

ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED

In The

United States Court of Appeals
For The District of Columbia Circuit

**In re: United Mine Workers of America, International Union and
the United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service Workers International
Union, AFL-CIO/CLC,**

Petitioners,

v.

**Mine Safety and Health Administration,
United States Department of Labor,**

Respondent.

**ON EMERGENCY PETITION FOR A WRIT OF MANDAMUS AND
REQUEST FOR EXPEDITED BRIEFING AND DISPOSITION**

**UNOPPOSED MOTION FOR PERMISSION TO SUBMIT *AMICUS CURIAE*
BRIEF IN SUPPORT OF THE UNITED MINE WORKERS OF AMERICA
ON BEHALF OF THE NATIONAL BLACK LUNG ASSOCIATION**

Stephen A. Sanders
Wes Addington
APPALACHIAN CITIZENS' LAW CENTER
317 Main Street
Whitesburg, Kentucky 41858
(606) 633-3929
steve@appalachianlawcenter.org
wes@appalachianlawcenter.org

Counsel for Amicus Curiae

THE LEX GROUP^{DC} ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

MOTION

The movant, the National Black Lung Association, pursuant to Rule 29(a)(3) of the Federal Rules of Appellate Procedure, requests leave to appear as amicus curiae and to submit the attached brief in support of the emergency petition for a writ of mandamus filed by the United Mine Workers of America, International Union and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC. Respondent, the Mine Safety and Health Administration, United States Department of Labor does not oppose this petition.

The National Black Lung Association (NBLA) is an organization of coal miners and friends and families of coal miners that advocates for protection for coal miners from black lung disease, the respiratory and pulmonary disease caused by coal mine dust exposure, and for fair and just compensation and medical treatment for black lung victims. The NBLA has existed for more than 50 years. The NBLA is composed of members of local black lung associations from the coal mining regions of the United States. Historically, the black lung associations were instrumental in the 1960s and 1970s in efforts to achieve state and federal legislation to compensate miners who have black lung and to protect miners from the dust exposure which causes black lung. The NBLA has continued to lobby for legislation and regulation to protect miners from black lung to the present day. The NBLA also

educates its membership and the public about black lung disease and it provides information about the U.S. Department of Labor's claims process for applying for black lung benefits. Recognizing that black lung is not curable but it is preventable, the National Black Lung Association actively promotes the protection of coal miners' health and works towards measures to prevent black lung disease. Given its experience with black lung disease and its impact on the coal mining work force, the NBLA can provide the Court with valuable and practical insight into the significantly increased and, indeed, unique risk that COVID-19 and the coronavirus poses to this highly vulnerable population. NBLA can also provide a different and necessary perspective as to why an Emergency Temporary Standard is needed to ensure the safety of this Nation's miners. For these reasons, NBLA respectfully requests that it be granted permission to file the attached amicus brief in this matter in support of Petitioners.

Respectfully submitted,

/s/ Stephen A. Sanders

Stephen A. Sanders

Wes Addington

APPALACHIAN CITIZENS' LAW CENTER

317 Main Street

Whitesburg, KY 41858

Telephone (606) 633-3929

steve@appalachianlawcenter.org

ADDENDUM**DISCLOSURE STATEMENT**

Pursuant to D.C. Circuit Rules 26.1 the National Black Lung Association (NBLA) states that it is an unincorporated entity. The NBLA is an organization of coal miners and friends and families of coal miners that advocates for protection for coal miners from black lung disease, the respiratory and pulmonary disease caused by coal mine dust exposure, and for fair and just compensation and medical treatment for black lung victims. There is no corporation with any ownership interest in the NBLA. The NBLA members have no ownership interests in the organization. Because the NBLA is a continuing association of numerous organizations and individuals that is operated to promote the general legislative or other interests of its members, it is a "trade association" under Rule 26.1.

CERTIFICATE AS TO PARTIES

Except for the amicus curiae, the parties in this proceeding are

- a. Petitioners: The United Mine Workers of America International Union and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC
- b. Respondent: The Mine Safety and Health Administration, United States Department of Labor
- c. Intervenors in this matter: None at present.

Respectfully submitted,

/s/ Stephen A. Sanders

Stephen A. Sanders

Wes Addington

APPALACHIAN CITIZENS' LAW CENTER

317 Main Street

Whitesburg, KY 41858

Telephone (606) 633-3929

steve@appalachianlawcenter.org

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limit 415 words.

I further certify that this document complies with the typeface requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

Dated: June 29, 2020

/s/ Stephen A. Sanders

Stephen A. Sanders

CERTIFICATE OF SERVICE

I certify that, on June 29, 2020, I filed the foregoing document using this Court's Appellate CM/ECF system, which effected service on all parties.

Dated: June 29, 2020

/s/ Stephen A. Sanders

Wes Addington

APPALACHIAN CITIZENS' LAW CENTER

317 Main Street

Whitesburg, KY 41858

Telephone (606) 633-3929

wes@appalachianlawcenter.org

RECORD NO. 20-1215

ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED**In The****United States Court of Appeals**
For The District of Columbia Circuit**In re: United Mine Workers of America, International Union and
the United Steel, Paper and Forestry, Rubber, Manufacturing,
Energy, Allied Industrial and Service Workers International
Union, AFL-CIO/CLC,***Petitioners,***v.****Mine Safety and Health Administration,
United States Department of Labor,***Respondent.*

**ON EMERGENCY PETITION FOR A WRIT OF MANDAMUS AND
REQUEST FOR EXPEDITED BRIEFING AND DISPOSITION**

**BRIEF OF AMICUS CURIAE THE NATIONAL BLACK LUNG ASSOCIATION
IN SUPPORT OF THE PETITIONERS**

Stephen A. Sanders
Wes Addington
APPALACHIAN CITIZENS' LAW CENTER
317 Main Street
Whitesburg, Kentucky 41858
(606) 633-3929
steve@appalachianlawcenter.org
wes@appalachianlawcenter.org

Counsel for Amicus Curiae

THE LEX GROUP^{DC} ♦ 1050 Connecticut Avenue, N.W. ♦ Suite 500, #5190 ♦ Washington, D.C. 20036
(202) 955-0001 ♦ (800) 856-4419 ♦ www.thelexgroup.com

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28, the National Black Lung Association makes the following certification:

(A) Parties and Amici

Except for the National Black Lung Association, there are no amicus curiae. All parties and intervenors appearing in this court are listed in the Brief for the Petitioners, The United Mine Workers of America International Union and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC.

Disclosure Statement

Pursuant to D.C. Circuit Rules 28 and Rule 26.1, the National Black Lung Association (NBLA) states that it is an unincorporated entity. The NBLA is an organization of coal miners and friends and families of coal miners that advocates for protection for coal miners from black lung disease, the respiratory and pulmonary disease caused by coal mine dust exposure, and for fair and just compensation and medical treatment for black lung victims. There is no corporation with any ownership interest in the NBLA. The NBLA members have no ownership interests in the organization. Because the NBLA is a continuing association of numerous organizations and individuals that is operated to promote the general legislative or other interests of its members, it is a "trade association" under Rule 26.1.

(B) Rulings Under Review

Petitioners challenge the Mine Safety and Health Administration's April 14, 2020, and continuing, decision not to issue an Emergency Temporary Standard under Section 101(b) of the Mine Act, 30 U.S.C. §811(b).

(C) Related Cases

None at Present.

Respectfully Submitted,

/s/ Stephen A. Sanders

STEPHEN A. SANDERS

TABLE OF CONTENTS

	<u>Page</u>
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
STATEMENT PURSUANT TO RULE 29(A)(4)(D) AND (E)	v
ARGUMENT	1
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF FILING AND SERVICE	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>CASES</u>	
<i>National Mining Association v. Department of Labor,</i> 292 F.3d 849, 853 (D.C. Cir. 2002).....	1
<i>Usery v. Turner Elkhorn Mining Co.,</i> 428 U.S. 1 (1976).....	1
<u>STATUTES</u>	
28 U.S.C. § 1651(a)	1
30 U.S.C. § 801 <i>et seq.</i>	2
30 U.S.C. § 811(d)	1
<u>OTHER AUTHORITIES</u>	
Blackley DJ, Halldin CN, Laney AS. Continued Increase in Prevalence of Coal Workers' Pneumoconiosis in the United States, 1970–2017. <i>Am J Public Health.</i> 2018;108(9):1220-1222. doi:10.2105/AJPH.2018.304517	3
Centers for Disease Control and Prevention. Enhanced Coal Workers' Health Surveillance Program (ECWHSP) Data Query System. Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. Published January 24, 2019. Accessed June 24, 2020. https://webappa.cdc.gov/ords/cwhsp-database.html	2
Chow N, Fleming-Dutra K, Gierke R, et al. Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019 — United States, February 12–March 28, 2020. <i>Morb Mortal Wkly Rep.</i> 2020;69(13): 382-386. doi:10.15585/mmwr.mm6913e2	4
COVID-19 Map. Johns Hopkins Coronavirus Resource Center. Accessed June 24, 2020. https://coronavirus.jhu.edu/map.html	3

NIOSH website entitled "Coal Workers' Health Surveillance Program."
<https://www.cdc.gov/niosh/topics/cwhsp/> last visited June 25, 20204

Petrilli CM, Jones SA, Yang J, et al. Factors associated with hospital admission and critical illness among 5279 people with coronavirus disease 2019 in New York City: prospective cohort study. *BMJ*. Published online May 22, 2020:m1966. doi:10.1136/bmj.m1966.....3

STATEMENT PURSUANT TO RULE 29(A)(4)(D) AND (E)

The National Black Lung Association (NBLA) is an organization of coal miners and friends and families of coal miners that advocates for protection for coal miners from black lung disease, the respiratory and pulmonary disease caused by coal mine dust exposure, and for fair and just compensation and medical treatment for black lung victims. It authorized this filing. Counsel for the NBLA authored the brief. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No other person - other than the amicus curiae, its members, or its counsel - contributed money that was intended to fund preparing or submitting the brief.

/s/ Stephen A. Sanders

STEPHEN A. SANDERS

ARGUMENT

The Mine Workers and the Steelworkers unions have asked the Court to issue a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651(a) and section 101(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 811(d), compelling MSHA to issue an Emergency Temporary Standard for Infectious Diseases aimed at protecting the life and health of tens of thousands of miners throughout the United States who are in grave danger from the deadly COVID-19 pandemic. Because COVID-19 is particularly dangerous for miners who have black lung disease, the National Black Lung Association submits this amicus brief in support of the Petition.¹

In *National Mining Association v. Department of Labor*, 292 F.3d 849, 853 (D.C. Cir. 2002), this Court stated that black lung encompasses a cruel set of conditions that afflict a significant percentage of the nation's coal miners with "severe, and frequently crippling, chronic respiratory impairment." (citing *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 6 (1976)). Coal mine workers are regularly exposed to breathing respirable coal mine dust during their work. The coal miner breathes in not only large dust particles, visible to the naked eye, but also invisibly small dust particles, which are deposited in the lungs. These dust particles, over time,

¹ The Petitioners and the Respondent consent to the filing of the amicus brief by the National Black Lung Association.

may cause inflammation, scarring, and destruction of lung tissue. With progression of this lung damage, respiratory symptoms such as cough, wheezing, and shortness of breath can occur. Scarring in the lung may lead to coal workers' pneumoconiosis ("CWP") and silicosis, and can progress to their most severe form, progressive massive fibrosis ("PMF"). Coal mine dust may also lead to obstructive lung diseases, including emphysema, chronic bronchitis, and chronic obstructive pulmonary disease. All these diseases may progress and cause respiratory failure and death.

The Federal Coal Mine Health and Safety Act, 30 U.S.C. § 801 *et seq.*, seeks to protect miners from disabling pneumoconiosis. The National Institute for Occupational Health and Safety, a division of the Centers for Disease Control, monitors the prevalence of pneumoconiosis among active coal miners. In the most recent publicly available data, NIOSH reported 2.9% of all active miners examined in the US from 2014 to 2018 were found to have radiographic evidence of pneumoconiosis.² Other analyses have shown that the prevalence of CWP has risen to greater than 10% among coal miners with 25 years of coal mining tenure, and

² Centers for Disease Control and Prevention. Enhanced Coal Workers' Health Surveillance Program (EWHSP) Data Query System. Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health. Published January 24, 2019. Accessed June 24, 2020. <https://webappa.cdc.gov/ords/cwhsp-database.html>.

over 5% among miners with 20 to 24 years of tenure.³ In central Appalachia, the resurgence has been more drastic, with an increase in prevalence to 20.6% among long-tenured coal miners, including 4.5% who had PMF. *Id.*

COVID-19 is an infectious and highly contagious disease causing fever, cough, and shortness of breath among other symptoms. As of this writing, there have been over 2.3 million cases in the US and it is the attributed cause of death of over 120,000 Americans.⁴ Many persons infected with COVID-19 have severe disease requiring hospitalization, need oxygen supplementation, and have suffered respiratory failure. Multiorgan dysfunction and death may occur. A number of risk factors for severe COVID-19 disease have been identified thus far, including increasing age beyond age 44.⁵ The presence of a number of comorbidities, including chronic lung disease, diabetes mellitus, and cardiovascular disease has also been

³ Blackley DJ, Halldin CN, Laney AS. Continued Increase in Prevalence of Coal Workers' Pneumoconiosis in the United States, 1970–2017. *Am J Public Health*. 2018;108(9):1220-1222. doi:10.2105/AJPH.2018.304517.

⁴ COVID-19 Map. Johns Hopkins Coronavirus Resource Center. Accessed June 24, 2020. <https://coronavirus.jhu.edu/map.html>.

⁵ Petrilli CM, Jones SA, Yang J, et al. Factors associated with hospital admission and critical illness among 5279 people with coronavirus disease 2019 in New York City: prospective cohort study. *BMJ*. Published online May 22, 2020:m1966. doi:10.1136/bmj.m1966.

identified as a risk factor.⁶ Although older age is associated with greater risk of severe COVID-19 disease, severe infection causing respiratory failure, shock and death can occur at any age.

Miners are frequently required to position themselves in close proximity to one another and share equipment in the performance of their work duties. They also may need to perform strenuous work activity such as lifting and moving a heavy piece of equipment, machinery or conveyor belt in close proximity to other miners. This heavy work activity causes the miner to breathe deeply and increases the risk of spreading COVID-19. Due to the highly contagious nature of COVID-19, one miner with the infection can potentially spread the virus to many others. Not only do the resulting illnesses keep the infected miners from working, but they also put affected mines at risk for temporary closure to reduce further transmission of disease.

Given the prevalence of black lung disease among active coal miners, coal miners are at increased risk of severe infection from COVID-19.⁷ Coal miners,

⁶ Chow N, Fleming-Dutra K, Gierke R, et al. Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019 — United States, February 12–March 28, 2020. *Morb Mortal Wkly Rep.* 2020;69(13):382-386. doi:10.15585/mmwr.mm6913e2.

⁷ See NIOSH website entitled “Coal Workers’ Health Surveillance Program.” <https://www.cdc.gov/niosh/topics/cwhsp/> last visited June 25, 2020.

especially those with black lung, need the protection from COVID-19 that MSHA can provide through an emergency temporary standard.

Respectfully submitted,

/s/ Stephen A. Sanders

Stephen A. Sanders

Wes Addington

APPALACHIAN CITIZENS' LAW CENTER

317 Main Street

Whitesburg, KY 41858

Telephone (606) 633-3929

steve@appalachianlawcenter.org

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B), excluding the portions of the motion exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1), because the document 415 words.

I further certify that this motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times New Roman..

Dated: June 29, 2020

/s/ Stephen A. Sanders
Stephen A. Sanders

CERTIFICATE OF SERVICE

I certify that, on June 29, 2020, I filed the foregoing document using this Court's Appellate CM/ECF system, which effected service on all parties.

/s/ Stephen A. Sanders
Stephen A. Sanders

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW

Washington, DC 20001-2866

Phone: 202-216-7000 | Facsimile: 202-219-8530

Case Caption: In re: United Mine Workers of America

v.

Case No: 20-1215

Mine Safety and Health Administration

ENTRY OF APPEARANCE

The Clerk shall enter my appearance as Retained Pro Bono Appointed (CJA/FPD) Gov't counsel for the Appellant(s)/Petitioner(s) Appellee(s)/Respondent(s) Intervenor(s) Amicus Curiae below:

Party Information

(List each represented party individually - Use an additional blank sheet as necessary)

National Black Lung Association

Counsel Information

Lead Counsel: Stephen A. Sanders

Direct Phone: (606) 633-3929 Fax: (606) 633-3925 Email: steve@appalachianlawcenter.org

2nd Counsel: Wes Addington

Direct Phone: (606) 633-3929 Fax: (606) 633-3925 Email: wes@appalachianlawcenter.org

3rd Counsel:

Direct Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

Firm Name:

Firm Address:

Firm Phone: (____) ____ - ____ Fax: (____) ____ - ____ Email: _____

Notes: This form must be submitted by a member of the Bar of the U.S. Court of Appeals for the D.C. Circuit. **Names of non-member attorneys listed above will not be entered on the court's docket.** Applications for admission are available on the court's web site at <http://www.cadc.uscourts.gov/>.