

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

JOB CREATORS NETWORK,)
INDEPENDENT BAKERS)
ASSOCIATION, LAWRENCE)
TRANSPORTATION COMPANY,)
GUY CHEMICAL COMPANY LLC,)
RABINE GROUP OF COMPANIES,)
PAN-O-GOLD BAKING COMPANY,)
TERRI MITCHELL,)
WATERBLASTING, LLC,)

Petitioners,)

v.)

No. 21-3491

U.S. DEPARTMENT OF LABOR,)
MARTY WALSH, Secretary of Labor,)
OCCUPATIONAL SAFETY AND)
HEALTH ADMINISTRATION,)
DOUGLAS PARKER, Assistant)
Secretary of Labor for Occupational)
Safety and Health,)

Respondents.)

RESPONSE TO RESPONDENTS' LETTER

On November 8, 2021, Respondents filed a letter informing this Court of the “lottery” process for challenging agency action, which they believe will take place on or around November 16, 2021. *See* Letter of Respondents (8th Cir. Nov. 8, 2021).

Respondents seem to imply that this Court should decline to exercise its statutory authority to issue a stay of the OSHA Mandate before the lottery occurs.

See 28 U.S.C. § 2112(a)(4) (“Any court of appeals in which proceedings with respect to an order of an agency, board, commission, or officer have been instituted may, to the extent authorized by law, stay the effective date of the order.”).

But, as Petitioners’ motion for a stay demonstrates, there is ongoing harm right now from the Mandate. *See* Petitioners’ Motion for an Administrative Stay and Stay Pending Judicial Review 19-24 (8th Cir. Nov. 5, 2021).

Further, Respondents’ implication that no relief is imminently needed is belied by press reports that the White House is telling businesses to move forward despite the temporary stay of the Mandate issued by the Fifth Circuit on November 6, 2021. *See, e.g.*, Morgan Chalfant, *White House: Move Forward with Mandate Despite Court Freeze*, THE HILL, Nov. 8, 2021, <https://thehill.com/homenews/administration/580586-whits-house-move-forward-with-mandate-despite-court-freeze>.

Finally, by suggesting that this Court delay any ruling, Respondents imply that there actually is not an imminent COVID emergency, contrary to the very premise of the OSHA Mandate. *See COVID-19 Vaccination and Testing Emergency Temporary Standard*, 86 Fed. Reg. 61402 (Nov. 5, 2021) (mentioning “emergency” over 100 times).

Dated: November 9, 2021

Respectfully submitted,

/s/ R. Trent McCotter

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

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/s/ R. Trent McCotter
R. Trent McCotter

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I certify that on November 9, 2021, the foregoing document was electronically filed with the United States Court of Appeals for the Eighth Circuit using the CM/ECF system, which will serve all parties.

Dated: November 9, 2021

Respectfully submitted,

/s/ R. Trent McCotter

Counsel for Petitioners