

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)

ORDER

On November 23, 2021, OSHA filed an Emergency Motion to Dissolve the Stay that was issued by the Fifth Circuit Court of Appeals and consolidated herein (Dkt. 69). Given the Government’s pending motion, the motions to stay the agency’s ruling and related motions, including Dkt. Entry Nos. 148, 150, 154, 157, 160, 161, 165, 168, 170, 171, 172, 175, 176, 182, and 197, are hereby DENIED AS MOOT.

A. Responses to Government’s Motion to Dissolve (Dkt. 69) and Reply Thereto

Per this Court’s November 23, 2021, Scheduling Order (Dkt. 141), responses to the Government’s Motion to Dissolve Stay (Dkt. 69) may be filed no later than December 7, 2021. Parties may choose to respond, pursuant to the instructions in the Initial Case Management Order (Dkt. 8), by one of the following methods:

- (1) Filing a direct response to the Government’s Motion, limited to 5,200 words (motions for leave to file an oversized response will not be entertained); OR

(2) Filing a notice of joinder in another filed response, specifying the joined document by its docket number in case 21-7000; OR

(3) Filing a notice to adopt their previously filed motion for stay, specified by docket number in case 21-7000, to which the word limit designated in subsection (1) does not apply.

The Government and the parties that joined in the Government's motion may each file their own single consolidated reply that addresses all responses, which is due no later than December 10, 2021, and limited to 5,200 words.

B. Government's Motion to Amend Briefing Schedule and Set Merits Briefing (Dkt. 131)

The Court DENIES the Government's motion to amend the briefing schedule established in Dkt. 141. The Court reserves judgment on setting a merits briefing schedule. Finally, the Court encourages the parties to consider the option noted above in A(2) and group their responses by joinder, but given practical considerations of the expedited proceedings, declines to set any requirements. Parties are advised to continue to adhere to the briefing schedule set forth in Dkt. 141.

C. Motions to Transfer (Dkt. 95, 213)

The Court hereby DENIES the motions to transfer the matter to the Fifth Circuit (Dkt. 95) and the D.C. Circuit (Dkt. 213).

D. Motion to Hold Case in Abeyance Pending the Outcome of Initial En Banc (Dkt. 99)

The Court hereby DENIES the motion to hold the case in abeyance pending the outcome of initial en banc. Parties are advised to continue to adhere to the briefing schedule set forth in Dkt. 141.

E. Motions for Leave to File Amicus Briefs (Dkt. 87, 88, 100, 101, 167, 208, 235, 241, 243)

Several parties (Dkt. 87, 88, 167, 208) previously filed motions for leave to file an amicus curiae brief and/or related motions regarding the initial motions for to stay. Because these motions for stay were herein denied as moot, the above-referenced amicus motions are also DENIED AS MOOT. Amici are advised that they may designate their previously filed amicus brief as their response to the Government's motion to dissolve the stay (Dkt. 69) by filing a notice adopting their initial amicus filing, such notice being filed in accordance with the schedule in Dkt. 141 and the procedures in the initial case management order.

The current motions for leave to file amicus brief regarding the Government's motion to dissolve stay (Dkt. 100, 101, 235, 241, 243) are hereby GRANTED.

F. Motion to Dismiss and Reimburse Filing Fee (Dkt. 147)

The motion to dismiss is GRANTED and the party is DISMISSED without prejudice. The motion to reimburse filing fee is DENIED.

G. Motion to Add an Additional Party (Dkt. 164)

The motion is GRANTED, and IEC and IEC – FL will be added as petitioners.

H. Motions to Intervene (Dkt. 174, 234)

Intervention is DENIED. The parties are advised that all circuit cases have been consolidated in 21-7000, where the parties may file directly for relief.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk