

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

June 13, 2022

Lyle W. Cayce  
Clerk

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No. 21-30734

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STATE OF LOUISIANA; STATE OF MONTANA; STATE OF  
ARIZONA; STATE OF ALABAMA; STATE OF GEORGIA; STATE OF  
IDAHO; STATE OF INDIANA; STATE OF MISSISSIPPI; STATE OF  
OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF UTAH;  
STATE OF WEST VIRGINIA; COMMONWEALTH OF KENTUCKY;  
STATE OF OHIO,

*Plaintiffs—Appellees,*

*versus*

XAVIER BECERRA, *Secretary, U.S. Department of Health and Human  
Services*; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; CHIQUITA BROOKS-LASURE; CENTERS FOR  
MEDICARE AND MEDICAID SERVICES,

*Defendants—Appellants.*

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC 3:21-CV-3970

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Before JOLLY, ELROD, and HAYNES, *Circuit Judges.*

No. 21-30734

PER CURIAM:\*

In November 2021, the Secretary of Health and Human Services issued an interim final rule which required that, in order to receive Medicare or Medicaid funding, participating facilities must ensure that their employees are vaccinated against COVID-19. *See* 86 Fed. Reg. 61555 (2021). States across the country sued to challenge the rule. A district court in Missouri preliminarily enjoined enforcement of the rule as applied to the plaintiff-states in that case. *Missouri v. Biden*, --- F. Supp. 3d ---, 2021 WL 5564501, at \*15 (E.D. Mo. Nov. 29, 2021). The next day, the district court in this case did the same for every other state, effectively enjoining enforcement of the rule nationwide. *Louisiana v. Becerra*, --- F. Supp. 3d ---, 2021 WL 5609846, at \*17 (W.D. La. Nov. 30, 2021). A panel of this court partially granted a stay of that injunction as to the non-party states, but denied a stay as to the fourteen plaintiff-states. *Louisiana v. Becerra*, 20 F.4th 260, 264 (5th Cir. 2021). The Supreme Court later stayed both injunctions in their entirety and remanded the case back to this court. *Biden v. Missouri*, 142 S. Ct. 647, 654–55 (2022).

Although this court had not responded to the Supreme Court's remand, Louisiana, joined by the remainder of the plaintiff-states, moved in the district court for leave to amend its complaint. Because our court had jurisdiction over the case, the district court denied that motion and issued an indicative ruling noting that it would grant the motion for leave to amend. Louisiana then moved in our court for a limited remand so the district court could grant leave to amend the complaint and to allow those new claims to be litigated in the district court. The motions panel denied that

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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motion, allowing the merits panel to resolve the remand issue and the propriety of the district court's preliminary injunction.

We have jurisdiction to decide only whether the district court erred in granting the earlier preliminary injunction that the Supreme Court has now stayed and remanded. *See* 28 U.S.C. § 1292(a)(1). The parties now agree that the preliminary injunction should be vacated. Accordingly, we VACATE the district court's preliminary injunction and REMAND this case to the district court for further consideration in the light of the Supreme Court opinion. In addition, we VACATE the motions panel's order denying the motion to remand as MOOT. Finally, we express no opinion on whether the district court should grant or deny leave to amend the complaint or on the propriety of Louisiana's other claims.

VACATED and REMANDED.

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

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CLERK

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NEW ORLEANS, LA 70130

June 13, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing  
or Rehearing En Banc

No. 21-30734 State of Louisiana v. Becerra  
USDC No. 3:21-CV-3970

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

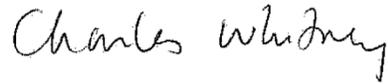
Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

The judgment entered provides that each party bear its own costs on appeal.

Sincerely,

LYLE W. CAYCE, Clerk



By: \_\_\_\_\_  
Charles B. Whitney, Deputy Clerk

Enclosure(s)

Mr. Drew C. Ensign  
Mr. Jimmy Roy Faircloth Jr.  
Mr. Andrew N. Ferguson  
Mr. Thomas Molnar Fisher  
Mr. Clark Lassiter Hildabrand  
Mr. Thomas T. Hydrick  
Ms. Alisa Beth Klein  
Mr. Matthew F. Kuhn  
Mr. Mithun Mansinghani  
Mr. Joel McElvain  
Ms. Elizabeth Baker Murrill  
Ms. Laura Myron  
Ms. Mary Katherine Price  
Ms. Lindsay Sara See  
Mr. Brandon James Smith  
Mr. Joseph Scott St. John