

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

No. 25-3037

SOFIDEL AMERICA,)
)
Petitioner,)
)
v.)
)
LORI CHAVEZ-DEREMER,)
Secretary of Labor,)
)
Respondent.)

**PETITIONER’S RESPONSE TO RESPONDENT’S MOTION FOR
CLARIFICATION OF THE COURT’S JANUARY 9, 2026 ORDER**

Petitioner Sofidel America (“Petitioner” or “Sofidel”), by and through its undersigned counsel, respectfully submits this response to Respondent’s Motion for Clarification of the Court’s January 9, 2026 Order, showing the Court as follows:

Petitioner maintains that Respondent’s Motion for Clarification is unnecessary, as the parties were given an opportunity to submit proposed judgments to the Court. To that end, Petitioner intends to submit the following proposed judgment to the Court contemporaneously with this Response:

PROPOSED JUDGMENT

THIS MATTER came before the court upon the petition for review of an order of the Occupational Safety and Health Review Commission (“OSHRC”).

UPON FULL REVIEW of the record and the briefs and arguments of counsel, IT IS ORDERED that the petition for review is GRANTED, OSHRC's Decision and Order as to Citation 1, Item 3 and Citation 1, Item 4 is REVERSED AND VACATED, and the monetary penalty assessed by the OSHRC Decision and Order against Petitioner is VACATED. No costs are taxed; each party will bear its own costs on this appeal.

In the event that FRAP does not apply to this proceeding, as noted above and for the reasons noted below, this Court should enter a judgment granting the petition for review, reversing the underlying OSHRC decision, and vacating the penalty against Petitioner.

Regarding the contentions in Respondent's Motion, Petitioner notes that the caselaw cited in Respondent's Motion regarding remand for additional findings is inconsistent with the Court's January 9, 2026 Opinion, wherein the Court did not instruct OSHRC's ALJ to perform additional findings but instead noted that the ALJ simply failed to cite substantial evidence supporting her decision. Additionally, this Court did not hold that the ALJ failed to consider a legal or factual issue.

By contrast, in a case cited by Respondent, *Caterpillar Logistics Servs., Inc. v. Solis*, the Seventh Circuit noted that "[s]ubstantial evidence is not enough to sustain an administrative decision, however. The adjudicator also must take account of competing evidence and inferences." 674 F.3d 705, 710 (7th Cir. 2012). The court went on to note that "[an administrative law judge] may not simply ignore strong indications that its favored witness got things wrong. That's what happened here.

The big consideration missing from the ALJ's analysis is Caterpillar Logistics' 300-person-years of experience with its packing department.” *Id.* (citation omitted). In *Caterpillar*, the ALJ failed to consider evidence, thus necessitating a remand.

Here, however, that was not the holding of this Court. Instead, as the Court held, the ALJ failed to cite substantial evidence supporting a finding of employer knowledge of a hazard, and this Court could not affirm the ALJ on any evidence cited. Similarly, unlike *Calcutt v. Fed. Deposit Ins. Corp.*, 598 U.S. 623 (2023), this is not a case of a threshold legal error by the ALJ regarding employer knowledge that would necessitate a remand but rather a lack of factual support for finding that Sofidel had knowledge of a violation—though the ALJ committed legal errors not reached by this Court. Therefore, a reversal, not remand, is warranted.

As *Pullman-Standard v. Swint*, illustrates, while factfinding by an appellate court is inappropriate where a factual dispute has not been considered by the trial court, remand is unnecessary where “the record permits only one resolution of the factual issue.” 456 U.S. 273, 291-292 (1982). In this appeal, this Court held that there was not substantial evidence of employer knowledge of two person jogging cited in by the ALJ. A review of the record shows that there is not substantial evidence in the record on this point, much less in the ALJ’s opinion, of a hazard from any other type of jogging, and, regarding knowledge, given that this Court rejected the testimony of Boone Sabine, Randy Kuhner, and Jacob Giammarino as

insufficient to show knowledge of two-person jogging, there is no need for a remand given the dearth of evidence in the record on employer knowledge. *See C&W Facility Servs., Inc. v. Sec'y of Lab.*, 22 F.4th 1284, 1289 (11th Cir. 2022) (holding no remand necessary where “record also lack[ed] substantial evidence to support a[n] [OSHRC ALJ] finding that [employer] had actual knowledge.”).

Contrary to Respondent’s argument, *Donovan v. A. Amorello & Sons, Inc.*, 761 F.2d 61, 66–67 (1st Cir. 1985), cited by Respondent, does not dictate a contrary result where the First Circuit held that remand was proper “for we cannot now say that the record in this case permits only one inference from the evidence that was before the Commission.” This Court did not hold that in its opinion in this matter, and for the reason noted above, this Court should not do so in response to the Respondent’s Motion. Moreover, “[*SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943)] [only] tells [the Court] not to sustain an administrative order on a different ground from the one the agency offered.” *Wolverine Pipe Line Co. v. United States Dep't of Transportation, Pipeline & Hazardous Materials Safety Admin.*, 69 F.4th 365, 376, 2023 WL 3773746 (6th Cir. 2023) (citation and quotation omitted). Thus, *Chenery* does not require a remand here. *See also Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747, 756 n.7 (1986) (“[T]he ruling in *Chenery* has not required courts to remand in futility.”), *overruled on other grounds by Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, (1992); *United States v.*

Schwarzbaum, 24 F.4th 1355, 1367 (11th Cir. 2022) (same). The final case cited in the Motion on this point, *Dole v. Williams Enters., Inc.*, also supports the opposite conclusion from the Respondent’s parenthetical in its Motion for that case, as that court remanded with instructions that a citation against the employer be reinstated, not for further consideration by the Commission—noting that a court “can instruct OSHRC to reinstate the citation, rather than remanding for further proceedings, if only one conclusion is supportable on the record before us.” 876 F.2d 186, 190-191 & n.8 (D.C. Cir. 1989) (“[A]s we agree with the ALJ that the argument borders on the frivolous, we dispose of it summarily and send the case back to the Commission with instructions to reinstate the citation.”).

Accordingly, for the reasons stated above and per the last option presented in Respondent’s Motion, this Court should grant Sofidel’s petition for review and vacate and reverse the ALJ’s decision and penalty against Sofidel—with no need for additional findings or remand.

Respectfully submitted this 30th day of January, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that all parties have consented to service by electronic transmission and that on the January 30, 2026, I served a copy of the foregoing **RESPONSE TO MOTION FOR CLARIFICATION** using the appellate CM/ECF system upon:

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