

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

CORDUA RESTAURANTS, INC.,	§	
	§	
Petitioner/Cross-Respondent,	§	
	§	No. 19-60630
v.	§	
	§	Board Case Nos.
NATIONAL LABOR RELATIONS	§	16-CA-160901 <i>et al.</i>
BOARD,	§	
	§	
Respondent/Cross-Petitioner.	§	

**PETITIONER/CROSS-RESPONDENT CORDUA RESTAURANTS, INC.’S
REPLY SUPPORTING ITS PARTIALLY UNOPPOSED
MOTION TO SUPPLEMENT THE RECORD**

Petitioner/Cross-Respondent Cordua Restaurants, Inc. (Cordua) hereby files its reply supporting its request to supplement the record with the briefs supporting the exceptions to the Administrative Law Judge’s decision, filed by both Cordua and the National Labor Relations Board (the Board).

The Board asserts that Cordua’s motion is moot because the Board agrees the briefs may be lodged as non-record evidence. The motion is not moot, because the Board has argued both (1) this Court may not consider any argument that was not presented to the Board; and (2) the administrative record before the Board did not contain the exceptions briefing. Board’s Corrected Brief, March 12, 2020, at 54 (“Pursuant to Section 10(e) of the Act, the Court lacks jurisdiction to entertain any argument that was not presented to the Board in the first instance.”); Board’s Partial

Opposition, Oct. 29, 2020, ¶ 2 (“the record on appeal is the same as the administrative record before the Board”).

It is simply incorrect to state that the exceptions briefing was not part of the record before the Board. *See* ROA.1786 (Board decision specifically noting the exceptions and supporting briefs filed by both parties). Cordua filed its exceptions and supporting briefing within 17 minutes of each other, and in express compliance with the Board’s regulations. 29 CFR § 102.46(a)(1)(i)(D) (“If a supporting brief is filed, the exceptions document must not contain any argument or citation of authorities in support of the exceptions; any argument and citation of authorities must be set forth only in the brief.”). It is disingenuous to contend that the exceptions and briefing are separate, and illogical to interpret the Board regulations to require the omission of fifty pages of briefing from the administrative record on appeal, when such briefing was considered by the Board and filed in express compliance with Board regulations.

Accordingly, Cordua respectfully requests that the Court permit the supplementation of the agency record in this appeal with Exhibits A and B to its motion, the briefs supporting the exceptions to the Administrative Law Judge’s decision, filed by both Cordua and the Board, and to direct that a supplemental record be prepared and filed, in accordance with Federal Rule of Appellate Procedure 16(b). In the alternative, Cordua respectfully requests that Exhibits A and B are lodged with the Court as non-record evidence.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

1. Required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13.
2. This filing complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 384 words, as determined by the word-count function of Microsoft Word 2010.
3. This filing complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

/s/ Daniel N. Ramirez

DANIEL N. RAMIREZ

CERTIFICATE OF SERVICE

I do hereby certify that on November 2, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that the foregoing document will be served via the CM/ECF system on all parties or their counsel of record.

/s/ Daniel N. Ramirez

DANIEL N. RAMIREZ