

No. 21-_____

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

BST Holdings, LLC; RV Trosclair L.L.C.; Trosclair Airline LLC;
Trosclair Almonaster LLC; Trosclair and Sons LLC; Trosclair &
Trosclair, Inc.; Trosclair Carrollton LLC; Trosclair Claiborne LLC;
Trosclair Donaldsonville, LLC; Trosclair Houma LLC; Trosclair Judge
Perez LLC; Trosclair Lake Forest LLC; Trosclair Morrison LLC;
Trosclair Paris LLC; Trosclair Terry LLC; Trosclair Williams LLC;
Ryan Dailey; Jasand Gamble; Christopher L. Jones; David John
Loschen; Samuel Albert Reyna; and Kip Stovall,

Petitioners,

v.

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

Respondent.

PETITION FOR REVIEW

Daniel R. Suhr
Jeffrey D. Jennings
Liberty Justice Center
141 W. Jackson Blvd., Ste. 1065
Chicago, IL 60604
Telephone: 312-637-2280
dsuhr@libertyjusticecenter.org
jjennings@libertyjusticecenter.org

Sarah Harbison
Pelican Institute for Public Policy
400 Poydras St., Suite 900
New Orleans, LA 70130
Telephone: 504-952-8016
sarah@pelicaninstitute.org

Attorneys for Petitioners

CERTIFICATE OF INTERESTED PERSONS

1. Pursuant to Fifth Circuit Rule 28.2.1, Petitioners file this Certificate of Interested Persons. The case number has yet to be assigned in this case, and the complete case caption of parties is on the preceding cover page.

2. The undersigned counsel of record certifies that the following listed persons and non-governmental entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

- a. BST Holdings, LLC
- b. RV Trosclair L.L.C.
- c. Trosclair Airline LLC
- d. Trosclair Almonaster LLC
- e. Trosclair and Sons LLC
- f. Trosclair & Trosclair, Inc.
- g. Trosclair Carrollton LLC
- h. Trosclair Claiborne LLC
- i. Trosclair Donaldsonville, LLC
- j. Trosclair Houma LLC

- k. Trosclair Judge Perez LLC
- l. Trosclair Lake Forest LLC
- m. Trosclair Morrison LLC
- n. Trosclair Paris LLC
- o. Trosclair Terry LLC
- p. Trosclair Williams LLC
- q. Ryan Dailey
- r. Jasand Gamble
- s. Christopher L. Jones
- t. David John Loschen
- u. Samuel Albert Reyna
- v. Kip Stovall

3. Opposing counsel in this case will be the United States Department of Justice.

/s/ Jeffrey D. Jennings
Attorney of record for Petitioners

PETITION FOR REVIEW

Pursuant to § 6(f) of the Occupational Safety and Health Act, 28 U.S.C. § 655(f), and Federal Rule of Appellate Procedure 15, the Petitioners, BST Holdings, LLC; RV Trosclair L.L.C.; Trosclair Airline LLC; Trosclair Almonaster LLC; Trosclair and Sons LLC; Trosclair & Trosclair, Inc.; Trosclair Carrollton LLC; Trosclair Claiborne LLC; Trosclair Donaldsonville, LLC; Trosclair Houma LLC; Trosclair Judge Perez LLC; Trosclair Lake Forest LLC; Trosclair Morrison LLC; Trosclair Paris LLC; Trosclair Terry LLC; Trosclair Williams LLC; Ryan Dailey; Jasand Gamble; Christopher L. Jones; David John Loschen; Samuel Albert Reyna; and Kip Stovall (“Petitioners”), petition the Court for review of the Emergency Temporary Standard addressing occupational exposure to COVID-19, issued by the Respondent, Occupational Safety and Health Administration, United States Department of Labor (“OSHA” or “Respondent”), and published in the Federal Register on November 5, 2021, at Volume 86, pages 61402 through 61555 (the “ETS”). A copy of the ETS is attached to this Petition as **Exhibit A**.

The ETS requires all employers with more than 100 employees to mandate that their workers be fully vaccinated against COVID-19—or to

subject unvaccinated workers to weekly COVID-19 testing and masking at work. Petitioners petition for review of this ETS mandate on the grounds that 1) it exceeds OSHA's authority under its enabling statute, 2) it exceeds Congress's authority under the Interstate Commerce Clause, and 3) it exceeds Congress's authority under the nondelegation doctrine.

The sixteen corporate entity petitioners are a management company and fifteen locally owned supermarkets that conduct business under the names Ralph's Market, Butcher Boy, and Save A Lot. The earliest market has been in continuous operation in Louisiana since 1984. They share common ownership and common management, as Brandon Trosclair is the single member-manager of the limited liability companies and the president of the incorporated entity. They are all incorporated in Louisiana and maintain their principal place of business in Louisiana. Combined, they employ almost 500 workers and are currently subject to OSHA regulations. They will be adversely affected by the ETS because they already face worker shortages, and the ETS would make it even harder to hire and keep employees. The ETS would diminish their ability to provide grocery options to the citizens of

Louisiana.

The six individually named petitioners are residents of Texas and employees of CaptiveAire Systems, Inc., a corporation with approximately 1,500 employees. They will be adversely affected by the ETS because it will force them, against their will, to show their employer proof of COVID-19 vaccination or risk losing their jobs and livelihoods if they choose not to. Alternatively, they would be subjected to weekly COVID-19 testing and masking at work. This adverse effect is particularly troubling, unfair, and illegal as it applies to Petitioners Dailey, Gamble, Jones, and Reyna because they work mostly alone on roofs and are highly unlikely to spread COVID-19 to colleagues they may only see a few times a year. They only come into contact with customers briefly at customer workplaces. Therefore, OSHA's claimed authority over their private lives and vaccine status is an egregious government overreach.

For these reasons, Petitioners petition this Court to review the ETS immediately, and they plan to file today an Emergency Motion to Stay Enforcement & Expedite Review and their Opening Brief.

November 5, 2021

Respectfully submitted,

/s/ Jeffrey D. Jennings

Daniel R. Suhr, WI Bar # 1056658

Application for Admission Submitted

Jeffrey D. Jennings, VA Bar # 87667

Liberty Justice Center

141 W. Jackson Blvd., Ste. 1065

Chicago, IL 60604

Telephone: 312-637-2280

dsuhr@libertyjusticecenter.org

jjennings@libertyjusticecenter.org

Sarah Harbison, LA Bar # 31948

Pelican Institute for Public Policy

400 Poydras St., Suite 900

New Orleans, LA 70130

Telephone: 504-952-8016

sarah@pelicaninstitute.org

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2021, I caused a copy of this Petition for Review to be served on Respondent by email as directed in the ETS:

Edmund C. Baird
Associate Solicitor of Labor for Occupational
Safety and Health
Office of the Solicitor
United States Department of Labor
200 Constitution Ave., NW
Washington, DC 20210
zzSOLCovid19-ETS@dol.gov

/s/ Jeffrey D. Jennings

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. Jeffrey Jennings
Ms. Kate S. O'Scannlain
Mr. Thomas E. Perez

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,

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Occupational Safety and Health Administration, United States
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