

No. _____

**In the United States Court of Appeals
for the Fifth Circuit**

STATE OF TEXAS; HT STAFFING, LTD., D/B/A HT GROUP; STATE OF LOUISIANA; COX OPERATING, L.L.C; DIS-TRAN STEEL, LLC; DIS-TRAN PACKAGED SUBSTATIONS, LLC; BETA ENGINEERING, LLC; OPTIMAL FIELD SERVICES, LLC; STATE OF MISSISSIPPI; GULF COAST RESTAURANT GROUP INC.; STATE OF SOUTH CAROLINA; AND STATE OF UTAH,

Petitioners,

v.

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

Respondents.

PETITION FOR REVIEW

In accordance with 29 U.S.C. § 655(f) and Federal Rule of Appellate Procedure 15, the State of Texas; HT Staffing, Ltd., d/b/a HT Group; the State of Louisiana; Cox Operating, L.L.C.; DIS-TRAN Steel, LLC; DIS-TRAN Packaged Substations, LLC; Beta Engineering, LLC; Optimal Field Services, LLC; the State of Mississippi; Gulf Coast Restaurant Group Inc.; the State of South Carolina; and the State of Utah petition the Court for review of the Occupational Safety and Health Administration's Emergency Temporary Standard ("ETS") entitled "COVID-19

Vaccination and Testing; Emergency Temporary Standard,” 86 Fed. Reg. 61402 (Nov. 5, 2021), a copy of which is enclosed with this filing.

Jurisdiction and venue for this petition are proper in this Court under 29 U.S.C. § 655(f), because the petition “challenges the validity” of Respondents’ ETS and this Circuit is the location where one or more petitioners “reside[]” or have their “principal place of business.” This petition for review is timely because it was filed on November 5, 2021—a date that is “prior to the sixtieth day after” the ETS was “promulgated.” Joinder of the parties is practicable under Fed. R. App. P. 15(a)(1).

Respectfully submitted.

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CERTIFICATE OF SERVICE

On November 5, 2021, this petition for review was served by certified mail, return receipt requested, on:

Douglas Parker, Assistant Secretary
Occupational Health and Safety Administration
United States Department of Labor
200 Constitution Ave. NW, Rm. S-2315
Washington, D.C. 20210

Martin J. Walsh, Secretary of Labor
United States Department of Labor
Office of the Secretary
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Edmund C. Baird
Associate Solicitor for Occupational Safety & Health
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200 Constitution Ave. NW, Rm. S-4004
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The Hon. Merrick B. Garland
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United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

/s/ William F. Cole
WILLIAM F. COLE

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

November 05, 2021

Mr. Howard M. Radzely
U.S. Department of Labor
Office of the Solicitor
200 Constitution Avenue, N.W.
Frances Perkins Building
Washington, DC 20210

No. 21-60845 BST Holdings v. OSHA
Agency No. 29 CFR 1910

Dear Mr. Radzely,

You are served with the following document(s) under **FED. R. APP. P.**
15:

Petition for Review.

Special Guidance for Filing the Administrative Record: Pursuant to 5th Cir. R. 25.2, Electronic Case Filing (ECF) is mandatory for all counsel. Agencies responsible for filing the administrative record with this court are requested to electronically file the record via CM/ECF using one or more of the following events as appropriate:

Electronic Administrative Record Filed;
Supplemental Electronic Administrative Record Filed;
Sealed Electronic Administrative Record Filed; or
Sealed Supplemental Electronic Administrative Record Filed.

Electronic records must meet the requirements listed below. Records that do not comply with these requirements will be rejected.

- Max file size 20 megabytes per upload.
- Where multiple uploads are needed, describe subsequent files as "Volume 2", "Volume 3", etc.
- Individual documents should remain intact within the same file/upload, when possible.
- Supplemental records must contain the supplemental documents only. No documents contained within the original record should be duplicated.

Electronic records are automatically paginated for the benefit of counsel and the court and provide an accurate means of citing to the record in briefs. A copy of the paginated electronic record is provided to all counsel at the time of filing via a Notice of Docket Activity (NDA). Upon receipt, counsel should save a copy of the paginated record to their local computer.

Agencies unable to provide the administrative record via docketing in CM/ECF may instead provide a copy of the record on a flash drive or CD which we will use to upload and paginate the record.

If the agency intends to file a certified list in lieu of the administrative record, it is *required* to be filed electronically. Paper filings will not be accepted. See **FED. R. APP. P.** 16 and 17 as to the composition and time for the filing of the record.

ATTENTION ATTORNEYS: Attorneys are required to be a member of the Fifth Circuit Bar and to register for Electronic Case Filing. The "Application and Oath for Admission" form can be printed or downloaded from the Fifth Circuit's website, www.ca5.uscourts.gov. Information on Electronic Case Filing is available at www.ca5.uscourts.gov/cmecf/.

We recommend that you visit the Fifth Circuit's website, www.ca5.uscourts.gov and review material that will assist you during the appeal process. We especially call to your attention the Practitioner's Guide and the 5th Circuit Appeal Flow Chart, located in the Forms, Fees, and Guides tab.

Counsel who desire to appear in this case must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see **FED. R. APP. P.** and **5TH CIR. R.** 12. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov. If you fail to electronically file the form, we will remove your name from our docket.

Special guidance regarding filing certain documents:

General Order No. 2021-1, dated January 15, 2021, requires parties to file in paper highly sensitive documents (HSD) that would ordinarily be filed under seal in CM/ECF. This includes documents likely to be of interest to the intelligence service of a foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm to the United States or its interests. Before uploading any matter as a sealed filing, ensure it has not been designated as HSD by a district court and does not qualify as HSD under General Order No. 2021-1.

A party seeking to designate a document as highly sensitive in the first instance or to change its designation as HSD must do so by motion. Parties are required to contact the Clerk's office for guidance before filing such motions.

Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that

the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk

Mary Stewart

By: _____
Mary C. Stewart, Deputy Clerk
504-310-7694

Enclosure(s)

cc w/encl:

Mr. Edmund C. Baird
Mr. John Stone Campbell III
Mr. William Francis Cole
Ms. Sarah Harbison
Mr. Robert E. Henneke
Mrs. Melissa A. Holyoak
Mr. Thomas T. Hydrick
Mr. Jeffrey Jennings
Mr. Jeffrey Carl Mateer
Mr. Justin Lee Matheny
Mr. Matthew R. Miller
Ms. Elizabeth Baker Murrill
Mr. John Parham Murrill
Mr. Aaron Randall Rice
Mr. Joseph Scott St. John
Mr. Scott Stewart

Provided below is the court's official caption. Please review the parties listed and advise the court immediately of any discrepancies. If you are required to file an appearance form, a complete list of the parties should be listed on the form exactly as they are listed on the caption.

Case 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 Packages 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,

Petitioners

v.

Occupational Safety and Health Administration, United States
Department of Labor,

Respondent