

**ORAL ARGUMENT HELD ON APRIL 4, 2022**

No. 22-1002

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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In re: National Nurses United, *et al.*,

Petitioners,

Marty Walsh, Secretary of Labor and Occupational Safety and Health  
Administration, United States Department of Labor,Respondents.

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**Petitioners' Motion to Supplement the Record or, in the Alternative, Rule  
28(j) Letter Providing Supplemental Authority.**

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Petitioners file this Motion to Supplement the Record or, in the Alternative, Rule 28(j) Letter Providing Supplemental Authority to alert the Court to a change in the Occupational Safety & Health Administration's (OSHA) schedule for completing a final standard regulating COVID-19 exposures to healthcare workers.

In its filing with the Court on January 21, "OSHA estimate[d] that it can draft a rule finalizing the Healthcare ETS in six to nine months." ECF No. 192176, Decl. of James Frederick ¶ 11. Under that schedule, OSHA predicted a final

COVID-19 Healthcare standard sometime between July 2022 -October 2022.

OSHA's most recent regulatory agenda predicts a final COVID-19 standard in September 2022.

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1218>  
-AD36

However, more recently, the Secretary of Labor testified before the Senate Appropriations Committee that OSHA will not complete the standard for another three to six months (or between September to December 2022).

<https://www.appropriations.senate.gov/hearings/hearing-on-the-presidents-fiscal-year-2023-budget-request-for-the-united-states-department-of-labor> at 41:51-

43:35. The delay in promulgating a permanent COVID-19 standard for healthcare workers is particularly concerning because the number of COVID -19 among nursing home workers is now higher than during last summer's Delta variant surge and has been rising for the past 14 weeks. In the week ending July 3, there were 10,990 cases of COVID-19 among nursing home workers and 21 COVID-19 fatalities. (<https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff>). Thus, although healthcare workers continue to face a grave danger from exposure to the virus that causes COVID-19, OSHA's new schedule represents at least a two-month delay before OSHA will finalize protections for healthcare workers from

COVID-19. In the interim, there are no enforceable COVID-specific OSHA standards to protect healthcare workers.

Counsel for OSHA has informed Petitioners that OSHA does not oppose this motion but may file a response.

Respectfully submitted,

/s/ Randy S. Rabinowitz  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this Petitioners' Motion to Supplement the Record or, in the Alternative, Rule 28(j) Letter Providing Supplemental Authority contains 279 words and therefore is in compliance with the word limit set by Fed. R. App. P. 21(d)(1).

/s/ Randy S. Rabinowitz

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15<sup>th</sup> day of July 2022, a copy of this Petitioners' Motion to Supplement the Record or, in the Alternative, Rule 28(j) Letter Providing Supplemental Authority was served, through the Court's CM/ECF system on the following counsel of record.

Edmund Baird  
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/s/ Randy S. Rabinowitz