

No. 20-73203

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**AMERICAN FEDERATION OF TEACHERS; AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES; WASHINGTON
STATE NURSES ASSOCIATION; UNITED NURSES ASSOCIATION OF
CALIFORNIA,**

Petitioners,

v.

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION; UNITED
STATES DEPARTMENT OF LABOR; EUGENE SCALIA, in his official
capacity as Secretary of the United States Department of Labor,**

Respondents.

On Petition for a Writ of Mandamus

**JOINT MOTION TO REMOVE CASE FROM ORAL ARGUMENT
CALENDAR AND PLACE CASE IN ABEYANCE**

Pursuant to Fed. R. App. P. 27 and Circuit Rules 27-1 and 34-2, Petitioners American Federation of Teachers, American Federation of State, County and Municipal Employees, Washington State Nurses Association, and United Nurses Association of California (collectively “Petitioners”) along with Respondent Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, jointly request that the Court remove the above-captioned case from the oral argument calendar and place the case in abeyance. The parties agree to file a status report in the case within sixty days of the Court’s order granting this motion. In support of this motion, the parties state the following:

1. On October 29, 2020, Petitioners filed their petition seeking a writ of mandamus compelling OSHA to propose and then finalize a health standard regulating occupational exposure to infectious diseases in the healthcare sector. Pet. for Writ of Mandamus, Oct. 29, 2020, ECF No. 1. As of January 28, 2021, the case has been fully briefed.

2. On December 20, 2020, the Court issued a notice setting oral argument in this case for March 3, 2021. Notice of Oral Argument, Dec. 20, 2020, ECF No. 10.

3. Since January 20, 2021, new leadership at OSHA have begun reassessing the agency’s priorities in light of the goals of the new administration.

In particular, the agency intends to prioritize the development of an infectious diseases standard for the healthcare sector.

4. In addition, on January 21, 2021, President Biden issued an executive order which, among other things, directed OSHA to “consider whether any emergency temporary standards on COVID-19, including with respect to masks in the workplace, are necessary, and if such standards are determined to be necessary, issue them by March 15, 2021.” *See* Exec. Order No. 13999, 86 Fed. Reg. 7211 (Jan. 21, 2021).

5. Given the recent change of administration and the potential for resolution of this case without the need for a writ of mandamus from this Court, the parties believe that it would conserve the resources of both the Court and the parties to remove the case from the Court’s argument calendar and place the case in abeyance while the agency reassesses its position.

6. The parties agree to file a status report with the Court within sixty days of the order placing the case in abeyance. OSHA will update the Court on the agency’s prioritization of the infectious diseases standard in the next status report.

Respectfully submitted,

/s/ Michael C. Martinez

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CERTIFICATE OF COMPLIANCE

This motion complies with the length and typeface requirements of Circuit Rule 27-1 and Fed. R. App. P. 27(d)(1), because it does not exceed 20 pages and has been prepared in a proportionately spaced typeface using Microsoft Word 2016 Times New Roman 14-point font.

/s/ Joseph G. Gilliland
Attorney for the Secretary of Labor

February 16, 2021

CERTIFICATE OF SERVICE

I certify that on this 16th day of February, 2021, I caused the parties' Joint Motion to Remove Case from Oral Argument Calendar and Place Case in Abeyance to be electronically filed via the Court's CM/ECF system, providing service on all counsel of record.

/s/ Joseph G. Gilliland
Attorney for the Secretary of Labor

February 16, 2021