

**NOT RECOMMENDED FOR PUBLICATION**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 )

**FILED**  
Feb 18, 2022  
DEBORAH S. HUNT, Clerk

ORDER

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.*

No. 21-7000

- 2 -

*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 Because the ETS's requirements are no longer in effect as a result of OSHA's withdrawal, the challenged requirements from which Petitioners seek relief are no longer in effect.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.<sup>1</sup> 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



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Deborah S. Hunt, Clerk

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<sup>1</sup> 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.