 Bring your insurance card and photo identification.  
 Bring your MD referral/pre-certification (if applicable).  
 Bring a copy of your medical records, recent test results (including labs, X-ray, CT, etc.) that relate to the reason for your visit.  
 Bring the name and phone number of your primary and referring MD.  
 Be prepared to pay any co-payments or patient responsible balances at the time of your appointment.

Preston Robert Tisch Center for Men's Health  
 555 Madison Ave  
 New York NY 10022-3301  
 646-754-2000

SEP 1 2021	Physical with Yelena Karasina, MD Wednesday September 1 11:00 AM Arrive 15 minutes prior to appointment.	NYU Langone Ambulatory Care West Side 355 West 52nd St New York NY 10019-6239 646-754-2100
OCT 27 2021	Follow Up Appointment with Ian Lustbader, MD Wednesday October 27 4:30 PM Arrive 15 minutes prior to appointment.	Preston Robert Tisch Center for Men's Health 555 Madison Ave New York NY 10022-3301 646-754-2000

## NYU Langone Health App & MyChart

- Download the NYU Langone Health app on the [App Store](#) or [Google Play](#) to stay connected to your care anytime and anywhere.
- Sign in with your NYU Langone Health MyChart account username and password.
- You can schedule appointments, view test results, request prescription refills, send secure messages to your providers, have a virtual urgent care visit, and more.

## Your Medication List as of May 6, 2021 9:17 PM

 For your privacy, any medications your clinician marked as private are not included in this list. This message appears even if the list is complete. If you have any questions about a medication you don't see here, contact your doctor. Always use your most recent med list.



START

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]

## Access to Clinical Notes and Test Results

At NYU Langone Health, we believe that sharing information supports patients taking an active role in their health. In support of this, clinical notes and test results are made available to patients in MyChart and the NYU Langone Health App, as soon as they are available. This is in accordance with the 21st Century Cures Act, which is intended to give patients and their healthcare providers secure access to health information. ([www.healthit.gov/curesrule](http://www.healthit.gov/curesrule))

This means that a patient may see test results before their health care provider does. If you do access your test results right away, please keep in mind that some results may be hard to interpret without guidance from a health care professional. All results will be reviewed by members of your care team. They will continue to follow-up with you as they have done in the past.

## Allergies as of 5/6/2021

No Known Allergies

**If you feel that any of the information in this summary is inaccurate, please talk with your healthcare provider.**

## Information About Medication Safety

It is important to keep an updated record of the medications you are taking, and to bring this updated list of medications every time you visit your Health Care Provider and when you come to the hospital. We want to help you in managing your medications safely after your visit or discharge. This includes the potential side effects of your medications. If you have any questions regarding the medications you are taking, please speak to your Health Care Provider or Pharmacist.

## Have questions about your bills?

Our physician and hospital customer service representatives are available to answer any billing questions: <https://nyulangone.org/insurance-billing-financial-assistance>

Physician Billing: 1 - 877 - 648 - 2964

Hospital Billing: 1 - 800 - 237 - 6977

## Finding a Physician Within NYU Langone Health

As one of the nation's premier academic medical centers, NYU Langone Health is devoted to excellence in patient care, education, and research. We are proud that our care team includes leading specialists for every condition.

Should you need assistance finding a physician or service, please visit us on our website at <https://nyulangone.org/doctors>.

To reach us by phone:

NYU Langone Physician Referral Services – (855) 314-2978

NYU Langone Orthopedic Hospital – (888) 453-3627

Family Health Centers at NYU Langone – (718) 630-7942

Additional resources include:

National Suicide Prevention Hotline – **(800) 273-8255**

NYC Suicide Hotline – **(888) 692-9355**

## AIRLINE LIST OF RESPONSES OR VIOLATIONS;

50

airline	Disabled can fly without a mask?	Demands	In violation of
Aer lingus	YES with doctor's letter	None	None
Aeroflot	Nope	Denied Access	ACAA, § 382.19
Aerolineas Argentina	YES with doctor's letter	None	None
Aeromexico	Nope	Denied Access	ACAA, § 382.19
Air Canada	with complicated requirements, maybe	Medical form that passenger is medically able to fly	ACAA, § 382.23 (a).
Air China	Nope	Denied Access	ACAA, § 382.19
Air Europa	YES with doctor's letter	None	None
Air France	YES with doctor's letter	None	None
Air India	Nope	Denied Access	ACAA, § 382.19
Air New Zealand	YES with doctor's letter	None	None
Air Serbia	YES with doctor's letter	None	None
Air Tahiti Nui	with complicated requirements, maybe	updating dr letter	§ 382.33
Air Transat	YES with doctor's letter	None	None
Alaska airlines	Questionable	no advance confirmation if can fly	§ 382.33 (a)
Allegiant Air	Nope	Denied Access	ACAA, § 382.19
American Airlines	Nope	Denied Access	ACAA, § 382.19
ANA All Nippon Airw	YES with doctor's letter	None	None
Asiana airlines	Nope	Denied Access	ACAA, § 382.19
Austrian Airlines	with complicated requirements, maybe	Medical form that passenger is medically able to fly and Covid test	§ 382.33 & 382.23 (a)
AVianca	Nope	Denied Access	ACAA, § 382.19
Azerbaijan airlines	Nope	Denied Access	ACAA, § 382.19
Azul Brazilian airline	Nope	Denied Access	ACAA, § 382.19
British Air	Nope	Denied Access	ACAA, § 382.19
Brussels airways	YES with doctor's letter	None	None
Cathay Pacific airwa	Nope	Denied Access	ACAA, § 382.19
China Eastern Airlin	Nope	Denied Access	ACAA, § 382.19
China Southern Airli	Nope	Denied Access	ACAA, § 382.19
COPA Compania Par	YES with doctor's letter	None	None
Delta	Questionable	no advance confirmation if can fly	§ 382.33 (a)
Egyptair	Nope	Denied Access	ACAA, § 382.19
ELAL	YES with doctor's letter	None	None
Emirates	Nope	Denied Access	ACAA, § 382.19
Ethiopian Airlines	YES with doctor's letter	None	None

## AIRLINE LIST OF RESPONSES OR VIOLATIONS:

51

airline	<u>Disabled can fly without a mask?</u>	<u>Demands</u>	<u>In violation of</u>
Etihad	Nope	Denied Access	ACAA, § 382.19
Eva Airways	Nope	Denied Access	ACAA, § 382.19
Finnair	with complicated requirements, maybe	Medical form that passenger is medically able to fly and Covid test	§ 382.33 & 382.23 (a)
Frontier	Nope	Denied Access	ACAA, § 382.19
Hawaiian Airlines	Questionable	no advance confirmation if can fly	§ 382.33 (a)
Iberia Airlines	with complicated requirements, maybe	Medical form that passenger is medically able to fly & advance notice	§ 382.25 & 382.27 (a) & 382.23(a)
Icelandair	YES with doctor's letter	None	None
Japan Air Lines Co	YES with doctor's letter	None	None
JetBlue	Nope	Denied Access	ACAA, § 382.19
Kenya Airways	Nope	Denied Access	ACAA, § 382.19
KLM	YES with doctor's letter	None	None
Korean Air Lines	Nope	Denied Access	ACAA, § 382.19
Kuwait Airways	Nope	Denied Access	ACAA, § 382.19
LATAM	with complicated requirements, maybe	Medical form that passenger is medically able to fly	ACAA, § 382.23 (a).
Lot Polish Airlines	Nope	Denied Access	ACAA, § 382.19
Mokulele Airlines	Nope	Denied Access	ACAA, § 382.19
Philippine Airlines	Nope	Denied Access	ACAA, § 382.19
Porter Airlines	with complicated requirements, maybe	Medical form that passenger is medically able to fly	ACAA, § 382.23 (a).
Qatar Airways	with complicated requirements, maybe	Medical form that passenger is medically able to fly	ACAA, § 382.23 (a).
Royal Air Maroc	Nope	Denied Access	ACAA, § 382.19
Royal Jordanian Airl	with complicated requirements, maybe	Medical form that passenger is medically able to fly & Vaccine card & negative Covid Test	§ 382.33 & 382.23 (a)
SAS	with complicated requirements, maybe	Medical form that passenger is medically able to fly	ACAA, § 382.23 (a).
Silver Airways	Nope	Denied Access	ACAA, § 382.19
Singapore Airlines	Nope	Denied Access	ACAA, § 382.19
Southwest	Nope	Denied Access	ACAA, § 382.19
Spirit Airlines	Nope	Denied Access	ACAA, § 382.19
Sun Country Airlines	with complicated requirements, maybe	Medical form that passenger is medically able to fly & advance notice & negative Covid Test & more	Most sections
Swiss Air	with complicated requirements, maybe	Medical form that passenger is medically able to fly and Covid test	§ 382.33 & 382.23 (a)

## AIRLINE LIST OF RESPONSES OR VIOLATIONS;

52

airline	Disabled can fly without a mask?	Demands	In violation of
TAP	with complicated requirements, maybe	Medical form that passenger is medically able to fly and Covid test	§ 382.33 & 382.23 (a)
Turkish Airlines	Nope	Denied Access	ACAA, § 382.19
United	Nope	Denied Access	ACAA, § 382.19
Virgin Atlantic	YES with doctor's letter	None	None
Viva Air	Nope	Denied Access	ACAA, § 382.19
Volaris Airlines	Nope	Denied Access	ACAA, § 382.19



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

**GENERAL COUNSEL**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

January 25, 2021

Mr. Aaron Abadi  
82 Nassau Street, 140  
New York, NY 10038

Dear Mr. Abadi:

This letter is in further reference to your disability complaint regarding American Airlines. We were sorry to hear of the incident and appreciate the opportunity to advise you of the outcome of our investigation. Enclosed you will find an Investigation Summary Sheet that details the results of our investigation, which was based on the Air Carrier Access Act (ACAA), 49 U.S.C. Section 41705, and our implementing rule, 14 CFR Part 382.

In particular, the Investigation Summary Sheet identifies the applicable section of 14 CFR Part 382, provides a brief summary of that section and explains this office's view on whether the carrier has violated the ACAA and 14 CFR Part 382. If your complaint raises more than one disability issue, an additional Investigation Summary Sheet has been attached to address each issue.

If we believe the complained of incident involves a violation, the Investigation Summary Sheet indicates the action that we plan to take. We will either pursue formal enforcement action or by copy of this letter notify the airline specified in your complaint of our determination and warn it that any similar incidents could lead to formal enforcement action. Generally, we will pursue enforcement action on the basis of a number of complaints from which we may infer a pattern or practice of discrimination. However, where one or a few complaints describe particularly egregious conduct on the part of a carrier and those complaints are supported by adequate evidence, we will pursue enforcement action as our resources permit. If we decide to seek enforcement action against the airline, your complaint will be among those considered in the context of this action, which may lead to the issuance of a cease and desist order and to the assessment of civil penalties. In the event that this enforcement action leads to litigation, it is possible that we may need sworn statements or witnesses for a hearing. We will advise you if, in fact, we need your further help.

For your information, in an enforcement case, the U.S. Department of Transportation is limited to issuing cease and desist orders and assessing civil penalties not to exceed \$34,174 per violation. Such action can only be accomplished through settlements or formal hearings before administrative law judges. We cannot order compensation for aggrieved parties. To obtain a personal monetary award of damages, a complainant would have to file a private legal action that may be based on private contract rights or on civil rights statutes that provide for a private right of action.

If we have insufficient evidence or it appears that the airline specified in your complaint has not violated the ACAA, we will not pursue enforcement action. Notwithstanding our decision not to pursue enforcement action, however, private legal action may be pursued in the courts based on private contract rights or on civil rights statutes that provide for a private right of action and, in such a proceeding, monetary damages may be sought.

Regardless of whether the airline has been determined to have violated the ACAA, we have entered your complaint in our computerized industry monitoring system, and the carrier's ACAA complaint totals in our

monthly *Air Travel Consumer Report* reflect your complaint. Our monthly report is made available to the aviation industry, the news media and the general public so that both consumers and air travel companies can compare the overall complaint records of individual airlines, as well as the number of disability complaints filed against particular carriers. This system also serves as a basis for rulemaking, legislation, and research.

Moreover, we also routinely monitor our complaint records to determine the extent to which carriers are in compliance with the ACAA and to track trends or spot areas of concern which we feel may warrant further action. This ongoing process also enables us to ensure prompt corrective action whenever we determine that an airline's policies or procedures are not in compliance with our ACAA regulations. Your complaint will be among those considered in the context of this overall process.

I hope this further information is useful. Thank you again for taking the time to contact us.

Sincerely,

Livaughn Chapman, Jr.  
Deputy Assistant General Counsel  
for Aviation Consumer Protection

By: Robert Gorman  
/s/  
Senior Attorney

Enclosures  
cc: American Airlines



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

**GENERAL COUNSEL**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

## **INVESTIGATION SUMMARY SHEET**

<b>Case Number:</b>	AT2019010090
<b>Complainant Title:</b>	MR.
<b>Name:</b>	AARON ABADI
<b>Address:</b>	82 NASSAU STREET, 140 NEW YORK, NY 10038
<b>Passenger(s):</b>	Aaron Abadi
<b>Airline:</b>	American Airlines
<b>Travel Date(s):</b>	1/28/2019
<b>Flight Number(s):</b>	AA 1638
<b>City Pair:</b>	RSW-CLT
<b>Location of Incident:</b>	Charlotte International Airport
<b>Complaint/Issue:</b>	Preboarding
<b>Applicable Section of 14 CFR Part 382:</b>	382.93
<b>Section Summary:</b>	382.93  As a carrier, you must offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated.
<b>Rule Violated?</b>	Yes
<b>Remarks:</b>	In the January 31, 2019, complaint against American Airlines (American), Mr. Abadi states that he did not receive preboarding assistance. Mr. Abadi describes that he has a knee disability and was provided wheelchair assistance to the departure gate. Mr. Abadi explains that he requested preboarding at the counter before boarding began for his flight. He states that he was advised that he could board any time after group one. Mr. Abadi states that he complained to a customer service agent who initially advised him as the counter agent did that he could board after group one. However, he states that the customer service agent later stated otherwise. He concludes that a

boarding agent assisted him to board once the aisle was clear onboard.

In its response dated February 28, 2019, American stated that Mr. Abadi should have been provided the opportunity to pre-board when he approached its counter agent. American stated that it was in violation of Part 382 in this instance.

Pursuant to Section 382.93, carriers must offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated.

Here, based on the information provided and American's own admission, we find that American violated Part 382 in this case. Mr. Abadi requested preboarding due to his disability but it was not provided. If we decide to seek enforcement action against American with respect to this issue, this complaint will be among those considered, which may lead to the issuance of a cease and desist order and the assessment of civil penalties. The carrier is warned in this instance.

## Secure Message

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**Sent Date:** 09/05/2021 01:13 AM

**From:** Department of Labor

**To:** AARON ABADI

**Priority:** NORMAL

**Subject:** End of Unemployment Benefits

Dear AARON ABADI:

This letter is proof that you have received all regular Unemployment Insurance benefits available on your current claim. This means you have received the maximum 26 weeks (104 effective days) of benefits on your claim with a benefit year ending 03/14/2021.

You cannot receive any more regular Unemployment Insurance benefits on this claim. Please note that there are no extensions of Unemployment Insurance benefits available beyond 26 weeks.

We encourage you to continue working with your local New York State Career Center to find a job. To find your closest Career Center, go to <http://labor.ny.gov/career-center-locator/> [<http://labor.ny.gov/career-center-locator/>] or call our Contact Center at 1-888-4 NYSDOL (1-888-469-7365). Services offered include:

- \* Help with resume writing and interviewing skills;
- \* Career advice and guidance;
- \* Skills assessments to help determine jobs you might be suited for;
- \* Job-hunting workshops;
- \* Information about jobs available in a particular area or industry (labor market information);
- \* Job referrals and;
- \* Information about training opportunities and referrals to training when appropriate.

Career Services are available at no charge to you.

We also recognize that the ending of your Unemployment Insurance benefits may create a serious financial hardship for you and your family. Please go to [www.mybenefits.ny.gov](http://www.mybenefits.ny.gov) [<http://www.mybenefits.ny.gov>] to see what programs may be available to help you with food, shelter, health insurance and other needs.

For the Commissioner of Labor,

By: Unemployment Insurance Division

[aa@neg.com](mailto:aa@neg.com)

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**From:** aa@neg.com  
**Sent:** Monday, November 1, 2021 12:02 AM  
**To:** alex.taday@dot.gov  
**Attachments:** ABADI V DOT Appeal petition to review 2nd C.pdf

Dear Mr. Taday,

I just filed the attached petition in the 2<sup>nd</sup> Circuit Appellate Court in NY, for the court to review the DOT failure to act regarding mask disabilities and the fact that the airlines have been discriminating against us and our disabilities. I'm certain that you're working hard and possibly overwhelmed by the amount of blatant disregard the airlines have had and continue to have to the ACAA laws and the office that you head, and its jurisdiction.

I want to be very clear with you. I appreciate what you and your team do. The reason that I filed this, is because I do not think the DOT is set up properly to handle a situation of this magnitude, and I have asked the court to weigh in on this question.

My only goal here is to resolve these issues.

As I mention in the petition, to understand my point, try to imagine if for some reason all airlines decided to discriminate against a specific race or religion, and refused to allow them to fly, wouldn't the DOT be expected to do something immediately and not just put it into the same multi-year queue as all other simpler cases?

I'm open to discuss and try to figure out a resolution to these issues, if we can. Otherwise, I look forward to the Judge's determination and decision.

Once again, thank you for the work you do to help the disabled.  
May God bless you!

*Aaron Abadi*  
Cell 516-639-4100

[aa@neg.com](mailto:aa@neg.com)

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**From:** [REDACTED]  
**Sent:** Saturday, January 29, 2022 11:45 AM  
**To:** Taday, Alex (OST)  
**Subject:** Southwest Airlines Complaints - Status Check  
**Attachments:** 2022-0104 Southwest Airlines Official Response.pdf

Mr. Taday,

I'm checking on the status of the numerous complaints that I've filed related to Southwest Airlines. Since the entry of the violation notice where DOT indicated that no penalty action was taken against Southwest Airlines because they amended their policy, Southwest has continued with the very same discriminatory behavior related to any flights I've requested despite my legitimate ADA classified disability that prevents me from being medically able to wear and tolerate a facial covering. When will your office get around to actually doing something related to these complaints?

I've attached the latest response from Southwest to most of my complaints where they even admit to violating ACAA and attempt to justify the violations by stating that the CDC has said they can do it. Sorry, that's just not how law works. Apparently they think they are above the law. But at the end of the day, it appears the responsibility to correct these illegal acts is in the hands of your office! So why is your office not able to protect the civil rights of the disabled in the United States?

Thank you.  
[REDACTED]

Sent with [ProtonMail](#) Secure Email.

## Southwest Airlines Response to your Inquiry (Case #33242982)

From: Southwest Airlines <no-reply@southwest-communications.com>

To: [REDACTED]

Date: Tuesday, January 4th, 2022 at 4:49 PM



Dear [REDACTED]

We received your emails, completed mask exemption applications, and a copy of your correspondence to the Department of Transportation Office of Aviation Enforcement and Proceedings, as well as your correspondence to the Virginia State Attorney General which were both forwarded to our office.

The Centers for Disease Control (CDC) has made clear that appropriately worn masks reduce the spread of COVID-19—particularly given the evidence of pre-symptomatic and asymptomatic transmission of COVID-19. Per?Department of Transportation (DOT) regulation (14 CFR §382.21), a Passenger with a communicable disease or infection, such as COVID-19, may pose a direct threat to the health and safety of others onboard an aircraft.?

As you are aware, Southwest began requiring that Customers wear masks (with some exceptions) on May 11, 2020, and adopted a strict enforcement policy with only children under two being excepted on July 27, 2020.

On January 29, 2021, a federal mask mandate was issued -- the Centers for Disease Control and Prevention (CDC) issued an order requiring that passengers and employees wear masks on airplanes and in the airport. This federal mask mandate took effect on February 1, 2021, and currently remains in effect through March 18, 2022.

Per the federal mask mandate, each person (ages 2 and over) must wear a mask at all times in the airport and throughout the flight, including during boarding and deplaning. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.

As of March 21, 2021, and in accordance with the federal mask mandate, Southwest has an exemption policy in place for passengers with disabilities who are unable to wear a mask due to their disability.

As permitted by the CDC Order and DOT Notice, Southwest has imposed the requirements and conditions listed on our web site. Some of these conditions include (a) may require a medical consultation by a third party; and (b) medical documentation by a licensed medical provider. Indeed, our exemption process requires that Customers submit an application and physician's note at least seven days prior to travel, and we approve exemption requests on a case-by-case basis based on guidance from a third-party medical provider.

Southwest is fully aware of all laws and regulations protecting passengers with disabilities. We are active in the airline industry in sharing best practices about how best to accommodate passengers with disabilities. I also want to assure you that Southwest Airlines strictly prohibits discrimination of any form.

We understand you are disappointed with our previous denials of your mask exemption applications on May 21, 2021, and October 21, 2021. Specific to your May 21 application, the reason(s) provided for your not being able to wear a mask were nonspecific. Your updated mask exemption application sent on October 21, 2021, references Tourette's Syndrome (as do your subsequent mask exemption applications). We confirmed with our third-party medical provider that Tourette's Syndrome does not qualify someone for an exemption to the federal mask mandate. As our decision was based on Safety, we did not fail to comply with federal regulations in either case.

With this in mind, Southwest again conducted an individualized assessment of the information provided by you in (a) and (b) above with respect to the updated, completed mask exemption applications you sent us on November 28, 2021, and December 19, 2021. The mask exemption application you sent on December 24, 2021, did not include the required physician's letter, but we understand you included it in prior applications. We regret to inform you that our third-party medical provider has concluded that you still do not qualify for a disability-based exemption. As such, we cannot transport you at this time if you are unable to wear a mask. We apologize for any inconvenience.

Along these lines, and as we have explained previously, to ensure that only qualified persons are granted exemptions to travel without a mask, the CDC Order allows airlines to impose certain requirements or conditions on a person seeking an exemption from the mask requirement. The TSA Security Directive made clear that "this is a narrow exception" and CDC guidance states this exemption "is not meant to cover persons for whom mask-wearing may only be difficult or whose disability does not prevent them from wearing a mask or wearing a mask safely." Further, "Persons who experience discomfort or anxiety while wearing a mask without imminent threat of harm would not qualify for this exemption." Accordingly, Southwest is careful to approve mask exemptions only for those who meet the strict criteria set forth in the CDC Order. We are not failing to comply with federal regulations in this regard.

We agree that, as a default, an airline cannot ask for advance notice from a passenger with a disability, in order to travel. However, one of the conditions allowed by the CDC Order (federal mask mandate) is that persons seeking an exemption from the requirement to wear a mask may have to request an accommodation in advance. As permitted by the CDC Order, Southwest does request that Customers submit an application in advance. We are not failing to comply with federal regulations in this regard.

We do not require passengers seeking a mask exemption, or passengers whose mask exemption applications have been approved, provide a medical certificate in order travel. We are not failing to comply with federal regulations in this regard.

Although allowed by the CDC Order, Southwest does not currently require that a person with a mask exemption travel at less crowded times, travel on less crowded conveyances, or sit in a specific area of the cabin. We are not failing to comply with federal regulations as such.

As allowed by the CDC Order, we do require passengers who have been approved for a mask exemption submit a qualifying COVID-19 test prior to scheduled departure. Again, this decision is based on Safety, and that a passenger with a communicable disease or infection, such as COVID-19, may pose a direct threat to the health and safety of others onboard an aircraft. We are not failing to comply with federal regulations in this regard.

Bottom line, I understand this is disappointing. Should a customer purchase tickets for travel while the mask mandate remains in effect and they are not approved for an exemption from the mask mandate, we will refund their tickets on request. Our records indicate that you currently do not have travel booked with us for a future flight, and have not had travel booked with us in the past which was canceled as a result of the mask mandate and/or your mask exemption application.

Regardless, I am sorry for your continued frustration.

As much as anyone else, we are eager for things to get back to "normal," and we ask for your patience as we all work together to get there.

Sincerely,

Elena Scott  
Senior Specialist, Customer Advocacy  
Southwest Airlines

The case numbers for your emails are 33242982, 33344713, 34418636, 35387339, 36600698, 36870157, and 36744456. This email is being sent from a "no-reply" email address. You may

follow-up with us on our website. Additionally, although you have already done so, by law, I'm required to inform you that should you wish to pursue this matter further, you may contact the U.S. Department of Transportation.

[southwest.com](http://southwest.com) | [Flight](#) | [Hotel](#) | [Car](#) | [Rapid Rewards](#) | [Travel Tools](#)

This is a post-only mailing from Southwest Airlines. Please do not attempt to respond to this message.

Southwest Airlines  
2702 Love Field Drive  
Dallas, TX 75235

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ref:\_00Df43k1z.\_5005GriPAD:ref

## SAMPLING OF AIRLINE DISCRIMINATIONS

[abadi.rne@gmail.com](mailto:abadi.rne@gmail.com)

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**From:** Tatsiana Karalevich <TKaralevich-x@aeroflot.ru>  
**Sent:** Wednesday, November 24, 2021 2:59 PM  
**To:** ABADI.RNE@GMAIL.COM  
**Cc:** alex.taday@dot.gov  
**Subject:** AT2021110006 - (AARON ABADI) MG2300  
**Attachments:** AT2021110006\_2\_ES.pdf; AT2021110006\_1\_ES.pdf

Dear Mr. Abadi,

On January 29, 2021, the Centers for Disease Control and Prevention (CDC) issued an order requiring carriers to “transport only persons wearing masks” and to “use best efforts to ensure that masks are worn when embarking, disembarking, and throughout the duration of travel. The CDC Order included an exception for “a person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disability Act (42 U.S.C. 1201 *et seq.*).”

The CDC Order also states:

This is a narrow exception that includes a person with a disability who cannot wear a mask under this exception.

The following narrow subset of persons with disabilities **are** exempt from CDC’s requirement to wear a mask: A person with a disability who, for reasons related to the disability, would be physically unable to remove a mask without assistance if breathing becomes obstructed. Examples might include a person with impaired motor skills, quadriplegia, or limb restrictions.

A person with an intellectual, developmental, cognitive, or psychiatric disability that affects the person’s ability to understand the need to remove a mask if breathing becomes obstructed.

The following persons with disabilities **might** be exempt from CDC’s requirement to wear a mask based on factors specific to the person:

A person with a disability who cannot wear a mask because it would cause the person to be unable to breathe or have respiratory distress if a mask were worn over the mouth and nose. A person with a condition that causes intermittent respiratory distress, such as asthma, likely does not qualify for this exemption because people with asthma, or other similar conditions, can generally wear a mask safely.

A person with a disability requiring the use of an assistive device, such as for mobility or communication, that prevents the person from wearing a mask and wearing or using the assistive device at the same time. If use of the device is intermittent and the person can remove the mask independently to use the device, then a mask must be worn during periods when the person is not using the device.

A person with a severe sensory disability or a severe mental health disability who would pose an imminent threat of harm to themselves or others if required to wear a mask. Persons who experience discomfort or anxiety while wearing a mask without imminent threat of harm would not qualify for this exemption.

Order: Wearing of face masks while on conveyances and at transportation hubs | Quarantine | CDC

Based on the evidence provided, we shall conclude that the condition described by you is not sufficiently severe to qualify for an exemption and enable you to travel without wearing a mask. We also conclude your complaint does not indicate Aeroflot violated any requirement specified in part 382 of the Department of Transportation Regulations. Although we assume you already know this since you have already complained to the Department of Transportation, we also advise you that you can file a complaint with the Department of Transportation.

We apologize for the inconvenience.

Kind regards,  
Tatsiana.

**От:** [alex.taday@dot.gov](mailto:alex.taday@dot.gov)

**Дата:** 5 ноября 2021 г. в 11:27:26 GMT-4

**Кому:** [nuctosu@aeroflot.ru](mailto:nuctosu@aeroflot.ru), Зеленин Вадим Олегович <[vzelenin@aeroflot.ru](mailto:vzelenin@aeroflot.ru)>

**Копия:** [alex.taday@dot.gov](mailto:alex.taday@dot.gov)

**Тема:** AT2021110006 - (AARON ABADI) MG2300

**ВНЕШНЯЯ ПОЧТА:** Если вы не знаете отправителя – не открывайте вложений, не переходите по ссылкам, не пересылайте конфиденциальную информацию и никогда не вводите свой корпоративный логин и пароль.

**EXTERNAL EMAIL:** If the sender is unknown, do not click on links/attachments.  
Never give out confidential information, especially your corporate user ID or password.

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Dear Customer Relations Official:

Enclosed is a copy of a letter this office recently received. I am forwarding it to you because it requires immediate attention and involves disability issues which may be covered by the Air Carrier Access Act (ACAA). The complainant has been advised of this referral.

Within 30 days of the date of this letter, please send a dispositive written response directly to the complainant, and provide me with a copy of your reply. This is to place you on notice that, in accordance with the ACAA, as amended on April 5, 2000, by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Air 21), we must investigate each disability-related complaint we receive, which could include an on-site examination of records and procedures at your company. Your response to the enclosed complaint should specifically address the facts alleged in the complaint, agree or deny that a violation occurred, and provide any other relevant mitigating or explanatory material.

In the event that we disclose information to your office in the course of this investigation, including information that if released to an unauthorized third party could reasonably be expected to constitute an unwarranted invasion of personal privacy, your office should maintain the confidentiality of such documents. Such documents could include, but are not limited to, personnel records, medical condition descriptions or records, or names and addresses of parties or witnesses.

In your response to this office, please include copies of any correspondence received or sent by the carrier relating to the incident at issue, including any correspondence under 14 CFR 382.155, as well as any relevant documentation prepared by the carrier or any of its employees regarding the incident at issue.

As you are aware, 382.155 of our regulations outlines the requirements for dispositive airline responses to disability complaints, which an airline receives, that are postmarked 45 days or less from the incident in question. Such responses are required to state whether or not the carrier believes that the complaint constitutes a violation of the regulation. If the carrier agrees that a violation has occurred, the carrier must state what corrective action has been taken. If the carrier denies that a violation has occurred, the response must include a summary of the facts and the

carrier's reasons justifying that determination. The failure to provide a dispositive response as required by 382.155 could itself lead to enforcement action. However, notwithstanding whether that section applies to the enclosed complaint, your response to this letter is needed for our investigation of this matter, as mandated by Air 21. Any failure to respond voluntarily to this complaint, or any other disability complaints referred by our office, could lead to further legal action.

In addition, please be aware that when submitting material to the Department that you wish to remain confidential, you should request confidential treatment of the material and reference 14 CFR 302.12, which governs public disclosure of information. We have been recently advised that certain material received during the course of an investigation may be subject to release under the Freedom of Information Act during the investigation. While we cannot guarantee that a confidentiality request will be fully honored, such a request will ensure that you will receive the advantage of this regulation and get notice before any covered material is released.

Sincerely,

Alexander A. Taday III  
Director of Civil Rights Advocacy  
Office of Aviation Consumer Protection  
US Department of Transportation

**Case Number: AT2021110006**

**Consumer Information**

Inquirer Type	Name	Address	E-mail Address	Office Phone	Home Phone
AA	MR AARON ABADI	82 NASSAU STREET, APT. 140 NEW YORK NY 10038	ABADI.RNE@GMAIL.COM	5166394100	5166394100

**УВЕДОМЛЕНИЕ О**

**КОНФИДЕНЦИАЛЬНОСТИ:**  
Передаваемая информация предназначена только для физического или юридического лица, которому она адресована, и может содержать конфиденциальные материалы.

Любой просмотр, повторная передача, распространение или другое использование, или принятие каких-либо действий на основании этой информации лицами или организациями, кроме предполагаемого получателя, запрещены. Если вы получили это по ошибке, свяжитесь с отправителем и удалите материал с любого компьютера.

**PRIVACY NOTICE:**  
The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential material. Any review, retransmission, dissemination or other use of, or

**Complaints Information**

**Complaint CodeCarrier NameFlight DateFlight Itinerary**

MG2300 AEROFLOT

**Description of Problem/Inquiry**

I have a medical disability, specifically a sensory integration disorder, and I cannot wear a mask or a face shield. I notified the airline with a copy of a doctor's letter attesting to my inability to wear a mask. Additionally, the doctor's letter attests to the fact that I already had Covid in 2020. CDC very clearly states that "Covid reinfection is rare," and therefore, I do not pose a significant health risk. The airline emailed me on September 20, 2021 that I cannot fly with them without a mask. This is frustrating and unfair. As a disabled person they're required to accommodate me. This is blatant discrimination against me due to my disability. The DOT made it very clear to all the airlines that they must honor such exemptions, but seemingly this airline does not care. There is no itinerary listed, as I am waiting to be approved to travel before paying money to book tickets.

taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

[abadi.rne@gmail.com](mailto:abadi.rne@gmail.com)

---

**From:** Customer Care <CustomerCare.serviceclient@aircanada.ca>  
**Sent:** Friday, November 12, 2021 4:36 PM  
**To:** Aaron Abadi  
**Cc:** Alexander Taday  
**Subject:** RE: [EXT] Re: AT2021110008 - (AARON ABADI) MZ2300 AC:000192000006144

Dear Mr. Abadi,

Thank you for the follow-up email. I am truly sorry you remain dissatisfied with Air Canada.

Although there is little more I can add to my initial explanation, I understand your disappointment.

To look after the special needs of customers, we have specially trained agents at our Call Centre Medical (MEDA) desk. We ask that you contact them directly regarding your request for mask exemption. Please note, the medical certificate must be completed – at <https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/en/covid-medical-certificate-en.pdf>. As well, there is a requirement to provide a negative COVID-19 test; the test must be taken within 72 hours of each flight departure.

You can contact MEDA at the following:

**Phone:**

1-800-667-4732 (toll-free for Canada and the United States)  
1-514-369-7039 (long distance charges apply)

**Hearing Impaired (TTY) Reservations:**

1-800-361-8071 (toll free)

**Fax:**

1-888-334-7717 or 514-828-0027 (Canada and the United States)

**Email:**

acmedical@aircanada.ca

We would like to thank you, once again for contacting us, Mr. Abadi. We recognize we did not leave you with a favourable impression on this occasion but we look forward to an opportunity to provide you with a more positive customer service experience in the future.

We appreciate this opportunity to review your concerns.

Sincerely,  
MaryAnn Hough  
Customer Relations



To serve you best, I kindly ask that you do not change the subject line if responding to this email.

----- Original Message -----

**From:** Aaron Abadi <abadi.rne@gmail.com>;  
**Received:** Fri Nov 12 2021 13:26:18 GMT-0700 (Mountain Standard Time)  
**To:** Customer Care Email <customercare.serviceclient@aircanada.ca>;  
**Cc:** Alexander Taday <alex.taday@dot.gov>;  
**Subject:** [EXT] Re: AT2021110008 - (AARON ABADI) MZ2300 AC:000192000006144

**CAUTION!** External email: Please do not click links or open attachments unless from a trusted sender.

**ATTENTION!** Courriel externe: N'ouvrir ni liens ni pièces jointes, sauf si l'expéditeur est fiable.

FYI

Aaron Abadi

On Nov 12, 2021, at 3:24 PM, Aaron Abadi <abadi.rne@gmail.com> wrote:

"Air Canada is able to request that a passenger provide us with a Medical Certificate completed by their physician when there is medical reasonable doubt that the passenger can complete the flight safely without requiring extraordinary assistance during the flight."

You know very well that there is and was no reason to suggest that I may have any issue completing flight safety.  
I guess you are just gaslighting.

You have no right within the ACAA laws to treat someone with a disability different than those without. Does every person who requests a wheelchair have to provide proof that they can complete the flight safety?! Of course, not.

You are in violation of the ACAA laws, but even worse than that, your actions and policies are a violation of human rights.

SHAME ON YOU!

Aaron Abadi

On Nov 12, 2021, at 2:50 PM, Customer Care  
<CustomerCare.serviceclient@aircanada.ca> wrote:

Your case number is: CAS-3938600-X2Y5P9

Dear Mr. Abadi,

Your concerns submitted to the U.S. Department of Transportation (DOT) has been forwarded to Air Canada Customer Relations for our review.

We appreciate your comments regarding your experience with Air Canada and we thank you for the time you have taken to share your observations and the opportunity to reply. I do apologize in advance for the length.

I would first like to assure you that Air Canada is committed to making air travel safe, accessible, and comfortable for our customers with disabilities.

And I'm so sorry to learn we have not met your service expectations. On behalf of Air Canada, I sincerely apologize for your disappointments.

Our records indicate you emailed Air Canada's Medical Assistance (MEDA) Desk requesting a mask exemption, and then submitted a complaint to the DOT about our policy. Regretfully, we could not locate any other correspondence with you where we actually provided our policy.

Disability laws require that air carriers abide by specific guidelines and we take this obligation very seriously. Based on the information currently available, I must tell you that Air Canada was not in violation of the American disability discrimination law. According to the US Department of Transportation's Rule on "Non-Discrimination on the Basis of Disability in Air Travel" (14 CFR Part 382), Air Canada is able to request that a passenger provide us with a Medical Certificate completed by their physician when there is medical reasonable doubt that the passenger can complete the flight safely without requiring extraordinary assistance during the flight.

The above said, you provided Air Canada with a doctor's letter - which is not sufficient. The Air Canada mask exemption medical certificate must be completed - at <https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/en/covid-medical-certificate-en.pdf>. Once that has been submitted, the MEDA desk will review and advise if the mask exemption is approved. As well, there is a requirement to provide a negative COVID-19 test; the test must be taken within 72 hours of each flight departure.

For clarification of our policies regard this matter and to request medical approval, please follow the steps at the following link provided below at least 48 hours before departure.

<https://www.aircanada.com/ca/en/aco/home/plan/accessibility.html>

Once you are approved for a mask exemption, it will be valid for one year. However, please note, you are required to contact MEDA for each booking made to ensure the exemption is validated and added to each reservation.

If you feel I have not understood or properly addressed your complaint or if you simply have questions or additional comments to share, it would be my pleasure to speak with you.

Mr. Abadi, please know we take our obligation to meet the needs of all our travellers very seriously and we appreciate hearing about your experience. Learning from our customers with

disabilities is one of the best ways we have to gauge our service and we will do everything possible to bring about positive change from what you have shared with us. Thank you again.

Sincerely,  
MaryAnn Hough  
Special Assistance Representative  
Executive Centre, Customer Relations



To serve you best, I kindly ask that you do not change the subject line if responding to this email.

aa@neg.com

---

**From:** ACAA <acaa@allegiantair.com>  
**Sent:** Tuesday, November 9, 2021 12:52 PM  
**To:** AA@NEG.COM  
**Cc:** Taday, Alex (OST)  
**Subject:** AT2021100031 - (AARON ABADI) MG2300 - Allegiant Confirmation #NONE

Dear Mr. Abadi,

On behalf of Allegiant, I am responding to the complaint you submitted to the Department of Transportation (DOT) regarding a Face Mask Exemption. Allegiant strives to provide an excellent experience for all of our customers and sincerely regrets that you had a less than positive experience.

As you know, the US Centers for Disease Control (the "CDC") has issued an Order which now legally requires masks to be worn by all persons traveling by air. (42 U.S.C. 264) That Order allows for only very narrow exceptions to the mask requirement. Specifically, the Order states that air carriers are authorized to provide an exception to the mask requirement for those whose physical disability renders them unable to wear a mask, or those who are unable to remove their own mask without assistance. The CDC Order further authorizes air carriers to implement policies, procedures and requirements to comply with the new law. Because safety for our passengers and crews is always Allegiant's top priority, we review and consider passenger requests to travel mask-free very carefully.

Allegiant received a letter from Dr. Yelena Karasina, dated December 3, 2020, requesting a Face Mask Exemption on your behalf. The letter stated you are "suffering from extreme sensitivity," but does not state your "sensitivity" is a disability or qualifies as a disability. Within an email, dated September 1, 2021, you identified yourself as a person with a disability, citing "Sensory Integration Disorder." The letter also states you have "recovered from COVID, and is not contagious." However, the letter does not provide a date when COVID was diagnosed and the letter was written approximately 9 months prior to your request for an exemption.

After careful review of the letter from Dr. Yelena Karasina, it was determined Allegiant would not be able to honor your request to fly without a mask because your circumstance does not fit within the very narrow category of legally permitted exceptions. Sensory Integration Disorder is not a qualifying disability for a Face Mask Exemption. As standard procedure, Allegiant offered a full refund if you were unable to travel without a compliant Face Mask. However, Allegiant did not have a record of an active reservation in your name.

According to ACAA Title 14 CFR Part 382 an air carrier must admit or deny a violation to the DOT after receiving a written disability complaint. In this instance, Allegiant will deny a violation when reporting to the DOT.

Again, we sincerely regret any frustration and inconvenience you may have experienced.

Sincerely,

Jana

**Jana Leonard**  
**Manager ~ ACAA/ DOT Compliance**  
**& Small Claims**  
**Corporate Complaint Resolution Official**  
**(CCRO)**  
 P.O. Box 371477, Las Vegas, NV 89137  
[ACAA@allegiantair.com](mailto:ACAA@allegiantair.com) | [www.allegiant.com](http://www.allegiant.com)





### **Finnair's response to complaint**

Name of the passenger: [Redacted as this statement contains sensitive personal information]

Date of incident / service concerned: September 3, 2021 / Finnair's email to passenger regarding the use of face masks on flights

DOT Case Number / Complaint Code: AT2021100033 / MG2300

#### **Description of the incident**

On September 2, 2021 passenger was in contact with Finnair Medadesk requesting exemption for the rule of wearing a facial mask due to his medical disability. On September 3, 2021 passenger received a response email from Finnair Medadesk describing the general requirements on using facial mask. The email also stated that if passenger wishes to seek exemption from wearing a mask on Finnair flights, Finnair requires a MEDIF form and a negative Covid-19 test not older than 72 hours.

On October 12, 2021 Finnair received a claim from DOT where the passenger claims at being discriminated due to his disability. Finnair denies having discriminatory processes in place and maintains having followed applicable regulations and recommendations.

Finnair is not aware that the passenger would have a valid booking at the moment.

#### **Finnair's response**

As an airline, we want to ensure safe travel for all our customers, and that is also our responsibility. In health safety measures we rely on the instructions given by European Aviation Safety Agency: they have issued to airlines an Aviation Health Safety Protocol document, which outlines the health safety measures for protecting air travelers and crew, and these include face mask usage. We have also reviewed our health and safety measures with the Finnish aviation authority Traficom. Finnair requires a mask to be worn in order to protect the health of the passengers according to applicable laws and recommendations.

If a person cannot use a face mask for health reasons, they need to fill in a standard medical information form for air travel and deliver it to us 48 hours before the journey. Typically, the reason behind not being able to wear a face mask has to do with respiratory issues. If a customer has respiratory problems, it is possible that they are not fit to fly, but flying may endanger their health, and that is why we need the medical information form to be able to see if it is safe for the customer to fly. This is also in line with EASA instructions, which state that when not being able to use a face mask is justified due to medical reasons, the reason must be documented in a doctor's certificate. The objective of the mandatory use of face masks is to protect people's health.

Finnair requires a PCR test from all passengers that wish to be exempted from wearing a mask which is based on the need to protect people's health and applicable laws. In addition, the United States requires such test from all passengers, not exempted and exempted from wearing a mask and vaccinated and non-vaccinated passengers. The United States requires that all passengers who have recovered from the disease to provide a proof of a positive test result obtained maximum of 90 days prior the flight to be able to travel without a test. In the European Union the corresponding time limit is 6 months from the recovery. It can be concluded from Passenger's medical certificate that he has been concluded as recovered by the doctor 12.3.2020, almost a year ago.

Our right to demand that customers wear a mask is also set out in our conditions of carriage, which every customer approves when purchasing a Finnair flight ticket. Based on the conditions of carriage, Finnair has the right to refuse to carry a passenger if it may endanger or affect the safety or health of other passengers or crew.

We follow the development of health safety policies closely and update our own practices as needed.

Under the disability regulation in 14 CFR Part 382, airlines may impose conditions, restrictions, or requirements on a passenger asserting that a medical condition prevents the passenger from wearing a face mask, because the passenger may pose a direct threat to the health or safety of others, as any passenger is a potential carrier of the SARS-CoV-2 virus.

To ensure that only qualified persons under the exemptions would be able to travel without a mask, CDC Order permits airlines to impose requirements, or conditions for carriage, on persons requesting an exemption, including requiring a person seeking an exemption to request an accommodation in advance, submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the operator. The CDC Order also permits operators to require protective measures, such as a negative result from a SARS-CoV-2 viral test or documentation of recovery from COVID-19 or seating or otherwise situating the individual in a less crowded section of the conveyance, e.g., aircraft.

I am thereby concluding my statement by confirming that I believe Finnair was in compliance with all applicable laws and regulations when asking the passenger to provide a medical certificate pursuant to §382.21 and CDC Order.

Sincerely,

*Johanna Partanen*

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Johanna Partanen  
Manager, Customer Feedback Dispute  
Finnair Plc

aa@neg.com

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**From:** CR Dispute <CR.Dispute@finnair.com>  
**Sent:** Friday, November 12, 2021 8:09 AM  
**To:** AA@NEG.COM  
**Cc:** alex.taday@dot.gov  
**Subject:** AT2021100033 - MG2300 / 06653472  
**Attachments:** AT2021100033.pdf

Dear Mr. Adabi,

CC: Mr. Taday

With respect to the letter cited below, kindly find attached requested response to case number AT2021100033.

**Sincerely,**

Johanna Partanen

Manager, Customer Feedback Dispute  
 Customer Relations  
 Finnair Oyj

**Case Number: AT2021100033**

**Consumer Information**

**Complaints Information**

Complaint Code	Carrier Name	Flight Date	Flight Itinerary
MG2300	FINNAIR OY		

**Description of Problem/Inquiry**

I have a medical disability, specifically a sensory integration disorder, and I cannot wear a mask or a face shield. I notified the airline with a copy of a doctor's letter attesting to my inability to wear a mask. Additionally, the doctor's letter attests to the fact that I already had Covid in 2020. CDC very clearly states that "Covid reinfection is rare," and therefore, I do not pose a health risk. The airline emailed me on September 3, 2021 that I cannot fly with them without a mask, unless I follow a list of requirements that are unnecessary and only designed to keep me from flying. All regular normal people can fly by just ordering a ticket online and heading to the airport. This airline requires a MEDIF form filled out and signed by a Doctor, and a negative Covid-19 test not older than 72 hrs. The MEDIF form is for people that have medical issues that need a Doctor's approval to fly. Sensory processing disorder is a sensory issue, not a medical issue that would affect my ability to fly. They know that. They use the Medif form to obstruct my flying. Other passengers don't need to get a Covid test in order to fly. That's another way to chase me away. I already had Covid. It's in the Doctor's letter. CDC says Covid reinfection is rare. These precautions are not designed to protect the other passengers, but rather are designed to make it difficult enough for me that they hope I'll stay home or try another airline. All normal regular people without disabilities get to just book a flight and hop on a plane. Someone like me is made to jump through hoops in order to hopefully get to fly. I fly over 40 flights each year. I normally book my flights a few hours before I fly. Most other people can do that now. I would need my own personal physician to fill

out forms for me every several days in order to accomodate such requests. It should be very simple. I send them my Doctor's letter clarifying that I have a sensory issue and CANNOT wear a mask or face shield, and that should be the end of it. This does not need to be rewritten right before each flight. This is a permanent disability, and everyone knows that. Maybe the reason for creating this jumping- through-hoops scenario, is to discourage fakers from lying and playing games. That is their problem. I'm the one that suffers. Anyway, I don't think that real Doctor's would sign letters that are lies. Let them investigate those that they are skeptical of. I shouldn't have to suffer. This is frustrating and unfair. As a disabled person they're required to accommodate me. This is blatant discrimination against me due to my disability. The DOT made it very clear to all the airlines that they must honor such exemptions, but seemingly this airline does not care.

[aa@neg.com](mailto:aa@neg.com)

---

**From:** Frontier Airlines <[frontierairlines@mailca.custhelp.com](mailto:frontierairlines@mailca.custhelp.com)>  
**Sent:** Monday, February 8, 2021 1:25 PM  
**To:** [aa@neg.com](mailto:aa@neg.com)  
**Subject:** Frontier Airlines: Medical disability [Incident: 210124-000077]



---

You requested assistance from our on-line support form. Below is a summary of your request and our response.

---

Topic: Frontier Airlines: Medical disability

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Reference #: 210124-000077

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Discussion Thread

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Response By Email (Beth) (02/08/2021 11:25 AM)

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Hi Aaron,

Thank you for your response.

We now do have the medical exemption for customers with disabilities.

The information and documentation required can be found on our website at <https://www.flyfrontier.com/travel/travel-info/special-services/>

All customers must provide a negative result from SARS-CoV-2 viral test collected no more than 3 days before applicable flight. Having recovered from COVID does not exempt.

Thank you for your patience.

Regards,

Beth  
Customer Relations Advocate  
Frontier Airlines

---

Customer By CSS Email (Aaron Abadi) (02/08/2021 06:44 AM)

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===== application File Attachment

=====

NYU Langone Health MyChart - Letter re mask.pdf, 90874 bytes, Added to

incident

===== text File Attachment =====

Attachment 2.html, 556 bytes, Added to incident

===== application File Attachment

=====

OACP DOT mask directive for disabilities .pdf, 200910 bytes, Added to incident

===== text File Attachment =====

Attachment 4.html, 1528 bytes, Added to incident

Response By Email (Beth) (01/29/2021 07:52 AM)

Hi Aaron,

Thank you for reaching out to us.

Frontier along with most carriers, does require all passengers 2 years of age and older to wear a mask at all points of their travel. This is ticket counter, gate area, onboard the aircraft and baggage claim. Respectfully, there are no exemptions.

At this time I believe the only carriers that accept a medical exemption are Delta and Hawaiian.

Sincerely,

Beth

Customer Relations Advocate

Frontier Airlines

Customer By CSS Email (Aaron Abadi) (01/28/2021 11:28 PM)

I do not see the response.

Aaron Abadi  
CEO  
National Environmental Group  
Cell # 516-639-4100

>

>

>

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>

>

Customer By CSS Web (Aaron Abadi) (01/24/2021 10:22 AM)

The CDC recommendation includes the following:

"Wearing masks may be difficult for some people with sensory, cognitive, or behavioral issues. If they are unable to wear a mask properly or cannot tolerate a mask, they should not wear one..."

I am one of those people, unfortunately. I have serious sensory issues and cannot wear a mask for a flight.

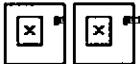
The State of New York mandate similarly has exclusions for someone like me and requires that as a person with disabilities, we are accommodated. I believe most mandates concur.

I already had Covid. I tested positive in early October, so there is no actual health risk to other passengers. Additionally, I can provide a doctor's letter confirming my disability and my recovery from Covid.

Can I fly without a mask?

aa@neg.com

**From:** Frontier Airlines <frontierairlines@mailac.custhelp.com>  
**Sent:** Tuesday, September 7, 2021 2:52 PM  
**To:** aa@neg.com  
**Subject:** Frontier Airlines: DOT AT2021090018 - (AARON ABADI) MG2300 [Incident: 210907-000522]



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You requested assistance from our on-line support form. Below is a summary of your request and our response.

---

Topic: Frontier Airlines: DOT AT2021090018 - (AARON ABADI) MG2300

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Reference #: 210907-000522

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Discussion Thread

Response By Email (Beth) (09/07/2021 12:51 PM)

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Dear Mr. Abadi,

We have received your correspondence as submitted to the Department of Transportation and appreciate the opportunity to respond.

Respectfully, our mask exemption policy is still in place and will continue until the mandate is lifted

As noted in my prior response (below) under AT2021020049, you can view information regarding our mask exemption policy [HERE](#). While reviewing our flight records, we do not see you have any upcoming or previous Frontier travel, but hope this information allows you to feel comfortable flying with us in the future.

Sincerely,

Beth  
Customer Relations Advocate  
Frontier Airlines

Response



Email

02/12/2021 04:11 PM

(CR) DEN Beth

Dear Mr. Abadi,

We have received your correspondence as submitted to the Department of Transportation and appreciate the opportunity to respond.

We understand your concerns regarding your ability to travel with a mask. Our policy was explained to you regarding medical exemptions.

It is Frontier's responsibility to assist passenger's with disabilities, in accordance with the US Department of Transportation (DOT regulation 14 CFR part 382.19 (a) which requires. As a carrier you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part. (1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat. In determining whether an individual poses a direct threat you must make an individualized assessment, based on the reasonable judgment that relies on current medical knowledge or on the best available of objective evidence to ascertain. Frontier did not violate this part of the regulation on January 24, 2021 when you email regarding and exemption as current medical information confirms wearing a mask in public is necessary to control the spread of COVID-19.

You can view our policy at <https://www.flyfrontier.com/travel/travel-info/special-services/>

We appreciate your patience and understanding.

Regards,

Beth  
Customer Relations Advocate  
Frontier

[aa@neg.com](mailto:aa@neg.com)

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**From:** IBERIA No-reply <[servicerecoveryteamnoreply@iberia.es](mailto:servicerecoveryteamnoreply@iberia.es)>  
**Sent:** Monday, November 15, 2021 1:30 PM  
**To:** aa@neg.com  
**Cc:** alex.taday@dot.gov  
**Subject:** Case number: P20211013-16995053 / DOT REF: AT2021100034



Madrid, November 15th, 2021

Office of Aviation Consumer Protection  
US Department of Transportation

DOT REF: AT2021100034  
O/REF: P20211013-16995053

Dear Mr. Abadi,

We refer to your conversations with Iberia last September regarding the issues around the mandatory use of face masks on board and your medical disability. We also refer to the claim you have submitted to the US Department of Transportation (DOT) in relation to such conversations.

After the investigations we have carried out, we understand that the events have occurred as follows:

- On September 3rd, 2021 you contacted Iberia in order to obtain an exemption from the mandatory requirement of having to wear a mask on board our aircraft. In order to support your argument, you provided a medical certificate issued on December 3rd, 2020 -i.e. 9 months ago.
- At that moment and following our internal procedures together with actual requirements due to Covid-19, we requested you to provide us the INCAD form as well as the medical report duly signed. To the best of our knowledge, we have not gotten any reply from you about this.

- The INCAD form is for our medical services to assess whether a person having certain health or medical condition is considered suitable for flying. During covid19 pandemic this has also been used to assess whether a passenger can be considered subject to exception of the legal obligation to wear a face mask. We need to do this because air carriers are liable for allowing individuals above without a face mask and are subject to economic sanctions if they fail to comply with this.

-You were also informed that according to Spanish Government regulations all passengers travelling to Spain from USA, needed to present a negative Covid test in order to fly. A recovery certificate is only valid as long as recovery has taken place no more than 6 months before the date you would be travelling to Spain, which would not be your case.

-To the best of our knowledge you have not made any flight booking with Iberia.

All the above mentioned formalities are aligned with the CDC Order issued on February 1st 2021, which permits airlines to impose requirements or conditions for carriage on a person requesting an exemption, including submit to medical consultation by a third party, provide medical documentation by a licensed medical provider, and/or provide other information as determined by the airline.

Likewise, in compliance with the Department's disability regulation in 14 CFR Part 382, according to which airlines may impose conditions, restrictions, or requirements on a passenger asserting that a medical condition prevents the passenger from wearing a face mask, because the passenger may pose a direct threat to the health or safety of others, as any passenger is a potential carrier of the SARS-CoV-2 virus. In short, both the CDC Order and Part 382 permit airlines to require passengers to consult with the airline's medical expert and/or to provide medical evaluation documentation from the passenger's doctor sufficient to satisfy the airline that the passenger does, indeed have a recognized medical condition precluding the wearing or safe wearing of a mask.

As a result of our investigation, we deny that any discrimination and violation of Part 382 occurred.

While you obviously know, you have the right to raise your complaint with DOT as you already did, the DOT regulations require us to remind you of that right. Please also note that a copy of this dispositive response letter is likewise being sent to DOT for their file.

Thank you for giving us the opportunity to respond to your concerns.

Sincerely,

Iberia Customer Care Center

cc: U.S. Department of Transportation - ACPD

*IBERIA L.A.E. S.A. Operadora, Sole-Shareholder Company (hereinafter "Iberia") with registered address at calle Martínez Villergas 49, 28027 Madrid, Spain, is the data controller.*

*Your data will be processed to manage and settle requests and claims, according to the contract.*

*The recipients are companies of IAG Group, to which IBERIA belongs*

*The user can revoke his/her consent at any time, and exercise all rights of access, to object, data portability, rectification, restrict processing and erasure.*

*You can read more about the information herein by visiting our [Privacy Policy].*



**aabadi@optonline.net**

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**From:** noreplycontactus@jetblue.com on behalf of JetBlue <noreplycontactus@jetblue.com>  
**Sent:** Tuesday, February 9, 2021 2:34 PM  
**To:** aabadi@optonline.net  
**Subject:** Response from JetBlue's Executive Office

Dear Aaron,

Thank you for sharing your concern with JetBlue's Executive Office.

We're sorry to hear of the frustration you've experienced in the past. We appreciate the opportunity to provide current information for future travel with JetBlue.

Federal law requires masks to be worn by all travelers 2 years and older at all times throughout the flight including during boarding and deplaning, and in the airport. Any individual who fails to comply with this law may be subject to denied boarding, removal from the aircraft and/or penalties under federal law. If conditions on board a flight necessitate, masks should be removed to accommodate the placement and wearing of oxygen masks.

Visit <https://www.jetblue.com/travel-alerts> and [www.jetblue.com/safety](https://www.jetblue.com/safety) for more details.

Customers with disabilities who cannot wear a mask, or cannot safely wear a mask because of a permanent disability as defined by the Americans with Disabilities Act may contact us via phone or chat to apply for an exemption from this requirement. Exemptions will be limited on board each flight and will require specific documentation submitted in advance as well as testing and a face shield worn at all times.

Based on this information, we respectfully deny that our service failed to meet the standards set by the Department of Transportation.

I hope I have been able to address your concerns. If you have any other questions, please do not hesitate to contact me. Alternatively, you may contact the U.S. Department of Transportation regarding your concerns and seek enforcement under 14 CFR Part 382.

As a future reference, you are welcome to make us aware of how we may best assist you by calling us directly on our Special Services Support Line, 1-855-ADA-LINE (855-232-5463) prior to your departure.

We value you as a JetBlue customer and we hope to serve your future travel needs with a positive experience.

Sincerely,

Debbie Castleton  
JetBlue | Customer Support  
Executive Offices


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## Customers with Disabilities

### Notice of Disability

### Assistance in the Airport

### Security Screening

### Wheelchairs & Other Devices

### Allergies

### Cognitive Disabilities

### Deaf or Hard of Hearing

### Blind Or Low Vision

### Medication

### Trained Service Animals

### Medical Oxygen

### Portable Oxygen Concentrators

### Non-Passenger Escort

### Mask Exemptions

### Your Rights

### Exemption to Federal Mask Requirement on Southwest Airlines

Federal law requires each person, 2 years of age and older, to wear a mask at all times throughout the flight, including during boarding and deplaning. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.

**Southwest Airlines will consider applications for exemptions from this mask requirement from Passengers with a disability who cannot wear a mask, or who cannot safely wear a mask because of the disability.**

Per guidance from the U.S. Department of Transportation, airlines are permitted to impose certain requirements or conditions on a person requesting an exemption from the mask requirement.

#### Please comply with the following pre-travel steps:

At least seven (7) days prior to the Passenger's planned date of travel, a Passenger requesting a mask exemption for travel on Southwest Airlines must complete and submit the following via [Southwest.com](#)>[Contact Us](#)>[Send a Message](#)>[Email Us](#): [Comment/Question](#)>[Disability](#)>[Future Travel Assistance](#):

1. A fully completed copy of this form executed by the Passenger making the request, or if the Passenger requesting a mask exemption is a minor child, the parent or guardian of such minor child; and

2. A signed letter from the requesting Passenger's Medical Physician on the Physician's letterhead stating that the Passenger with a disability has a recognized medical condition precluding the wearing or safe wearing of a mask because of their disability.

Once Southwest Airlines receives a mask exemption application in line with the above criteria, at Southwest's request to Passenger, Passenger may undergo a private medical screening (over the phone) with a third-party medical provider (Southwest Airlines' vendor StatMD).

If Southwest preliminarily approves a mask exemption after reviewing the Passenger's PDF document and the Medical Physician's letter and after receiving the third party medical provider's affirmation for travel, if required, Southwest will contact you at the phone number or email address provided below to discuss any need to change your travel dates and/or flights and remind you of the need to obtain a qualifying COVID negative viral test.

No later than 24 hours prior to the Passenger's scheduled departure(s), Passenger must provide evidence of Passenger's qualifying COVID negative viral test result. A qualifying COVID negative viral test result is defined as:

A physical or electronic documentation of a qualifying COVID negative viral test taken within three (3) calendar days preceding the Passenger's scheduled date of travel. A viral test means a viral detection test for current infection, which is a nucleic acid amplification test with observation approved or authorized by the relevant national authority for the detection of SARS-CoV-2.

**Note:** Roundtrip travel will require an additional qualifying COVID negative viral test result taken within three (3) calendar days preceding the Passenger's scheduled date of return travel and submitted no later than 24 hours prior to the Passenger's scheduled departure, unless the Passenger's return flight is within three (3) calendar days of the date of the initial negative COVID-19 departure test.

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[aa@neg.com](mailto:aa@neg.com)

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**From:** NYC.CUSTOMER@THY.COM  
**Sent:** Friday, November 12, 2021 10:46 AM  
**To:** Aaron Abadi  
**Cc:** alex.taday@dot.gov  
**Subject:** RE: [EXTERNAL] AT2021100050 - (AARON ABADI) MG2300

Dear Mr. Abadi,

Your doctor's letter did not indicate the disability, it indicates the sensitivity. This being said, again as per CDC guideline; in cases if the masks could not be worn for a reason to make sure to maintain physical distance from others. Traveling in an aircraft, especially on a long haul flight, keeping the physical distance would be impossible and may cause risk to all other passengers.

Thank you,




---

**From:** Aaron Abadi <aa@neg.com>  
**Sent:** Friday, November 12, 2021 10:38 AM  
**To:** NEWYORK CUSTOMER <NYC.CUSTOMER@THY.COM>  
**Cc:** alex.taday@dot.gov  
**Subject:** Re: [EXTERNAL] AT2021100050 - (AARON ABADI) MG2300

In the words that you posted it says as follows:

"In this evidence-free zone, clinicians must make individual determinations as to whether a patient should be exempt from mask wearing. Some individuals, particularly children, with sensory processing disorders may be unable to tolerate masks."

I too have sensory processing disorder, as I described in the original email to you. I sent you a letter from my doctor that I cannot tolerate a mask. As you showed below, CDC guidelines very clearly exempt me from wearing a mask.

Aaron Abadi  
Cell # 516-639-4100

On Nov 12, 2021, at 8:35 AM, [NYC.CUSTOMER@thy.com](mailto:NYC.CUSTOMER@thy.com) wrote:

In this evidence-free zone, clinicians must make individual determinations as to whether a patient should be exempt from mask wearing. Some individuals, particularly children, with sensory processing disorders may be unable to tolerate masks.



Bu E-mail mesaji ve ekleri, isimleri yazılı alıcılar disindaki kişilere açıklanmaması, dağıtılmaması ve iletilmemesi gereken kişiye özel ve gizli bilgiler içerebilir. Mesajın muhatabı degilseniz lütfen gönderici ile irtibat kurunuz, mesaj ve eklerini siliniz. E-mail sistemlerinin taşıdığı güvenlik risklerinden dolayı, mesajların gizlilikleri ve bütünlükleri bozulabilir, mesaj virus içerebilir. Bilinen viruslere karşı kontrolleri yapılmış olarak yollanan mesajın sisteminizde yaratabileceği olası zararlardan Şirketimiz (T.H.Y. A.O) sorumlu tutulamaz.

This email and its attachments may contain private and confidential information intended for the use of the addressee only, which should not be announced, copied or forwarded. If you are not the intended recipient, please contact the sender, delete the message and its attachments. Due to security risks of email systems, the confidentiality and integrity of the message may be damaged, the message may contain viruses. This message is scanned for known viruses and our Company (Turkish Airlines Inc.) will not be liable for possible system damages caused by the message.

[aa@neg.com](mailto:aa@neg.com)

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**From:** NYC.CUSTOMER@THY.COM  
**Sent:** Friday, November 12, 2021 8:36 AM  
**To:** AA@NEG.COM  
**Cc:** alex.taday@dot.gov  
**Subject:** RE: [EXTERNAL] AT2021100050 - (AARON ABADI) MG2300

Dear Mr. Abadi,

We would like to inform that we have finalized the claim filed with U.S Department of Transportation.

For your easy access we are providing the U.S CDC guidelines below:

According to the CDC, the following people should not wear a face mask:

Children under 2 years old.

Anyone who has trouble breathing

Anyone who is unconscious, incapacitated, or otherwise unable to remove the cloth face-covering without assistance.

Beyond the CDC's recommended exemptions CDC's recommended exemptions-children younger than 2 years, people with difficulty breathing, and anyone unable to place or remove the mask—there are certain categories of disability that undoubtedly warrant medical exemptions. In this evidence-free zone, clinicians must make individual determinations as to whether a patient should be exempt from mask wearing. Some individuals, particularly children, with sensory processing disorders may be unable to tolerate masks. Facial deformities that are incompatible with masking are an additional category of exemption. Other situations, such as chronic pulmonary illnesses without an active exacerbation, are less clear. An individual with a chronic pulmonary illness is at higher risk for severe disease from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the virus that causes COVID-19. Conversely, if that same individual were infected with SARS-CoV-2, he or she would likely also be at higher risk for spreading viral illness because many pulmonary illnesses are associated with a chronic cough. There is a risk-benefit ratio that must be carefully considered. It is likely that chronic pulmonary disease in itself is a compelling reason for masking, rather than a category of exemption.

The guidelines continue stating; There are no known medical conditions aside from a severe skin condition [like a very severe burn that needs medical attention] on your face that would prevent a person from wearing any type of mask," The CDC recognizes that wearing a cloth face mask may not be possible for some people as they may "exacerbate a physical or mental condition, lead to a medical emergency, or introduce significant safety concerns." However, in these instances, adaptations and alternatives should be considered.

CDC guideline emphasizes that in cases if the masks could not be worn for a reason to make sure to maintain physical distance from others.

As you may understand, traveling in an aircraft ,especially on a long haul flight , keeping the physical distance would be impossible and may cause risk to all other passengers.

Beside these information provided above, we also would like to add that we did not find any reservation records and or ticket information under your name. This claim was based on probability.

To sum up we believe that Turkish Airlines actions were consistent under US CDC guidelines and you have right to pursue if you disagree with our conclusion.

Sincerely,



Neslihan

Customer Service

JFK Int'l Airport

Terminal ONE  
Jamaica New York 11430



**From:** NEWYORK CUSTOMER  
**Sent:** Friday, October 15, 2021 9:23 AM  
**To:** AA@NEG.COM  
**Cc:** alex.taday@dot.gov  
**Subject:** RE: [EXTERNAL] AT2021100050 - (AARON ABADI) MG2300

Dear Mr. Abadi,

We've received your complaint from the U.S Department of Transportation on October 15, 2021.

We will start investigating your case and respond to you by the U.S DOT required deadline.

Sincerely,



Serpil

Customer Service Representative

JFK International Airport

Terminal One

Jamaica, NY 11430



**From:** [alex.taday@dot.gov](mailto:alex.taday@dot.gov) <[alex.taday@dot.gov](mailto:alex.taday@dot.gov)>  
**Sent:** Friday, October 15, 2021 9:08 AM  
**To:** NEWYORK CUSTOMER <[NYC.CUSTOMER@THY.COM](mailto:NYC.CUSTOMER@THY.COM)>  
**Cc:** [alex.taday@dot.gov](mailto:alex.taday@dot.gov)  
**Subject:** [EXTERNAL] AT2021100050 - (AARON ABADI) MG2300

Case Number: AT2021100050

**Consumer Information**

Inquirer Type	Name	Address	E-mail Address	Office Phone	Home Phone
AA	MR AARON ABADI	82 NASSAU STREET, APT. 140 NEW YORK NY 10038	AA@NEG.COM	5166394100	5166394100



Bu E-mail mesajı ve ekleri, isimleri yazılı alıcılar dışındaki kişilere açıklanmaması, dağıtılmaması ve iletilmemesi gereken kişiye özel ve gizli bilgiler içerebilir. Mesajın muhatabı degilseniz lütfen gönderici ile irtibat kurunuz, mesaj ve eklerini siliniz. E-mail sistemlerinin taşıdığı güvenlik risklerinden dolayı, mesajların gizlilikleri ve bütünlükleri bozulabilir, mesaj virus içerebilir. Bilinen viruslere karşı kontrolleri yapılmış olarak yollanan mesaj sisteminizde yaratabileceğiniz olası zararlardan Sirketimiz (T.H.Y. A.O) sorumlu tutulamaz.

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**Complaints Information**

**Complaint Code** Carrier Name **Flight Date** **Flight Itinerary**

MG2300 TURKISH AIRLINES

**Description of Problem/Inquiry**

On September 1, 2021 I posted the following on the airline's website contact form. "I have a sensory integration disorder, which is a medical disability that causes me not to be able to wear a mask or a face shield. I carry around a doctor's letter to that effect, that also states that I already had Covid, which would indicate that there is no significant health risk, as the CDC clearly states that covid reinfection is rare I have already flown several times without a mask on airlines that agreed to accommodate me. CDC Guidelines and federal laws exempt someone like me from wearing a mask. Additionally, DOT instructed the airlines to allow people like me to fly without a mask. Federal ADA laws require that you provide an accommodation for disabilities. I would like to travel on your airline. Can I travel on your airline without a mask? Or can you provide an accommodation that will allow me to use your airline? Thank you in advance. Aaron Abadi" They refused me on September 11, 2021 I have a medical disability, specifically a sensory integration disorder, and I cannot wear a mask or a face shield. I notified the airline with a copy of a doctor's letter attesting to my inability to wear a mask. Additionally, the doctor's letter attests to the fact that I already had Covid in 2020. CDC very clearly states that "Covid reinfection is rare," and therefore, I do not pose a health risk. The airline emailed me on September 11, 2021 that I cannot fly with them without a mask. This is frustrating and unfair. As a disabled person they're required to accommodate me. This is blatant discrimination against me due to my disability. The DOT made it very clear to all the airlines that they must honor such exemptions, but seemingly this airline does not care. There is no itinerary listed, as I am waiting to be approved to travel before paying money to book tickets."

[aa@neg.com](mailto:aa@neg.com)

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**From:** customer.care@united.com  
**Sent:** Friday, December 18, 2020 8:20 AM  
**To:** aa@neg.com  
**Subject:** Flight experience

Hello Mr. Abadi:

Please understand I was merely sharing why we have our policy in hopes to foster a better understanding between us. It was not my intention to upset you and I apologize.

It is unfortunate you have a condition that makes it difficult for you to wear a face mask or other permitted face covering. As I indicated in my earlier correspondence with you, United has determined the possibility of asymptomatic transmission of COVID-19 in the confined space of an airplane is a direct threat to the health and safety of our passengers and crew that can only be mitigated by all onboard wearing a face mask. United has made this determination based on a review of current medical knowledge and CDC guidance. A person with a disability is just as likely to be an asymptomatic spreader of Covid-19 as any other passenger. While it is rare, we have been advised reinfection is possible.

While I certainly understand your point of view, United isn't in violation of the Air Carrier Access Act, since this regulation does not require us to permit an exception to United's face covering requirements during the Covid-19 pandemic, at this time.

We're committed to ensuring all of our customers have access to the same services. Each airport has trained agents (Complaint Resolution Officials, CRO) who are available upon request to resolve service issues for customers with disabilities. In the future, please ask for a CRO if you need assistance. Prior to travel, you can view information on [united.com](http://united.com) > Travel information > Special travel needs.

While we don't want you to feel you have to file a complaint against us, we respect that it's your decision and right to do so. We wish you the best with all of your future travel.

Regards,

Susan Campbell  
DOT/CRO/Disability Specialist  
Corporate Customer Care  
Case ID: 160789154037420

*United Airlines is committed to making air travel safe, accessible, and comfortable for our passengers with disabilities. Customers may also contact the U.S. Department of Transportation (DOT). It's important to note that the DOT does not determine nor influence the issuance of personal compensation by an airline.*

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::: ORIGINAL EMAIL :::

From: aa@neg.com

Message: That's technically dishonest, as I made it very clear that I have already recovered from Covid. There's no health risk at all. If you want to say it is company policy, that's one thing. But saying there's a "direct threat" is an absolute lie.

I will file a complaint against your company for discrimination against a disability.

One day, we will all look back at this period, and you will have to look at yourself and live with the crimes that you have been responsible for.

Aaron Abadi  
CEO  
National Environmental Group  
Cell # 516-639-4100

On Dec 17, 2020, at 8:49 AM, customer.care@united.com wrote:

Hello Mr. Abadi,

Thank you for reaching out to us.

It is unfortunate you have a condition that makes it difficult for you to wear a face mask or other permitted face covering. United has determined the possibility of asymptomatic transmission of COVID-19 in the confined space of an airplane is a direct threat to the health and safety of our passengers and crew that can only be mitigated by all onboard wearing a face mask. United has made this determination based on a review of current medical knowledge and CDC guidance. A person with a disability is just as likely to be an asymptomatic spreader of Covid-19 as any other passenger. As noted on our website we are only making exceptions for passengers that are younger than 2 years old.

We're grateful for your understanding during this time and hope to welcome you aboard a flight in the future.

Regards,

Susan Campbell  
DOT/CRO/Disability Specialist

Corporate Customer Care  
Case ID: 160789154037420

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::: ORIGINAL EMAIL :::

From: aa@neg.com

Message: Medical Disability The CDC recommendation regarding wearing masks includes the following: "Wearing masks may be difficult for some people with sensory, cognitive, or behavioral issues. If they are unable to wear a mask properly or cannot tolerate a mask, they should not wear one..." I am one of those people, unfortunately. I have serious sensory issues and cannot wear a mask for a flight. The State of New York mandate similarly has exclusions for someone like me and requires that as a person with disabilities, we are accommodated. I believe most mandates concur. I already had Covid. I tested positive in early October, so there is no actual health risk to other passengers. Additionally, I can provide a recent negative Covid test and a doctor's letter confirming my disability and my recovery from Covid. Here is my question: Is it possible for me to fly with your airline and not wear a mask? Would you be able to accommodate my disability? Thank you,



**U.S. Department of  
Transportation**

**Office of the Secretary  
of Transportation**

**GENERAL COUNSEL**

**1200 New Jersey Ave., S.E.  
Washington, DC 20590**

**April 18, 2022**

**Mr Aaron Abadi  
82 Nassau Street, 140  
New York, NY 10038**

**Dear Mr Abadi:**

This letter is in further reference to your disability complaint regarding Air India. We were sorry to hear of the incident and appreciate the opportunity to advise you of the outcome of our investigation. Enclosed you will find an Investigation Summary Sheet that details the results of our investigation, which was based on the Air Carrier Access Act (ACAA), 49 U.S.C. Section 41705, and our implementing rule, 14 CFR Part 382.

In particular, the Investigation Summary Sheet identifies the applicable section of 14 CFR Part 382, provides a brief summary of that section and explains this office's view on whether the carrier has violated the ACAA and 14 CFR Part 382. If your complaint raises more than one disability issue, an additional Investigation Summary Sheet has been attached to address each issue.

If we believe the complained of incident involves a violation, the Investigation Summary Sheet indicates the action that we plan to take. We will either pursue formal enforcement action or by copy of this letter notify the airline specified in your complaint of our determination and warn it that any similar incidents could lead to formal enforcement action. Generally, we will pursue enforcement action on the basis of a number of complaints from which we may infer a pattern or practice of discrimination. However, where one or a few complaints describe particularly egregious conduct on the part of a carrier and those complaints are supported by adequate evidence, we will pursue enforcement action as our resources permit. If we decide to seek enforcement action against the airline, your complaint will be among those considered in the context of this action, which may lead to the issuance of a cease and desist order and to the assessment of civil penalties. In the event that this enforcement action leads to litigation, it is possible that we may need sworn statements or witnesses for a hearing. We will advise you if, in fact, we need your further help.

For your information, in an enforcement case, the U.S. Department of Transportation is limited to issuing cease and desist orders and assessing civil penalties not to exceed \$34,174 per violation. Such action can only be accomplished through settlements or formal hearings before administrative law judges. We cannot order compensation for aggrieved parties. To obtain a personal monetary award of damages, a complainant would have to file a private legal action that may be based on private contract rights or on civil rights statutes that provide for a private right of action.

If we have insufficient evidence or it appears that the airline specified in your complaint has not violated the ACAA, we will not pursue enforcement action. Notwithstanding our decision not to pursue enforcement action, however, private legal action may be pursued in the courts based on private contract rights or on civil rights statutes that provide for a private right of action and, in such a proceeding, monetary damages may be sought.

Regardless of whether the airline has been determined to have violated the ACAA, we have entered your complaint in our computerized industry monitoring system, and the carrier's ACAA complaint totals in our monthly *Air Travel Consumer Report* reflect your complaint. Our monthly report is made available to the

aviation industry, the news media and the general public so that both consumers and air travel companies can compare the overall complaint records of individual airlines, as well as the number of disability complaints filed against particular carriers. This system also serves as a basis for rulemaking, legislation, and research.

Moreover, we also routinely monitor our complaint records to determine the extent to which carriers are in compliance with the ACAA and to track trends or spot areas of concern which we feel may warrant further action. This ongoing process also enables us to ensure prompt corrective action whenever we determine that an airline's policies or procedures are not in compliance with our ACAA regulations. Your complaint will be among those considered in the context of this overall process.

I hope this further information is useful. Thank you again for taking the time to contact us.

Sincerely,

Livaughn Chapman, Jr.  
Deputy Assistant General Counsel  
for Aviation Consumer Protection

/s/

By: Ryan Patanaphan  
Senior Trial Attorney

Enclosures  
cc: Air India



**U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation**

**GENERAL COUNSEL**

**1200 New Jersey Ave., S.E.  
Washington, DC 20590**

## **INVESTIGATION SUMMARY SHEET**

**Case Number:** AT2021020039

**Complainant Title:** MR

**Name:** AARON ABADI

**Address:** 82 NASSAU STREET, 140  
NEW YORK, NY 10038

**Passenger(s):** Mr. Aaron Abadi

**Airline:** Air India

**Travel Date(s):** January 2021

**Flight Number(s):** Not Applicable

**City Pair:** Not Applicable

**Location of Incident:** Dispositive Reply

**Complaint/Issue:** Failure to provide a dispositive reply

**Applicable Section of  
14 CFR Part 382:** 382.155(d)

**Section Summary:** As a carrier, you must make a dispositive written response to a written disability complaint within 30 days of its receipt. The response must specifically admit or deny that a violation of this part has occurred.

**Rule Violated?** Yes

**Remarks:** Mr. Abadi filed a complaint with the Department in January 2021 alleging violations of the Air Carrier Access Act (ACAA) as implemented by 14 CFR Part 382 (Part 382). That complaint was forwarded to Air India on February 10, 2021. Air India responded to Mr. Abadi on November 18, 2021 apologizing for not responding earlier.

In this instance, Air India did not respond to Mr. Abadi's disability-related complaint within 30 days. Therefore, the carrier violated the ACAA and Part 382 when it failed to provide Mr. Abadi with a timely dispositive reply.

If we decide to seek enforcement action against the airline with respect to this issue, this complaint will be among those considered, which may lead to the issuance of a cease and desist order and to the assessment of civil penalties. By copy of this letter, the carrier will be warned in this instance.



**U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation**

**GENERAL COUNSEL**

**1200 New Jersey Ave., S.E.  
Washington, DC 20590**

## **INVESTIGATION SUMMARY SHEET**

**Case Number:** AT2021020039

**Complainant Title:** MR

**Name:** AARON ABADI

**Address:** 82 NASSAU STREET, 140  
NEW YORK, NY 10038

**Passenger(s):** Mr. Aaron Abadi

**Airline:** Air India

**Travel Date(s):** January 2021

**Flight Number(s):** Not Applicable

**City Pair:** Not Provided

**Location of Incident:** On board flights

**Complaint/Issue:** Carrier's refusal to make an exemption to its mask policy for a passenger with a disability.

**Applicable Section of  
14 CFR Part 382:** 382.19

**Section Summary:** 382.19(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in §382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

- (i) The nature, duration, and severity of the risk;
- (ii) The probability that the potential harm to the health and safety of others will actually occur; and
- (iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you

must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this part.

(4) If your actions are inconsistent with any of the provisions of this part, you are subject to enforcement action under Subpart K of this part.

**Rule Violated?**

Yes

**Remarks:**

Mr. Abadi states that he has a disability and cannot wear a mask or face shield. Mr. Abadi states that he notified Air India and provided a copy of a doctor's letter stating that he had recovered from COVID-19 and that he was no longer contagious. Mr. Abadi states that the carrier refused to accommodate him for a January 2021 trip.

In the carrier's November 18, 2021, reply to Mr. Abadi, Air India states that it follows current health guidelines that all passengers must wear a mask unless they are actively eating or drinking. Air India does state that if Mr. Abadi has a disability that prevents him from wearing a mask, then Air India should be able to accommodate him.

In this instance, while Air India indicates in its response that it makes accommodations to passengers with disabilities, correspondence between Mr. Abadi and Air India suggests that Mr. Abadi requested an exemption to the mask requirement but that Air India's replies did not state whether the exemption was approved or denied.

On February 5, 2021, the Office of Aviation Consumer Protection (OACP) issued a notice titled, "Notice of Enforcement Policy: Accommodation by Carriers of Persons with Disabilities Who Are Unable to Wear Masks While on Commercial Aircraft". The notice reminds U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the public health risks associated with COVID-19. The notice makes clear that airline policies that expressly allow no exceptions to the mask requirement other than for children under the age of two violate the Air Carrier Access Act.

The Air Carrier Access Act and its implementing regulation, 14 CFR Part 382 (Part 382) require airlines to make reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear or safely wear a mask due to their disability. It would be a violation of the ACIA and Part 382 for an airline to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not have an exemption for the limited number of individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others.

In this instance, based on the information presented in this matter, it appears that Air India did not conduct an individualized assessment to determine whether Mr. Abadi could not wear or safely wear a mask due to his disability and whether a reasonable accommodation could be made that would permit Mr. Abadi to fly safely without a mask. Therefore, we find that Air India violated the ACIA and Part 382 in this instance.

Since the issuance of the notice, OACP has exercised its prosecutorial discretion and provided the airlines 45 days from the date of the Enforcement Notice to come into compliance with its obligation under the ACIA and Part 382 by amending their mask policies to provide reasonable accommodations to persons with disabilities who are unable to wear masks or to wear masks safely, so long as the airline demonstrates that it began the process of compliance as soon as this notice was issued. A copy of OACP's Enforcement Notice is available on the Department's website at: <https://www.transportation.gov/airconsumer/masks-notice-of-enforcement-policy>.



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

**GENERAL COUNSEL**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

March 4, 2022

Mr Aaron Abadi  
82 Nassau Street, 140  
New York, NY 10038

Dear Mr Abadi:

This letter is in further reference to your disability complaint regarding American Airlines. We were sorry to hear of the incident and appreciate the opportunity to advise you of the outcome of our investigation. Enclosed you will find an Investigation Summary Sheet that details the results of our investigation, which was based on the Air Carrier Access Act (ACAA), 49 U.S.C. Section 41705, and our implementing rule, 14 CFR Part 382.

In particular, the Investigation Summary Sheet identifies the applicable section of 14 CFR Part 382, provides a brief summary of that section and explains this office's view on whether the carrier has violated the ACAA and 14 CFR Part 382. If your complaint raises more than one disability issue, an additional Investigation Summary Sheet has been attached to address each issue.

If we believe the complained of incident involves a violation, the Investigation Summary Sheet indicates the action that we plan to take. We will either pursue formal enforcement action or by copy of this letter notify the airline specified in your complaint of our determination and warn it that any similar incidents could lead to formal enforcement action. Generally, we will pursue enforcement action on the basis of a number of complaints from which we may infer a pattern or practice of discrimination. However, where one or a few complaints describe particularly egregious conduct on the part of a carrier and those complaints are supported by adequate evidence, we will pursue enforcement action as our resources permit. If we decide to seek enforcement action against the airline, your complaint will be among those considered in the context of this action, which may lead to the issuance of a cease and desist order and to the assessment of civil penalties. In the event that this enforcement action leads to litigation, it is possible that we may need sworn statements or witnesses for a hearing. We will advise you if, in fact, we need your further help.

For your information, in an enforcement case, the U.S. Department of Transportation is limited to issuing cease and desist orders and assessing civil penalties not to exceed \$34,174 per violation. Such action can only be accomplished through settlements or formal hearings before administrative law judges. We cannot order compensation for aggrieved parties. To obtain a personal monetary award of damages, a complainant would have to file a private legal action that may be based on private contract rights or on civil rights statutes that provide for a private right of action.

If we have insufficient evidence or it appears that the airline specified in your complaint has not violated the ACAA, we will not pursue enforcement action. Notwithstanding our decision not to pursue enforcement action, however, private legal action may be pursued in the courts based on private contract rights or on civil rights statutes that provide for a private right of action and, in such a proceeding, monetary damages may be sought.

Regardless of whether the airline has been determined to have violated the ACAA, we have entered your complaint in our computerized industry monitoring system, and the carrier's ACAA complaint totals in our monthly *Air Travel Consumer Report* reflect your complaint. Our monthly report is made available to the

aviation industry, the news media and the general public so that both consumers and air travel companies can compare the overall complaint records of individual airlines, as well as the number of disability complaints filed against particular carriers. This system also serves as a basis for rulemaking, legislation, and research.

Moreover, we also routinely monitor our complaint records to determine the extent to which carriers are in compliance with the ACAA and to track trends or spot areas of concern which we feel may warrant further action. This ongoing process also enables us to ensure prompt corrective action whenever we determine that an airline's policies or procedures are not in compliance with our ACAA regulations. Your complaint will be among those considered in the context of this overall process.

I hope this further information is useful. Thank you again for taking the time to contact us.

Sincerely,

Livaughn Chapman, Jr.  
Deputy Assistant General Counsel  
for Aviation Consumer Protection

/s/

By: Robert Gorman  
Senior Trial Attorney

Enclosures  
cc: American Airlines



**U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation**

**GENERAL COUNSEL**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

## **INVESTIGATION SUMMARY SHEET**

**Case Number:** AT2021020035

**Complainant Title:** MR

**Name:** AARON ABADI

**Address:** 82 NASSAU STREET, 140  
NEW YORK, NY 10038

**Passenger(s):** Mr. Aaron Abadi

**Airline:** American Airlines

**Travel Date(s):** January 27, 2021

**Flight Number(s):** Not Applicable

**City Pair:** Not Provided

**Location of Incident:** Not Provided

**Complaint/Issue:** Failure to make an exemption to carrier's mask policy to a passenger with a disability.

**Applicable Section of  
14 CFR Part 382:** 382.19

**Section Summary:** 382.19(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in §382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

- (i) The nature, duration, and severity of the risk;
- (ii) The probability that the potential harm to the health and safety of others will actually occur; and
- (iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you

must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this part.

(4) If your actions are inconsistent with any of the provisions of this part, you are subject to enforcement action under Subpart K of this part.

**Rule Violated?**

Yes

**Remarks:**

Mr. Abadi states that he has a medical disability and cannot wear a mask or face shield. Mr. Abadi states that he notified the carrier, American Airlines (American) and provided a copy of a doctor's letter stating that he has already had COVID and does not really pose any risk. Mr. Abadi states that the carrier refused to accommodate him.

American states that it spoke with Mr. Abadi via telephone on February 11, 2021. American states that effective February 2, 2021, American changed its policy and began making medical exemptions to its mask policy. American advised Mr. Abadi to contact the Special Service Coordinator if he wish to make further travel plans.

On February 5, 2021, the Office of Aviation Consumer Protection (OACP) issued a notice titled "Notice of Enforcement Policy: Accommodation by Carriers of Persons with Disabilities Who Are Unable to Wear Masks While on Commercial Aircraft." The notice reminds U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the public health risks associated with COVID-19. The notice makes clear that airline policies that expressly allow no exceptions to the mask requirement other than for children under the age of two violate the Air Carrier Access Act.

The Air Carrier Access Act and its implementing regulation, 14 CFR Part 382 (Part 382) require airlines to make reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear or safely wear a mask due to their disability. It would be a violation of the ACAA and Part 382 for an airline to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not have an exemption for the limited number of individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others.

American's mask policy that was in place at the time Mr. Abadi wished to travel failed to provide an exemption for passengers with disabilities who cannot wear or safely wear a mask due to their disability. As a result, American did not conduct an individualized assessment to determine whether Mr. Abadi could not wear or safely wear a mask due to his disability and whether a reasonable accommodation could be made that would permit Mr. Abadi to fly safely without a mask. Therefore, we find that American violated the ACAA and Part 382 in this instance.

Since the issuance of the notice, OACP has exercised its prosecutorial discretion and provided airlines 45 days from the date of the Enforcement Notice to come into compliance with its obligation under the ACAA and Part 382 by amending their mask policies to provide reasonable accommodations to persons with disabilities who are unable to wear masks or to wear masks safely, so long as the airline demonstrates that it began the process of compliance as soon as this notice was issued. A copy of OACP's Enforcement Notice is available on the Department's website at: <https://www.transportation.gov/airconsumer/masks-notice-of-enforcement-policy>. We note that since the time of this incident, American has informed OACP that it has amended its mask policy to comply with the ACAA and Part 382.



**U.S. Department of  
Transportation**  
**Office of the Secretary  
of Transportation**

**GENERAL COUNSEL**

**1200 New Jersey Ave., S.E.  
Washington, DC 20590**

**March 25, 2022**

**Mr Aaron Abadi  
82 Nassau Street, 140  
New York, NY 10038**

**Dear Mr Abadi:**

This letter is in further reference to your disability complaint regarding Frontier Airlines. We were sorry to hear of the incident and appreciate the opportunity to advise you of the outcome of our investigation. Enclosed you will find an Investigation Summary Sheet that details the results of our investigation, which was based on the Air Carrier Access Act (ACAA), 49 U.S.C. Section 41705, and our implementing rule, 14 CFR Part 382.

In particular, the Investigation Summary Sheet identifies the applicable section of 14 CFR Part 382, provides a brief summary of that section and explains this office's view on whether the carrier has violated the ACAA and 14 CFR Part 382. If your complaint raises more than one disability issue, an additional Investigation Summary Sheet has been attached to address each issue.

If we believe the complained of incident involves a violation, the Investigation Summary Sheet indicates the action that we plan to take. We will either pursue formal enforcement action or by copy of this letter notify the airline specified in your complaint of our determination and warn it that any similar incidents could lead to formal enforcement action. Generally, we will pursue enforcement action on the basis of a number of complaints from which we may infer a pattern or practice of discrimination. However, where one or a few complaints describe particularly egregious conduct on the part of a carrier and those complaints are supported by adequate evidence, we will pursue enforcement action as our resources permit. If we decide to seek enforcement action against the airline, your complaint will be among those considered in the context of this action, which may lead to the issuance of a cease and desist order and to the assessment of civil penalties. In the event that this enforcement action leads to litigation, it is possible that we may need sworn statements or witnesses for a hearing. We will advise you if, in fact, we need your further help.

For your information, in an enforcement case, the U.S. Department of Transportation is limited to issuing cease and desist orders and assessing civil penalties not to exceed \$34,174 per violation. Such action can only be accomplished through settlements or formal hearings before administrative law judges. We cannot order compensation for aggrieved parties. To obtain a personal monetary award of damages, a complainant would have to file a private legal action that may be based on private contract rights or on civil rights statutes that provide for a private right of action.

If we have insufficient evidence or it appears that the airline specified in your complaint has not violated the ACAA, we will not pursue enforcement action. Notwithstanding our decision not to pursue enforcement action, however, private legal action may be pursued in the courts based on private contract rights or on civil rights statutes that provide for a private right of action and, in such a proceeding, monetary damages may be sought.

Regardless of whether the airline has been determined to have violated the ACAA, we have entered your complaint in our computerized industry monitoring system, and the carrier's ACAA complaint totals in our monthly *Air Travel Consumer Report* reflect your complaint. Our monthly report is made available to the

aviation industry, the news media and the general public so that both consumers and air travel companies can compare the overall complaint records of individual airlines, as well as the number of disability complaints filed against particular carriers. This system also serves as a basis for rulemaking, legislation, and research.

Moreover, we also routinely monitor our complaint records to determine the extent to which carriers are in compliance with the ACAA and to track trends or spot areas of concern which we feel may warrant further action. This ongoing process also enables us to ensure prompt corrective action whenever we determine that an airline's policies or procedures are not in compliance with our ACAA regulations. Your complaint will be among those considered in the context of this overall process.

I hope this further information is useful. Thank you again for taking the time to contact us.

Sincerely,

Livaughn Chapman, Jr.  
Deputy Assistant General Counsel  
for Aviation Consumer Protection

/s/

By: Clereece Kroha  
Senior Trial Attorney

Enclosures  
cc: Frontier Airlines



**U.S. Department of  
Transportation**  
Office of the Secretary  
of Transportation

**GENERAL COUNSEL**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

## **INVESTIGATION SUMMARY SHEET**

**Case Number:** AT2021020049

**Complainant Title:** MR

**Name:** AARON ABADI

**Address:** 82 NASSAU STREET, 140  
NEW YORK, NY 10038

**Passenger(s):** Mr. Aaron Abadi

**Airline:** Frontier Airlines

**Travel Date(s):** January 2021

**Flight Number(s):** Not Applicable

**City Pair:** Not Provided

**Location of Incident:** Not Applicable

**Complaint/Issue:** Carrier's refusal to make an exemption to its mask policy for a passenger with a disability.

**Applicable Section of  
14 CFR Part 382:** 382.19

**Section Summary:** 382.19(a) As a carrier, you must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) You may refuse to provide transportation to any passenger on the basis of safety, as provided in 49 U.S.C. 44902 or 14 CFR 121.533, or to any passenger whose carriage would violate FAA or TSA requirements or applicable requirements of a foreign government.

(1) You can determine that there is a disability-related safety basis for refusing to provide transportation to a passenger with a disability if you are able to demonstrate that the passenger poses a direct threat (see definition in §382.3). In determining whether an individual poses a direct threat, you must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:

- (i) The nature, duration, and severity of the risk;
- (ii) The probability that the potential harm to the health and safety of others will actually occur; and
- (iii) Whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(2) If you determine that the passenger does pose a direct threat, you

must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others. For example, you must not refuse transportation to the passenger if you can protect the health and safety of others by means short of a refusal.

(3) In exercising this authority, you must not act inconsistently with the provisions of this part.

(4) If your actions are inconsistent with any of the provisions of this part, you are subject to enforcement action under Subpart K of this part.

**Rule Violated?** Yes

**Remarks:** Mr. Abadi states that he has a disability and cannot wear a mask or face shield. Mr. Abadi states that he notified Frontier Airlines (Frontier) and provided a copy of a doctor's letter stating that he had recovered from COVID-19 and he was no longer contagious. Mr. Abadi states that the carrier refused to accommodate him for a January 2021 trip.

In the carrier's February 12, 2021, letter to Mr. Adabi, Frontier states that its mask policy regarding medical exemptions was previously explained to him. Frontier states that it did not violate DOT regulations when Mr. Abadi emailed regarding an exemption since current medical information confirmed wearing a mask in public was necessary to control the spread of COVID-19.

On February 5, 2021, the Office of Aviation Consumer Protection (OACP) issued a notice titled, "Notice of Enforcement Policy: Accommodation by Carriers of Persons with Disabilities Who Are Unable to Wear Masks While on Commercial Aircraft". The notice reminds U.S. and foreign air carriers of their legal obligation to accommodate the needs of passengers with disabilities when developing procedures to implement the Federal mandate on the use of masks to mitigate the public health risks associated with COVID-19. The notice makes clear that airline policies that expressly allow no exceptions to the mask requirement other than for children under the age of two violate the Air Carrier Access Act.

The Air Carrier Access Act and its implementing regulation, 14 CFR Part 382 (Part 382) require airlines to make reasonable accommodations, based on individualized assessments, for passengers with disabilities who are unable to wear or safely wear a mask due to their disability. It would be a violation of the ACAA and Part 382 for an airline to have an exemption for children under 2 on the basis that children that age cannot wear or safely wear a mask and not have an exemption for the limited number of individuals with disabilities who similarly cannot wear or safely wear a mask when there is no evidence that these individuals with disabilities would pose a greater health risk to others.

Frontier's mask policy that was in place at the time of Mr. Abadi's planned travel failed to provide an exemption for passengers with disabilities who cannot wear or safely wear a mask due to their disability. As a result, Frontier did not conduct an individualized assessment to determine whether Mr. Abadi could not wear or safely wear a mask due to his disability and whether a reasonable accommodation could be made that would permit Mr. Abadi to fly safely without a mask. Therefore, we find that Frontier violated the ACAA and Part 382 in this instance.

Since the issuance of the notice, OACP has exercised its prosecutorial discretion and provided the airlines 45 days from the date of the Enforcement Notice to come into compliance with its obligation under the ACAA and Part 382 by amending their mask policies to provide reasonable accommodations to persons with disabilities who are unable to wear masks or to wear masks safely, so long as the airline demonstrates that it began the process of compliance as soon as this notice was issued. A copy of OACP's Enforcement Notice is available on the Department's website at: <https://www.transportation.gov/airconsumer/masks-notice-of-enforcement-policy>. We note that since the time of this incident, Frontier has informed OACP that it has amended its mask policy to comply with the ACAA and Part 382.