

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

Deborah S. Hunt
Clerk

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Filed: February 18, 2022

Re: Case No. 21-7000/21-4027/21-4028/21-4031/21-4032/21-4033/21-4080/21-4082/21-4083/21-4084/21-4085/21-4086/21-4087/21-4088/21-4089/21-4090/21-4091/21-4092/21-4093/21-4094/21-4095/21-4096/21-4097/21-4099/21-4100/21-4101/21-4102/21-4103/21-4108/21-4112/21-4114/21-4115/21-4117/21-4133/21-4149/21-4152/21-4157, *MCP No.165, OSHA Covid Rule*
Originating Case No. : OSHA-2001-0007

Dear Counsel and Mr. Abadi,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Leon T. Korotko
Case Manager
Direct Dial No. 513-564-7069

cc: Mr. Aaron Abadi
Mr. Robert Alt
Mr. Michael Timothy Anderson
Mr. Ryan Baasch
Mr. Edmund Charles Baird
Mr. Ryan Bangert
Mr. David Joseph Beck
Mr. Craig Becker
Mr. Josh Belinfante
Mr. Ross Warren Bergethon
Ms. Nicole G. Berner
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Mr. Charles Edmond Brasington
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Mr. Brian Alan Broecker
Mr. Jeremy Joseph Broggi
Mr. Nicholas J. Bronni
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Mr. James A. Campbell
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Mr. Joshua Joseph Campbell
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Mr. William Francis Cole
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Mr. Steven R. Eatherly
Mr. Drew Curtis Ensign
Mr. Thomas Molnar Fisher
Mr. Charles Flores
Mr. Benjamin Michael Flowers
Mr. Peter Ford
Ms. Rachel Fried
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Mr. Thomas P. Gies
Mr. Jamila Gleason
Ms. Brianne Jenna Gorod
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Ms. Shannon Marie Grammel
Mr. Grant Joseph Guillot
Mr. Deepak Gupta
Mr. David J Hacker
Ms. Sarah Harbison
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Ms. Leslie Hayes
Mr. Ryan Lawrence Heath

Mr. Robert Henneke
Mr. Jason H Hilborn
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Ms. Melissa Ann Holyoak
Mr. Thomas T. Hydrick
Ms. Rachel Louise Jag
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Mr. Thomas M. Johnson Jr.
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Ms. Lindsey Keiser
Mr. Scott Allen Keller
Ms. Ashley Steiner Kelly
Ms. JoAnn Kintz
Mr. Kris W. Kobach
Mr. Edmund Gerard LaCour Jr.
Mr. Samuel Paul Langholz
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Mr. Steven Paul Lehotsky
Mr. Daniel P. Lennington
Ms. Emmy L. Levens
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Ms. Amy L. Rosenberger
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Mr. Halron Waites Turner
Mr. Thomas J. Ward
Ms. Felicia K. Watson
Mr. Chance Weldon
Mr. Henry Charles Whitaker
Mr. Edward Lawrence White
Mr. Christopher David Wiest
Mr. Kurtis T. Wilder
Mr. Daniel William Wolff
Ms. Allison M. Zieve

Enclosure

No mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 21-7000

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: MCP NO. 165,)
OCCUPATIONAL SAFETY AND HEALTH)
ADMINISTRATION RULE ON COVID-19)
VACCINE AND TESTING,)
86 FED. REG. 61402)

O R D E R

Before: GIBBONS, STRANCH, and LARSEN, Circuit Judges.

Several motions remain pending in these proceedings, consolidated pursuant to 28 U.S.C. § 2112(a) before this court. After consolidation, the Government moved to dissolve the stay of OSHA’s ETS issued by the 5th Circuit in *BST Holdings, LLC v. Occupational Safety and Health Admin.*, 17 F.4th 604 (5th Cir. 2021), and we granted that motion on December 17, 2021, pursuant to our authority under 28 U.S.C. § 2112(a)(4). *See In re MCP No. 165*, 21 F.4th 357 (6th Cir. 2021). On January 13, 2022, the Supreme Court stayed enforcement of the ETS. *See Nat’l Fed’n of Indep. Bus. v. Dep’t of Labor*, 142 S. Ct. 661 (2022). On January 26, OSHA withdrew the ETS as an enforceable emergency temporary standard. The Government now moves to dismiss the Petitions before this court as moot.

A case becomes moot “when it is impossible for a court to grant any effectual relief.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation omitted). “If events occur during the case, including during the appeal, that make it ‘impossible for the court to grant any effectual relief whatever to a prevailing party,’ the appeal must be dismissed as moot.” *Fialka-Feldman v.*

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Oakland Univ. Bd. of Trs., 639 F.3d 711, 713 (6th Cir. 2011) (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)). Because the ETS's requirements are no longer in effect as a result of OSHA's withdrawal, the challenged requirements from which Petitioners seek relief are no longer in effect.

Accordingly, we **GRANT** the Government's motion (Dkt. Entry 408) and **DISMISS** the case as moot.¹ In doing so, we also **DENY AS MOOT** all outstanding motions pertaining to this case (including, Dkt. Entries 225, 230, 231, 246, 247, 252, 307, 328, 368, 404, and Case No. 21-4133, Dkt. Entries 3, 68).

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

¹ We decline to vacate our prior decision under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). The main concern in that case was leaving a judgment on the books that would have res judicata effect. Thus, *Munsingwear* sought to "clear[] the path for future relitigation of issues between the parties and eliminate a judgment, review of which was prevented through happenstance." *Id.* at 40. Because our opinion did not constitute a final judgment on the merits and this ETS has been withdrawn, those concerns do not apply here.