

**No. 21-7000 (lead), 21-4101,  
MCP No. 165**

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

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

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On Petitions for Review

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**PETITIONERS' NOTICE RE ADOPTION OF MOTION AND  
REPLY AS RESPONSE TO GOVERNMENT MOTION**

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December 7, 2021

On December 3, 2021, this Court ordered that Petitioners whose motions for stay were deemed moot could elect to adopt those motions for stay as responses to the Government's Motion to Dissolve Stay (Dkt. 69). *See* Court Order, Dec. 3, 2021, Sec. A(3) (Dkt. 299-2). Accordingly, Petitioners DTN Staffing, Inc., Jamie Fleck, Sadie Haws, Sheriff Sharma, Wendi Johnston, Miller Insulation Company, Inc., Brad Miller, Corey Hager, Julio Hernandez Ortiz, and Aaron Janz hereby notify the Court that their Motion for Stay Pending Review (Dkt. 160) and their Reply in Support of Motion for Stay Pending Review (Dkt. 221) are adopted as a Response to the Government's Motion to Dissolve Stay (Dkt. 69). Petitioners' bases for opposing the Government's Motion are set forth fully therein.

For the convenience of the Court and the Government, Petitioners also point out that their Motion for Stay Pending Review includes one claim that most, if not all, other Petitioners have not raised—that the ETS is unconstitutional because it violates the substantive due process liberty interest protected by the Fifth Amendment. *See* Motion for Stay Pending Review (Dkt. 160), at 17-20; Reply (Dkt. 221), at 6-9. This claim is in addition to three other claims presented by Petitioners, namely that the ETS fails to meet the requirements of the OSHA statute, the ETS unconstitutionally expands the reach of the OSHA statute beyond the limits of the Commerce Power, and the ETS violates the Free Exercise Clause of the First Amendment.

Respectfully submitted,

December 7, 2021

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December 7, 2021

/s/ Kris W. Kobach  
Kris W. Kobach  
*Counsel for Petitioners*

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2021, I caused a copy of this Notice to be served on Respondents by operation of the Court's CM/ECF system.

December 7, 2021

/s/ Kris W. Kobach  
Kris W. Kobach  
*Counsel for Petitioners*