

Nos. 21-7000 (lead), 21-4027, -4028, -4031, -4032, -4033, -4080, -4082, -4083,
-4084, -4085, -4086, -4087, -4088, -4089, -4090, -4091, -4092, -4093, -4094,
-4095, -4096, -4097, -4099, -4100, -4101, -4102, -4103
MCP No. 165

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: OSHA RULE ON
COVID-19 VACCINATION AND
TESTING, 86 FED. REG. 61402

On Petitions for Review

RESPONDENTS' MOTION TO FILE AN OVERLENGTH MOTION

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Pursuant to Federal Rule of Appellate Procedure 27(d)(2), the federal government respectfully requests an extension of the word limit, to 13,000 words, for the accompanying Emergency Motion To Dissolve Stay. This extension is necessary in light of the paramount importance of the emergency temporary standard that was stayed by the Fifth Circuit, the large number of issues raised by the Fifth Circuit's opinion, and the agency's 150-page comprehensive analysis of these issues.

1. Faced with significant workplace transmission of COVID-19 and an extraordinary and present danger to employees, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard pursuant to 29 U.S.C. § 655(c)(1). *See* 86 Fed. Reg. 61402 (Nov. 5, 2021). The Standard gives employers the option of requiring vaccination or offering their employees the choice to mask and test. The Standard reflects OSHA's expert judgment that these measures are necessary to mitigate COVID-19 transmission, and the grievous harms the virus inflicts, throughout America's workplaces.

2. Petitions for review challenging the Standard were filed in all twelve regional courts of appeals, and the Judicial Panel on Multidistrict Litigation subsequently transferred the petitions to this Court. Before the transfer, the Fifth Circuit granted a stay and enjoined the implementation and enforcement of the Standard. *See BST Holdings, LLC v. OSHA*, No. 21-60845, slip op. (5th Cir. Nov. 12, 2021).

3. The requested extension is necessary to address the many issues presented by the Fifth Circuit's opinion and to discuss the most pertinent portions of OSHA's

analysis. The Fifth Circuit’s opinion addressed an array of arguments raised in multiple motions, as well as additional arguments not presented by the parties. That court’s opinion touched on a large number of issues that OSHA analyzed in a comprehensive explanation for its decision. The Standard’s preamble spans 150 pages of the Federal Register. The government’s motion addresses the issues touched on by the Fifth Circuit and presents the explanatory and factual bases for OSHA’s determinations. *See* 29 U.S.C. § 655(f) (“The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.”).

4. Because this case has only recently been consolidated, the federal government has not obtained the opposing petitioners’ positions. The federal government would not object to a similar extension for petitioners that have a right to respond to this motion. The federal government also respectfully requests a reply in which its word limit is half the length of the combined total of the petitioners’ responses.

Respectfully submitted,

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November 2021

CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 413 words. This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Brian J. Springer

Brian J. Springer