

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,**

Petitioners,

v.

U.S. DEPARTMENT OF LABOR, *et al.*,

Respondents.

RULE 28(J) NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to the Federal Rule of Appellate Procedure 28(j), Petitioners bring to the Court’s attention the Fifth Circuit’s order issued Saturday November 6, 2021, granting a temporary stay of the OSHA Mandate. *See BST Holdings, L.L.C. v. OSHA*, No. 21-60845 (5th Cir. Nov. 6, 2021) (attached as Ex. A). The Fifth Circuit held that there is “cause to believe there are grave statutory and constitutional issues with the Mandate.” *Id.* at 2.

The Fifth Circuit’s ruling may apply nationwide, but it is not entirely clear. To avoid any ambiguity on this front, as well as avoid any potentially inconsistent obligations for companies located across the country (*e.g.*, Job Creators Network

and Independent Bakers Association are membership organizations with hundreds of members located throughout the country), Petitioners respectfully request that this Court grant their pending motion for preliminary administrative relief in this case. *See* Petitioners' Motion for Administrative Stay and Stay Pending Judicial Review, *Job Creators Network v. U.S. Dep't of Labor*, No. 21-3491 (8th Cir. Nov. 5, 2021).

November 6, 2021

Respectfully submitted

/s/ R. Trent McCotter

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CERTIFICATE OF SERVICE

I certify that on November 6, 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.

I further certify that I will timely serve the following via U.S. Mail:

U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., N.W., Room C-2318
Washington, D.C. 20210

Douglas Parker
Assistant Secretary of Labor for Occupational Safety & Health
200 Constitution Ave., N.W., Room S-4004
Washington, D.C. 20210

Edmund Baird
(also served via email at zzSOL-Covid19-ETS@dol.gov)
Associate Solicitor of Labor for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue N.W., Rooms S-4004
Washington, D.C. 20210

/s/ R. Trent McCotter
R. Trent McCotter

EXHIBIT A

United States Court of Appeals for the Fifth Circuit

No. 21-60845

BST HOLDINGS, L.L.C.; RV TROSCLAIR, L.L.C.; TROSCLAIR AIRLINE, L.L.C.; TROSCLAIR ALMONASTER, L.L.C.; TROSCLAIR AND SONS, L.L.C.; TROSCLAIR ; TROSCLAIR, INCORPORATED; TROSCLAIR CARROLLTON, L.L.C.; TROSCLAIR CLAIBORNE, L.L.C.; TROSCLAIR DONALDSONVILLE, L.L.C.; TROSCLAIR HOUMA, L.L.C.; TROSCLAIR JUDGE PEREZ, L.L.C.; TROSCLAIR LAKE FOREST, L.L.C.; TROSCLAIR MORRISON, L.L.C.; TROSCLAIR PARIS, L.L.C.; TROSCLAIR TERRY, L.L.C.; TROSCLAIR WILLIAMS, L.L.C.; RYAN DAILEY; JASAND GAMBLE; CHRISTOPHER L. JONES; DAVID JOHN LOSCHEN; SAMUEL ALBERT REYNA; KIP STOVALL; ANSWERS IN GENESIS, INCORPORATED; AMERICAN FAMILY ASSOCIATION, INCORPORATED; BURNETT SPECIALISTS; CHOICE STAFFING, L.L.C.; STAFF FORCE, INCORPORATED; LEADINGEDGE PERSONNEL, LIMITED; STATE OF TEXAS; HT STAFFING, LIMITED; DOING BUSINESS AS HT GROUP; THE STATE OF LOUISIANA; COX OPERATING, L.L.C.; DIS-TRAN STEEL, L.L.C.; DIS-TRAN PACKAGED SUBSTATIONS, L.L.C.; BETA ENGINEERING, L.L.C. OPTIMAL FIELD SERVICES, L.L.C.; THE STATE OF MISSISSIPPI; GULF COAST RESTAURANT GROUP, INCORPORATED; THE STATE OF SOUTH CAROLINA; THE STATE OF UTAH; WORD OF GOD FELLOWSHIP, INCORPORATED, DOING BUSINES AS DAYSTAR TELEVISION NETWORK,

Petitioners,

versus

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,
UNITED STATES DEPARTMENT OF LABOR; UNITED STATES

No. 21-50353

DEPARTMENT OF LABOR; MARTIN J. WALSH, SECRETARY, U.S.
DEPARTMENT OF LABOR; DOUGLAS PARKER, IN HIS OFFICIAL
CAPACITY AS ASSISTANT SECRETARY OF LABOR FOR
OCCUPATIONAL SAFETY AND HEALTH,

Respondents.

Petition for Review of
Occupational Safety and Health Administration
Emergency Temporary Standard

Before JONES, DUNCAN, and ENGELHARDT, *Circuit Judges.*

PER CURIAM: *

Before the court is the petitioners'¹ emergency motion to stay enforcement of the Occupational Safety and Health Administration's November 5, 2021 Emergency Temporary Standard² (the "Mandate") pending expedited judicial review.

Because the petitions give cause to believe there are grave statutory and constitutional issues with the Mandate, the Mandate is hereby STAYED pending further action by this court.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

¹ This order addresses only the emergency motion filed by the above-captioned petitioners. Going forward, the Clerk of Court shall ensure that all related motions and petitions in this court be consolidated under this case number, and that all parties—including the Government—make all related filings in this case.

² See COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61,402 (Nov. 5, 2021) (to be codified at 29 C.F.R. pts. 1910, 1915, 1917, 1918, 1926, and 1928).

No. 21-60845

The Government shall respond to the petitioners' motion for a permanent injunction by 5:00 PM on Monday, November 8.

The petitioners shall file any reply by 5:00 PM on Tuesday, November 9.

So ordered.