

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

Levita Simmons, Administrator of the  
Estate of Arthur Scott, and Jeffrey  
Orvis, Administrator of the Estate of  
James Orvis,

Plaintiffs,

vs.

Tyson Foods, Inc., doing business as  
Tyson Pet Products, and Tyson Fresh  
Meats Group, a wholly owned  
subsidiary of Tyson Foods, Inc., John  
H. Tyson, Noel W. White, Dean Banks,  
Steven R. Stouffer, Tom Brower, Mary  
A. Oleksink, Elizabeth Croston, Scott  
Walston, David Scott, Tom Hart, Cody  
Brustkern, John Casey, Bret Tapken,  
Hamdija Beganovic, Ramiz Mujelic,  
and Unknown Plant Managers and  
Supervisors at Tyson Waterloo Plant  
and Unknown Plant Managers and  
Supervisors at Tyson Independence  
Plant,

Defendants.

CASE NO. \_\_\_\_\_

**JOINT NOTICE OF REMOVAL**

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**JOINT NOTICE OF REMOVAL**

Defendants Tyson Foods, Inc. and Tyson Fresh Meats Group (together, “Tyson”), John H. Tyson, Noel W. White, Dean Banks, Steven R. Stouffer, Tom Brower, Mary A. Oleksink, Elizabeth Croston, Scott Walston, David Scott, Tom Hart, Cody Brustkern, John Casey, Bret Tapken, Hamdija Beganovic, and Ramiz Mujelic jointly remove this civil action under 28 U.S.C. §§ 1331, 1441, 1442, and 1446. This Court has subject matter jurisdiction, and the case is removable because:

- (1) Plaintiffs' Petition and Jury Trial Demand ("Petition") challenges actions taken by Defendants at the direction of a federal officer, for which Defendants will have a colorable federal defense (28 U.S.C. § 1442(a)(1)); and
- (2) The Petition raises substantial and disputed issues of federal law related to national emergency declarations, federal critical infrastructure designations, and the Defense Production Act that must be decided by a federal forum (28 U.S.C. § 1331).

Removal is timely. Tyson accepted service of the Petition on June 7, 2021, and this Notice is being filed within 30 days thereof. *See* 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999).

### **BACKGROUND**

For the past year, the United States has struggled with a global pandemic whose size and scope are without modern precedent. Millions were infected with the novel coronavirus, and more than 590,000 Americans died of COVID-19. The economic and human fallout from the pandemic were severe. This case is brought by relatives of two individuals, Arthur Scott and James Orvis, who worked at Tyson meat processing facilities. Plaintiffs allege that Mr. Scott and Mr. Orvis contracted COVID-19 at work and later died of the disease. Their deaths are tragic.

But Plaintiffs' allegations—including allegations of wanton misconduct—are inaccurate and incorrect, and Defendants vigorously dispute Plaintiffs' claims. Tyson has worked from the beginning of the pandemic to follow federal workplace guidelines and has invested millions of dollars to provide employees with safety and risk-mitigation equipment. Tyson's efforts to protect its workers while continuing to supply Americans with food continue to this day.

Removal is proper because this case seeks to countermand federal statutes and federal directions Tyson received to assist the federal government in its efforts to

ensure that the greatest national health crisis in a century would not also spiral into a national food shortage. The Petition alleges that Tyson should have shut down facilities in Iowa during the COVID-19 pandemic or operated the facilities differently. But those facilities were operating as part of the federally designated “critical infrastructure” at the direction of, and under the supervision of, the President and numerous other federal officials, including the Office of the Vice President, U.S. Department of Homeland Security, U.S. Department of Agriculture, and U.S. Department of Transportation. Tyson worked hand-in-hand with federal officials from the time of the declaration of a national emergency on March 13 to safely continue operations to aid the federal government in accomplishing its duty to secure the national food supply. The President and the Secretary of Agriculture provided detailed instructions for meat and poultry processing facilities to continue operating, incorporating industry-specific guidance from the Centers for Disease Control and Prevention (“CDC”) and the Occupational Safety and Health Administration (“OSHA”). And after attempts by states to interfere with this national prerogative, the President again confirmed that “[i]t is important that processors of beef, pork, and poultry . . . in the food supply chain continue operating and fulfilling orders to ensure a continued supply of protein for Americans” and “continue operations consistent with the guidance for their operations jointly issued by the CDC and OSHA,” and that any “closures [of such facilities] threaten the continued functioning of the national meat and poultry supply chain” and “undermin[e] critical infrastructure during the national emergency.” *Executive Order on Delegating Authority Under the DPA with Respect to Food Supply Chain Resources During the National Emergency Caused by the Outbreak of COVID-19*

(“Food Supply Chain Resources”), 85 Fed. Reg. 26,313, 26,313, 2020 WL 2060381, at \*1 (Apr. 28, 2020).<sup>1</sup>

Because Defendants continued to operate Tyson’s facilities at the direction of federal officers at the highest levels, who enlisted Tyson’s help in the government’s efforts to ensure that the pandemic would not disrupt the operation of America’s critical infrastructure, a federal court must resolve this case.

## ARGUMENT

Removal is appropriate under 28 U.S.C. § 1442(a)(1) if any Defendant can satisfy the removal requirements as to any “one claim.” *See, e.g., Baker v. Atl. Richfield Co.*, 962 F.3d 937, 945 (7th Cir. 2020) (“[R]emoval need not be justified as to all claims asserted in the plaintiffs’ complaint; rather, the defense need only apply to one claim to remove the case.”) (quoting *Sawyer v. Foster Wheeler LLC*, 860 F.3d 249, 257 (4th Cir. 2017)); 14C Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc.* § 3726 (Rev. 4th ed.) (“Because Section 1442(a)(1) authorizes removal of the entire action even if only one of the controversies it raises involves a federal officer or agency, the section creates a species of statutorily-mandated supplemental subject-matter jurisdiction.”).

### I. Federal officer removal is proper under 28 U.S.C. § 1442(a)(1).

Under 28 U.S.C. § 1442(a)(1), a civil action may be removed to federal court if the action is asserted against a person acting under the direction of a federal officer:

A civil action . . . that is against or directed to any of the following may be removed . . . :

(1) The United States or any agency thereof or any officer (*or any person acting under that officer*) of the United States or of any

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<sup>1</sup> <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-delegating-authority-dpa-respect-food-supply-chain-resources-national-emergency-caused-outbreak-covid-19/>

agency thereof, in an official or individual capacity, for or relating to any act under color of such office . . . .

28 U.S.C. § 1442(a)(1) (emphasis added).

Here, federal officer removal is proper because (1) Defendants “acted under the direction of a federal officer,” (2) “there was a causal connection between [Defendants’] actions and the official authority,” (3) Defendants have “a colorable federal defense to the plaintiff’s claims,” and (4) each Defendant “is a ‘person,’ within the meaning of the statute.” *Jacks v. Meridian Res. Co.*, 701 F.3d 1224, 1230 (8th Cir. 2012) (citing *Dahl v. R.J. Reynolds Tobacco Co.*, 478 F.3d 965, 967 n.2 (8th Cir. 2007)).

**Federal Direction.** On March 13, 2020, the President “proclaim[ed] that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020.”<sup>2</sup> The federal government proceeded to devote significant effort to combating the pandemic and its potentially catastrophic effects, enlisting both public and private entities in its efforts to ensure that the rapid spread of the disease would not disrupt the nation’s critical infrastructure. A particular focus of that effort was the protection of the nation’s food supply.

This “critical infrastructure” designation derives from the Critical Infrastructure Protection Act passed after 9/11, *see* 42 U.S.C. § 5195c(e), which instructed the U.S. Department of Homeland Security to develop plans to protect designated “critical infrastructure” in the event of future disasters. “Food and Agriculture” is one of the sixteen recognized “sectors” of critical infrastructure and is subject to a 2013 Presidential Policy Directive intended to “advance[] a national unity of effort to strengthen and maintain secure, functioning, and resilient critical infrastructure.”<sup>3</sup> Coordinating protection of the Food and Agriculture Sector has been assigned to the

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<sup>2</sup> <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

<sup>3</sup> <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>

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