

No. 22-10061

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Jamie Wazelle; Tay Aung; Elizabeth Casel; Manivanh
Chanthanakhone; Manuel Contreras, *et al*,
Plaintiffs–Appellants,

v.

Tyson Foods, Incorporated; Ernesto Sanchez;
Kevin Kinikin; Farren Fernandez,
Defendants–Appellees.

On Appeal from the United States District Court
for the Northern District of Texas, Amarillo Division
No. 2:20-CV-203, Hon. Matthew J. Kacsmark, *Presiding Judge*

REPLY BRIEF FOR PLAINTIFFS–APPELLANTS

Kurt B. Arnold
Andrew R. Gould
Counsel of Record
Brian M. Christensen
ARNOLD & ITKIN LLP
6009 Memorial Drive
Houston, Texas 77007
(713) 222-3800 Telephone
(713) 222-3850 Facsimile

Counsel for Plaintiffs–Appellants

TABLE OF CONTENTS

Table of Authorities	iii
Introduction	1
Argument in Reply.....	4
I. Federal-officer-removal jurisdiction is absent.....	4
A. Defendants have not established the necessary “subordinate relationship” for the “acting under” element.....	4
1. The federal government’s conduct and communications toward Defendants demonstrated coordination and regulation, not control or subservience.	5
2. Defendants never acted under any directive.....	12
3. Defendants did not carry out a basic governmental task.	14
B. Nor are Defendants’ federal defenses facially colorable, let alone meritorious.....	18
1. The Federal Meat Inspection Act does not preempt Plaintiffs’ claims because it does not govern worker safety.....	18
2. The DPA and the “sum total” of federal communications do not provide Defendants with a colorable federal defense.....	22
II. The district court equally erred in granting Defendants’ motions to dismiss.	24
A. The Texas PLPA does not impose a heightened pleading standard.....	25

B. The Individual Defendants ignore that, under Texas law,
they are liable for their own tortious acts.....30

Conclusion.....34

Certificate of Service.....35

Certificate of Compliance36

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adame v. PetSmart LLC</i> , No. 2:21-CV-00191, 2022 WL 961547 (S.D. Tex. Mar. 15, 2022)	30, 31, 32
<i>Agredano v. State Farm Lloyds</i> , 975 F.3d 504 (5th Cir. 2020)	26
<i>Anderson v. Hackett</i> , 646 F. Supp. 2d 1041 (S.D. Ill. 2009)	23
<i>Bell v. Thornburg</i> , 743 F.3d 84 (5th Cir. 2014)	7
<i>Box v. PetroTel, Inc.</i> , 33 F.4th 195 (5th Cir. 2022)	15, 18
<i>Buljic v. Tyson Foods, Inc.</i> , 22 F.4th 730 (8th Cir. 2021)	<i>passim</i>
<i>Butler v. Coast Elec. Power Ass’n</i> , 926 F.3d 190 (5th Cir. 2019)	7
<i>Colonial Oaks Assisted Living Lafayette, L.L.C. v. Hannie Dev., Inc.</i> , 972 F.3d 684 (5th Cir. 2020)	8

E. Air Lines, Inc. v. McDonnell Douglas Corp.,
532 F.3d 957
(5th Cir. 1976) 11, 12, 13, 23

Geier v. Am. Honda Motor Co., Inc.,
529 U.S. 861 (2000) 23

Guzman v. Cordero,
481 F. Supp. 2d 787
(W.D. Tex. 2007) 31, 32

Hoyt v. Lane Constr. Corp.,
927 F.3d 287
(5th Cir. 2019) 32

In re S. Scrap Material Co., LLC,
541 F.3d 584
(5th Cir. 2008) 20

Jacks v. Meridian Res. Co., LLC,
701 F.3d 1224
(8th Cir. 2012) 6

Leyendecker & Assocs. v. Wechter,
683 S.W.2d 369
(Tex. 1984) 30

Maglioli v. All. HC Holdings LLC,
16 F.4th 393
(3rd Cir. 2021) 5, 11

Martin v. Petersen Health Operations, LLC,
— F.4th —, No. 21-2959, 2022 WL 2154870
(7th Cir. June 15, 2022) 4, 9

Mayor & City Council of Baltimore v. BP P.L.C.,
31 F.4th 178
(4th Cir. 2022) 14

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.