

No. \_\_\_\_

**In the United States Court of Appeals  
for the Fifth Circuit**

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TEXAS TRUCKING ASSOCIATION;  
MISSISSIPPI TRUCKING ASSOCIATION;  
LOUISIANA MOTOR TRANSPORT ASSOCIATION;  
AMERICAN TRUCKING ASSOCIATIONS, INC.;  
NATIONAL FEDERATION OF INDEPENDENT BUSINESS;  
NATIONAL RETAIL FEDERATION;  
FMI – THE FOOD INDUSTRY ASSOCIATION;  
NATIONAL ASSOCIATION OF CONVENIENCE STORES;  
NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS;  
INTERNATIONAL WAREHOUSE & LOGISTICS ASSOCIATION; AND  
INTERNATIONAL FOODSERVICE DISTRIBUTORS ASSOCIATION,  
*Petitioners,*

*v.*

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, UNITED STATES  
DEPARTMENT OF LABOR; UNITED STATES DEPARTMENT OF LABOR; MARTIN  
J. WALSH, SECRETARY, U.S. DEPARTMENT OF LABOR; DOUGLAS PARKER, IN  
HIS OFFICIAL CAPACITY AS ASSISTANT SECRETARY OF LABOR FOR  
OCCUPATIONAL SAFETY AND HEALTH,  
*Respondents.*

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**PETITION FOR REVIEW**

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In accordance with 29 U.S.C. § 655(f) and Federal Rule of Appellate Procedure 15, the Texas Trucking Association; Mississippi Trucking

Association; Louisiana Motor Transport Association; American Trucking Associations, Inc.; National Federation of Independent Business; National Retail Federation; FMI – The Food Industry Association; National Association of Convenience Stores; National Association of Wholesaler-Distributors; International Warehouse & Logistics Association; and International Foodservice Distributors Association petition the Court for review of the Occupational Safety and Health Administration’s “COVID-19 Vaccination and Testing; Emergency Temporary Standard,” 86 Fed. Reg. 61,402 (Nov. 5, 2021) (“ETS”). A copy of this ETS is enclosed with this filing.

Pursuant to this Court’s November 6, 2021, order in Case No. 21-60845, Petitioners respectfully request that this Petition for Review should be consolidated with Case No. 21-60845. This Petition for Review is related to that existing case, as both challenge the same ETS.

Petitioners, their members, and American businesses have contributed significantly to fighting COVID-19, including substantial efforts to make vaccines available and encourage employees to protect themselves against this pandemic. Petitioners are trade associations representing businesses across the economy. Their members have seen COVID-19 wreak havoc on their employees. This is not a case about the efficacy of COVID-19 vaccines, which are a marvel of modern medicine. Petitioners’ members have taken extraordinary measures to protect their employees, customers, and communities during the pandemic. They have distributed, incentivized, encouraged, and in some cases mandated the vaccine.

This is a case about American businesses that do not want to face the immediate irreparable harm of losing employees, incurring substantial and unrecoverable compliance costs, and worsening already fragile supply chains and labor markets. Yet that is precisely what would result from the Occupational Safety and Health Administration’s “COVID-19 Vaccination and Testing; Emergency Temporary Standard.” 86 Fed. Reg. 61,402 (Nov. 5, 2021). This challenged action is an extreme assertion of administrative power.

Jurisdiction and venue for this petition are proper in this Court under 29 U.S.C. § 655(f) because the petition “challeng[es] the validity of” OSHA’s action and one or more petitioners “reside[] or” have their “principal place of business” in this Circuit. This petition for review is timely because it was filed on November 9, 2021—a date that is “prior to the sixtieth day after” the OSHA action was “promulgated.” *Id.* Joinder of the parties is practicable under Fed. R. App. P. 15(a)(1).

Petitioners will promptly move under Federal Rule of Appellate Procedure 18 for a stay of the effective date of the ETS pending the conclusion of these proceedings, and further ask the Court to vacate and set aside the ETS.

Dated: November 9, 2021

Scott A. Keller  
Joshua P. Morrow  
LEHOTSKY KELLER LLP  
919 Congress Ave.  
Austin, Texas 78701

Katherine C. Yarger  
LEHOTSKY KELLER LLP  
1550 Dayton St.  
Unit 362  
Denver, CO 80010

Respectfully submitted,

/s/ Steven P. Lehotsky

Steven P. Lehotsky  
Michael B. Schon  
LEHOTSKY KELLER LLP  
200 Massachusetts Ave. NW  
Washington, DC 20001  
(512) 693-8350  
steve@lehotskykeller.com

*Counsel for Petitioners*

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FMI – THE FOOD INDUSTRY ASSOCIATION;  
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OCCUPATIONAL SAFETY AND HEALTH,  
*Respondents.*

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**Certificate of Interested Persons**

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. In accordance with Federal Rule of Appellate Procedure 26.1, the undersigned counsel certifies that none of the

named Petitioners has any parent corporation and that no publicly held corporation holds more than 10% of their stock. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

**Petitioners:**

Texas Trucking Association  
Mississippi Trucking Association  
Louisiana Motor Transport Association  
American Trucking Associations, Inc.  
National Federation of Independent Business  
National Retail Federation  
FMI – The Food Industry Association  
National Association of Convenience Stores  
National Association of Wholesaler-Distributors  
International Warehouse & Logistics Association  
International Foodservice Distributors Association

**Counsel for Petitioners:**

Steven P. Lehotsky (lead counsel)  
Scott A. Keller  
Michael B. Schon  
Katherine C. Yarger  
Joshua P. Morrow  
*Lehotsky Keller LLP*

**Respondents:**

Occupational Safety and Health Administration  
United States Department of Labor  
Martin J. Walsh, in his official capacity as Secretary of the U.S. Department of Labor

Douglas L. Parker, in his Official Capacity as Assistant Secretary of Labor for Occupational Safety and Health.

**Counsel for Respondents:**

Brian M. Boynton  
Sarah E. Harrington  
Michael S. Raab  
Adam C. Jed  
Brian J. Springer  
Martin Totaro  
*U.S. Department of Justice*

Seema Nanda  
Edmund C. Baird  
Louise M. Betts  
Brian Broecker  
Marisa C. Schnaith  
*U.S. Department of Labor*

*/s/ Steven P. Lehotsky*  
Steven P. Lehotsky  
Counsel of Record for Petitioners

## CERTIFICATE OF SERVICE

On November 9, 2021, I certify that I served Respondents by ECF and caused a true and correct copy of the Petition for Review and attachment to be emailed to the following:

Edmund C. Baird  
Associate Solicitor for Occupational Safety & Health  
Office of the Solicitor of Labor  
200 Constitution Ave. NW, Rm. S-4004  
Washington, DC 20210

/s/ Steven P. Lehotsky  
Steven P. Lehotsky