

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

TYSON FOODS, INC., et al.,

Applicants,

v.

HUS HARI BULJIC, et al.,

Respondents.

**APPLICATION TO THE HON. BRETT M. KAVANAUGH
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Tyson Foods, Inc., et al., hereby moves for an extension of time of 30 days, to and including June 22, 2022, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be May 23, 2022.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Eighth Circuit rendered its decision on December 30, 2021 (Exhibit 1), and denied a timely petition for rehearing on February 22, 2022 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case involves the circumstances under which private entities that assist the federal government during a national emergency can remove to federal

court under the federal-officer removal statute, 28 U.S.C. §1442(a). In the early days of the COVID-19 pandemic, as pictures of empty grocery store shelves swept the nation, Applicant Tyson Foods, Inc. (“Tyson”) kept its meat-processing facilities operating at the behest of the federal government, in order to help the government prevent the public health crisis from spiraling into a national food shortage crisis. Since then, Tyson has faced a wave of litigation from former employees or representatives of former employees alleging that they contracted COVID-19 because Tyson kept its plants operating in unsafe conditions. Tyson has removed most of those cases to federal court, invoking federal-officer removal under 28 U.S.C. §1442(a)(1). While several district courts have rejected efforts to remand such litigation to state court, others have disagreed.

3. In this case, the Eighth Circuit affirmed a decision remanding plaintiffs’ claims to state court, principally on the ground that it did not believe that Tyson was “acting under” a federal officer in keeping its plans operating in accordance with federal guidance. The panel recognized that a private entity is entitled to federal-officer removal when its actions “involve an effort to *assist*, or to help *carry out*” a “basic governmental task[.]” Ex.1, at 11. But it posited that Tyson’s activities did not qualify as a “basic government task” because meat-processing is a largely private activity in ordinary times. Ex.1 at 14. The panel further posited that Tyson was not engaged in “an effort to *assist*, or to help *carry out*” any federal tasks because the federal government took a “cooperative approach” rather than explicitly “direct[ing]” Tyson what to do. Ex.1 at, 15-16.

4. The Eighth Circuit’s conclusion that Tyson was not “acting under” federal officials in following the federal government’s instructions to help avert an impending national food shortage cannot be reconciled with decisions from this Court or decisions from the numerous district courts that have permitted Tyson to remove in materially identical circumstances. And the Eight Circuit’s rule will have drastic consequences for the next national emergency, as private actors will not be so eager to willingly aid the federal government in a crisis if they must resist and obtain a formal command in order to be entitled to a federal forum in which to defend actions taken at the federal government’s behest.

5. Applicants’ counsel, Paul D. Clement, has substantial argument and briefing obligations between now and the current due date of the petition. Among other things, he has an oral argument in *Glenn v. Tyson Foods*, No. 21-40622 (5th Cir.), a case in which the Fifth Circuit is considering essentially the same issue that this case presents, as well as an opening brief in *Axon Enterprise, Inc. v. FTC*, No. 21-86 (U.S.), a response brief in *Fields v. Brown*, 21-40818 (5th Cir.), a reply brief in *ERISA Industry Committee v. City of Seattle*, No. 21-1019 (U.S.), and a reply brief in *Duncan v. Bonta*, No. 21-1194 (U.S.).

WHEREFORE, for the foregoing reasons, Applicants requests an extension of time within which they may file a petition for a writ of certiorari to and including June 22, 2022.

Respectfully submitted,



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