

Nos. 21-7000 (lead), 21-4133  
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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OPPOSITION TO PETITIONER AARON ABADI'S  
EMERGENCY STAY MOTION

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Petitioner Aaron Abadi’s pro se “Emergency Motion for Stay Pending Review Specifically for Those with Natural Immunity” should be denied. *See* Doc. 404 (No. 21-7000).

1. Respondents previously filed a motion to dissolve the Fifth Circuit’s stay of the emergency temporary standard issued by the Occupational Safety and Health Administration to address the grave danger of COVID-19 in the workplace. Doc. 69. This Court set a briefing schedule to allow petitioners to respond to that motion. Doc. 141. Petitioner Abadi did so, urging that the Standard’s requirements should not apply to individuals who previously had COVID-19, whom Mr. Abadi describes as individuals with “natural immunity.” Doc. 303. After considering the parties’ filings, this Court granted respondents’ motion to dissolve the Fifth Circuit’s stay. Doc. 386-2.

2. Several petitioners—including Mr. Abadi—seek relief from that decision and have asked the Supreme Court to stay the Standard. *E.g.*, Doc. 388-1 (business association petitioners notifying this Court of an emergency stay application filed in the Supreme Court).<sup>\*</sup> The Supreme Court set a December 30 response deadline, with oral argument addressing the stay applications scheduled for January 7, 2022 (<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/21a244.html>).

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<sup>\*</sup> Mr. Abadi provided respondents with a copy of his Supreme Court stay application on December 21, although that document has not appeared on the Supreme Court’s electronic docket.

3. This Court should not entertain Mr. Abadi's motion in light of the pending proceedings. Although styled as a stay motion, Mr. Abadi's motion in substance appears to be a petition for panel rehearing to which no response may be filed absent a request by this Court. *See* Fed. R. App. P. 40(a)(3). To the extent Mr. Abadi's filing should be understood as a stay motion, it should be denied for the reasons laid out in the Court's opinion and in respondents' prior filings, which specifically discuss previously infected persons, and because the issue is now being briefed before the Supreme Court.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

This response complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 317 words. This response 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.

### **CERTIFICATE OF SERVICE**

I certify that Mr. Abadi has consented to receive service via electronic mail, and that I will send this response to him today.

*s/ Brian J. Springer*  
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Brian J. Springer