

No. 21-_____

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

BST Holdings, LLC; RV Trosclair L.L.C.; Trosclair Airline LLC;
Trosclair Almonaster LLC; Trosclair and Sons LLC; Trosclair &
Trosclair, Inc.; Trosclair Carrollton LLC; Trosclair Claiborne LLC;
Trosclair Donaldsonville, LLC; Trosclair Houma LLC; Trosclair Judge
Perez LLC; Trosclair Lake Forest LLC; Trosclair Morrison LLC;
Trosclair Paris LLC; Trosclair Terry LLC; Trosclair Williams LLC;
Ryan Dailey; Jasand Gamble; Christopher L. Jones; David John
Loschen; Samuel Albert Reyna; and Kip Stovall,

Petitioners,

v.

Occupational Safety and Health Administration,
United States Department of Labor,

Respondent.

PETITION FOR REVIEW

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CERTIFICATE OF INTERESTED PERSONS

1. Pursuant to Fifth Circuit Rule 28.2.1, Petitioners file this Certificate of Interested Persons. The case number has yet to be assigned in this case, and the complete case caption of parties is on the preceding cover page.

2. The undersigned counsel of record certifies that the following listed persons and non-governmental entities have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

- a. BST Holdings, LLC
- b. RV Trosclair L.L.C.
- c. Trosclair Airline LLC
- d. Trosclair Almonaster LLC
- e. Trosclair and Sons LLC
- f. Trosclair & Trosclair, Inc.
- g. Trosclair Carrollton LLC
- h. Trosclair Claiborne LLC
- i. Trosclair Donaldsonville, LLC
- j. Trosclair Houma LLC

- k. Trosclair Judge Perez LLC
- l. Trosclair Lake Forest LLC
- m. Trosclair Morrison LLC
- n. Trosclair Paris LLC
- o. Trosclair Terry LLC
- p. Trosclair Williams LLC
- q. Ryan Dailey
- r. Jasand Gamble
- s. Christopher L. Jones
- t. David John Loschen
- u. Samuel Albert Reyna
- v. Kip Stovall

3. Opposing counsel in this case will be the United States Department of Justice.

/s/ Jeffrey D. Jennings
Attorney of record for Petitioners

PETITION FOR REVIEW

Pursuant to § 6(f) of the Occupational Safety and Health Act, 28 U.S.C. § 655(f), and Federal Rule of Appellate Procedure 15, the Petitioners, BST Holdings, LLC; RV Trosclair L.L.C.; Trosclair Airline LLC; Trosclair Almonaster LLC; Trosclair and Sons LLC; Trosclair & Trosclair, Inc.; Trosclair Carrollton LLC; Trosclair Claiborne LLC; Trosclair Donaldsonville, LLC; Trosclair Houma LLC; Trosclair Judge Perez LLC; Trosclair Lake Forest LLC; Trosclair Morrison LLC; Trosclair Paris LLC; Trosclair Terry LLC; Trosclair Williams LLC; Ryan Dailey; Jasand Gamble; Christopher L. Jones; David John Loschen; Samuel Albert Reyna; and Kip Stovall (“Petitioners”), petition the Court for review of the Emergency Temporary Standard addressing occupational exposure to COVID-19, issued by the Respondent, Occupational Safety and Health Administration, United States Department of Labor (“OSHA” or “Respondent”), and published in the Federal Register on November 5, 2021, at Volume 86, pages 61402 through 61555 (the “ETS”). A copy of the ETS is attached to this Petition as **Exhibit A**.

The ETS requires all employers with more than 100 employees to mandate that their workers be fully vaccinated against COVID-19—or to

subject unvaccinated workers to weekly COVID-19 testing and masking at work. Petitioners petition for review of this ETS mandate on the grounds that 1) it exceeds OSHA's authority under its enabling statute, 2) it exceeds Congress's authority under the Interstate Commerce Clause, and 3) it exceeds Congress's authority under the nondelegation doctrine.

The sixteen corporate entity petitioners are a management company and fifteen locally owned supermarkets that conduct business under the names Ralph's Market, Butcher Boy, and Save A Lot. The earliest market has been in continuous operation in Louisiana since 1984. They share common ownership and common management, as Brandon Trosclair is the single member-manager of the limited liability companies and the president of the incorporated entity. They are all incorporated in Louisiana and maintain their principal place of business in Louisiana. Combined, they employ almost 500 workers and are currently subject to OSHA regulations. They will be adversely affected by the ETS because they already face worker shortages, and the ETS would make it even harder to hire and keep employees. The ETS would diminish their ability to provide grocery options to the citizens of

Louisiana.

The six individually named petitioners are residents of Texas and employees of CaptiveAire Systems, Inc., a corporation with approximately 1,500 employees. They will be adversely affected by the ETS because it will force them, against their will, to show their employer proof of COVID-19 vaccination or risk losing their jobs and livelihoods if they choose not to. Alternatively, they would be subjected to weekly COVID-19 testing and masking at work. This adverse effect is particularly troubling, unfair, and illegal as it applies to Petitioners Dailey, Gamble, Jones, and Reyna because they work mostly alone on roofs and are highly unlikely to spread COVID-19 to colleagues they may only see a few times a year. They only come into contact with customers briefly at customer workplaces. Therefore, OSHA's claimed authority over their private lives and vaccine status is an egregious government overreach.

For these reasons, Petitioners petition this Court to review the ETS immediately, and they plan to file today an Emergency Motion to Stay Enforcement & Expedite Review and their Opening Brief.

November 5, 2021

Respectfully submitted,

/s/ Jeffrey D. Jennings

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Application for Admission Submitted

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2021, I caused a copy of this Petition for Review to be served on Respondent by email as directed in the ETS:

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