

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-1158**September Term, 2019****Filed On: June 11, 2020**

In re: American Federation of Labor and
Congress of Industrial Organizations,

Petitioner

BEFORE: Henderson, Wilkins, and Rao, Circuit Judges

ORDER

Upon consideration of the emergency petition for a writ of mandamus, the opposition thereto, and the corrected reply; and the motions for leave to participate as amici curiae and the lodged amici briefs, it is

ORDERED that the motions for leave to participate as amici curiae be granted. The Clerk is directed to file the lodged briefs. It is

FURTHER ORDERED that the emergency petition for a writ of mandamus, which the court construes as a petition for review of the Occupational Safety and Health Administration's ("OSHA") denial of the March 6, 2020, administrative petition for an emergency temporary standard ("ETS"), see In re Int'l Chem. Workers Union, 830 F.2d 369 (D.C. Cir. 1987), be denied. Petitioner challenges the OSHA's decision not to issue an ETS to protect working people from occupational exposure to infectious disease, including COVID-19. The agency is authorized to issue an ETS if it determines that "employees are exposed to grave danger" from a new hazard in the workplace, and an ETS is "necessary" to protect them from that danger. 29 U.S.C. § 655(c). The OSHA's decision not to issue an ETS is entitled to considerable deference. See In re Int'l Chem. Workers Union, 830 F.2d at 371; Pub. Citizen Health Research Grp. v. Auchter, 702 F.2d 1150, 1156–57 (D.C. Cir. 1983). In light of the unprecedented nature of the COVID-19 pandemic, as well as the regulatory tools that the OSHA has at its disposal to ensure that employers are maintaining hazard-free work environments, see 29 U.S.C. § 654(a), the OSHA reasonably determined that an ETS is not necessary at this time.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk

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is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Manuel J. Castro

Deputy Clerk