

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

United Food and Commercial )  
Workers International Union, )  
AFL-CIO, CLC, )

and )

American Federation of Labor and )  
Congress of Industrial Organizations, )

*Petitioners,* )

v. )

Case No. 21-1143

Occupational Safety and Health )  
Administration, United States )  
Department of Labor, )

*Respondent.* )

**JOINT MOTION TO HOLD BRIEFING IN ABEYANCE**

Petitioners United Food and Commercial Workers International Union, AFL-CIO, CLC, and American Federation of Labor and Congress of Industrial Organizations together with Respondent, Occupational Safety & Health Administration (OSHA) respectfully request that this Court hold briefing in the above-captioned case in abeyance until further motion by one of the parties. In support of this request Petitioners and Respondent state as follows:

1. Petitioners’ opening brief is currently due on September 22, 2021. The parties to this matter are currently engaged in mediation under the

auspices of the Court's Appellate Mediation Program.

2. On September 9, 2021, President Biden announced that OSHA will promulgate a new ETS addressing COVID-19. In doing so, OSHA will necessarily consider whether COVID-19 poses a grave danger to employees outside of healthcare settings and whether an ETS is necessary to protect those employees from such danger. Because this new ETS and OSHA's findings on the grave danger and necessity issues may implicate Petitioner's claim in this litigation that OSHA's current ETS is under-inclusive, the parties jointly move to hold this litigation in abeyance pending the issuance of that new ETS or the occurrence of other events that might justify the immediate resumption of the litigation.
3. The parties agree to provide the Court with updates on the progress of OSHA's new ETS addressing COVID-19 every 45 days following the issuance of an order holding these proceedings in abeyance.
4. The parties are authorized to state that the mediator in this matter agrees that abeyance is warranted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 14, 2021, the foregoing Joint Motion to Hold Briefing in Abeyance was served on all parties or their counsel of record through the CM/ECF system.

/s/ Randy S. Rabinowitz  
Randy S. Rabinowitz