

**RECORD NO. 20-1215**

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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**

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**UNOPPOSED MOTION OF THE NATIONAL MINING ASSOCIATION;  
NATIONAL STONE, SAND, AND GRAVEL ASSOCIATION; PORTLAND  
CEMENT ASSOCIATION; AND INDUSTRIAL MINERALS ASSOCIATION –  
NORTH AMERICA FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE***

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## CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

### I. Parties and *Amici*

Except for *amici curiae* National Mining Association; National Stone, Sand, and Gravel Association; Portland Cement Association; and Industrial Minerals Association – North America, all parties and intervenors appearing in this Court are listed in the Emergency Petition. The West Virginia Coal Association, Virginia Coal Association, and Alliance Resource Partners also intend to appear as *amici curiae*.

Under Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, *amici curiae* state:

*Amicus curiae* National Mining Association is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the association. The association's general nature and purpose is to represent the interests of the members of the mining industry (particularly firms engaged in coal and metal mining) in the United States.

*Amicus curiae* National Stone, Sand, and Gravel Association is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or

greater ownership interest in the association. The association's general nature and purpose is to represent the interests of members of the United States mining industry (particularly firms engaged in aggregate mining).

*Amicus curiae* Portland Cement Association is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the association. The association's general nature and purpose is to represent the interests of members of the United States mining industry (particularly Portland cement processors).

*Amicus curiae* Industrial Minerals Association – North America is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the association. The association's general nature and purpose is to represent the interests of members of the North American mining industry (particularly firms engaged in industrial minerals mining and processing).

**II. Rulings Under Review**

All rulings under review are listed in the Emergency Petition.

**III. Related Cases**

All related cases are listed in the Emergency Petition.

Dated: June 29, 2020

/s/ Brian Hendrix

Brian Hendrix

The National Mining Association; the National Stone, Sand, and Gravel Association; the Portland Cement Association; and Industrial Minerals Association – North America hereby move the Court for leave to file a separate brief as *amici curiae* in support of Respondent Mine Safety and Health Administration (MSHA). Petitioners have consented. Respondent does not oppose this motion.

Proposed *amici* have a compelling interest in the disposition of this case. MSHA regulates the entire mining industry in the United States. Proposed *amici* represent large and small business across various segments of the mining industry. This includes all types of metal/non-metal mines around the country that produce industrial minerals, stone, sand, gravel, and Portland cement, as well as coal mines. The metal/non-metal industry constitutes 74% of mining by average number of employees in 2019.<sup>1</sup> Likewise, proposed *amici* have member companies that operate not only underground mines, but also surface mines and facilities, which employ 94% of all miners.<sup>2</sup> Because

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<sup>1</sup> See MSHA Mine Data Retrieval System, available at <https://www.msha.gov/mine-data-retrieval-system>, Average Number of Employees for 2019 (last accessed Jun. 28, 2020) (221,823 metal/non-metal employees out of total 300,249 in mining in 2019).

<sup>2</sup> *Id.* (281,533 miners employed at surface mines and facilities).

Petitioners seek a new safety standard that would govern the entire American mining industry, proposed *amici*'s interests are directly at stake.

Proposed *amici* can provide a unique viewpoint to assist the Court in understanding the issues presented in this case. Many of proposed *amici*'s members have been deemed essential by state and local governments during the COVID-19 pandemic and, thus, have continued to operate their work sites. Through proposed *amici*, the mining industry can speak first-hand to how it has handled the COVID-19 pandemic over the last several months, given the critical nature of the industry.

Specifically, proposed *amici*'s brief will assist the Court by explaining that the Petitioners' request for additional, judicially-compelled standards are not "necessary" under 30 U.S.C. § 811(b). Existing federal workplace safety standards, together with flexible and evolving industry-specific guidance and industrial hygiene efforts, have protected and continue to protect the health and safety of workers in the mining industry during the COVID-19 pandemic. Private employers and associations (including proposed *amici*) have developed and

enforced their own COVID-19 protocols particular to each workplace and worker exposure to protect worker health and safety.

Each mine is unique. Coal and metal/non-metal mines, as well as surface and underground mines, vary widely in size, scope, and configuration. As a result, the extent to which (and the ways in which) co-workers are exposed to each other also varies widely across different mines. Different segments and facilities within the mining industry have thus developed and adapted their health protocols based on the government-issued standards and guidance described above.

Ultimately, understanding how public and private efforts are already thoroughly protecting worker health and safety will show the Court why the requested standards are not necessary.

#### **CERTIFICATE UNDER CIRCUIT RULE 27(a)(4)**

Except for *amici curiae* National Mining Association; National Stone, Sand, and Gravel Association; Portland Cement Association; and Industrial Minerals Association – North America, all parties, intervenors, and *amici* appearing in this Court are listed in the Emergency Petition.

All rulings under review are listed in the Emergency Petition.

All related cases are listed in the Emergency Petition.

Under Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, proposed *amici curiae* state that:

*Amicus curiae* National Mining Association is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the Association. The Association's general nature and purpose is to represent the interests of members of the United States mining industry (particularly firms engaged in coal and metallic mining).

*Amicus curiae* National Stone, Sand, and Gravel Association is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the Association. The Association's general nature and purpose is to represent the interests of members of the United States mining industry (particularly firms engaged in aggregate mining).

*Amicus curiae* Portland Cement Association is an incorporated nonprofit association. It is not a publicly held corporation and has no



parent corporation. No publicly held company has 10% or greater ownership interest in the Association. The Association's general nature and purpose is to represent the interests of members of the United States mining industry (particularly Portland cement processors).

*Amicus curiae* Industrial Minerals Association – North America is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the Association. The Association's general nature and purpose is to represent the interests of members of the North American mining industry (particularly firms engaged in industrial minerals mining and processing).

Dated: June 29, 2020

/s/ Brian Hendrix

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**CERTIFICATE OF COMPLIANCE**

I certify that this document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains a total of 802 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/ Brian Hendrix

Brian Hendrix

**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/ Brian Hendrix

Brian Hendrix

**RECORD NO. 20-1215**

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**v.**

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

*Respondent.*

**ON EMERGENCY PETITION FOR A WRIT OF MANDAMUS**

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**BRIEF OF *AMICI CURIAE* NATIONAL MINING ASSOCIATION;  
NATIONAL STONE, SAND, AND GRAVEL ASSOCIATION;  
PORTLAND CEMENT ASSOCIATION; AND  
INDUSTRIAL MINERALS ASSOCIATION – NORTH AMERICA  
IN SUPPORT OF RESPONDENT AND DENIAL OF WRIT**

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## CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

### I. Parties and *Amici*

Except for *amici curiae* National Mining Association; National Stone, Sand, and Gravel Association; Portland Cement Association; and Industrial Minerals Association – North America, all parties and intervenors appearing in this Court are listed in the Emergency Petition. The West Virginia Coal Association, Virginia Coal Association, and Alliance Resource Partners also intend to appear as *amici curiae*.

Under Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, *amici curiae* state:

*Amicus curiae* National Mining Association is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the association. The association's general nature and purpose is to represent the interests of the members of the mining industry (particularly firms engaged in coal and metal mining) in the United States.

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*Amicus curiae* Industrial Minerals Association – North America is an incorporated nonprofit association. It is not a publicly held corporation and has no parent corporation. No publicly held company has 10% or greater ownership interest in the association. The association's general nature and purpose is to represent the interests of members of the North American mining industry (particularly firms engaged in industrial minerals mining and processing).

**II. Rulings Under Review**

All rulings under review are listed in the Emergency Petition.

**III. Related Cases**

All related cases are listed in the Emergency Petition.

Dated: June 29, 2020

/s/ Brian Hendrix

Brian Hendrix

**CERTIFICATE PURSUANT TO D.C. CIRCUIT RULE 29(d)**

*Amici* have been notified that the West Virginia Coal Association, the Virginia Coal Association, and the Alliance Resource Partners also intend to file a *amici curiae* brief in support of Respondent. *Amici*'s brief is necessary because *amici* represent large and small businesses across various segments of the mining industry. This includes all types of metal/non-metal mines around the country that produce metals, agricultural, and industrial minerals, stone, sand, gravel, and Portland cement, as well as coal. The metal/non-metal industry constitutes 74% of mining by average number of employees.<sup>1</sup> Likewise, *amici* have member companies that operate not only underground mines, but also surface mines and facilities, which employ 94% of all miners.<sup>2</sup> As such, the vast majority of *amici*'s member companies are not part of the coal mining industry. The Court would therefore benefit from the two

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<sup>1</sup> See MSHA Mine Data Retrieval System, available at <https://www.msha.gov/mine-data-retrieval-system>, Average Number of Employees for 2019 (last accessed Jun. 28, 2020) (221,823 metal/non-metal employees out of total 300,249 in mining in 2019).

<sup>2</sup> See *id.* (281,533 miners employed at surface mines and facilities).



separate briefs to understand the position of various segments of the mining industry beyond simply the coal segment.

Dated: June 29, 2020

/s/ Brian Hendrix

Brian Hendrix

## STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

Under Federal Rule of Appellate Procedure 29(a)(4)(E), *amici curiae* state that no party or party's counsel authored any portion of this brief in whole or in part. In addition, no party or party's counsel contributed money that was intended to fund preparing or submitting the brief. And no person—other than *amici*, their members, and their counsel—contributed money that was intended to fund preparing and submitting the brief.

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## **GLOSSARY OF ABBREVIATIONS**

### **ABBREVIATION**

CDC	Centers for Disease Control and Prevention
COVID-19	SARS-CoV-2 novel coronavirus
ETS	Emergency Temporary Standard
IMA-NA	Industrial Minerals Association – North America
MSHA	Mine Safety and Health Administration
NMA	National Mining Association
NSSGA	National Stone, Sand, and Gravel Association
OSHA	Occupational Safety and Health Administration
PCA	Portland Cement Association

## **STATUTES AND REGULATIONS**

Under D.C. Circuit Rule 28(a)(5), the relevant statutes and regulations are set out in the foregoing Table of Authorities (p. viii, above).



**STATEMENT OF IDENTITIES, INTEREST IN CASE, AND  
SOURCE OF AUTHORITY TO FILE AS AMICI CURIAE**

*Amicus curiae* National Mining Association (NMA) represents the interests of its member companies that engage in coal, metal, and nonmetal mining. NMA engages in and influences the public process on the most significant and timely issues that impact its members' ability to safely, healthfully, and sustainably locate, permit, mine, transport, and utilize the nation's coal and mineral resources.

*Amicus curiae* National Stone, Sand, and Gravel Association (NSSGA) represents the interests of its member companies in the aggregates industry, including stone, sand, and gravel producers, equipment manufacturers, and service providers. NSSGA advances public policies that protect and expand the safe, environmentally responsible use of aggregates used as essential raw materials in homes, buildings, roads, bridges, and public works projects.

*Amicus curiae* Portland Cement Association (PCA) represents the interests of its member companies that together manufacture the vast majority of cement in the United States. PCA promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and

distribution, and generally promotes economic growth and sound infrastructure investment.

*Amicus curiae* Industrial Minerals Association – North America (IMA-NA) represents the interests of its member companies that mine or process industrial minerals used throughout the manufacturing and agricultural supply chains. IMA-NA also represents associate member companies that support the producers of industrial minerals.

All four *amici* have a compelling interest in the disposition of this case. MSHA regulates the entire mining industry. *Amici* represent large and small business across industry segments. This includes all types of metal/non-metal mines around the country that produce industrial minerals, stone, sand, gravel, and Portland cement, as well as coal mines. The metal/non-metal industry constitutes 74% of mining by average number of employees.<sup>3</sup> Likewise, *amici* have member companies that operate not only underground mines, but also surface mines and facilities, which employ 94% of all miners.<sup>4</sup> Because

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<sup>3</sup> See Average Number of Employees Report for 2019 (accessed June 27, 2020), <https://www.msha.gov/mine-data-retrieval-system>.

<sup>4</sup> See *id.*

Petitioners seek a new safety standard that would govern the entire American mining industry, *amici*'s interests are directly at stake.

*Amici* provide a unique viewpoint to assist the Court. Many of *amici*'s members have been deemed essential by state and local governments during the COVID-19 pandemic and, thus, have kept operations open. Through *amici*, the mining industry can speak first-hand to how it has handled the COVID-19 pandemic over the last several months, given the critical nature of the industry.

Petitioners have consented to the filing of this brief. Respondent does not oppose the filing of this brief. Accordingly, *amici* have contemporaneously filed an unopposed motion for leave to file.

## SUMMARY OF ARGUMENT

Petitioners ask this Court to require an emergency temporary standard (ETS) under the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. § 811(b), imposing some undefined, mandatory COVID-19 requirements across all of mining. *See, e.g.*, Petition, 7. Petitioners have the burden of showing that an ETS is necessary because miners are in “grave danger.” Neither is the case.

Though mines have operated continuously during four months of pandemic, the Petition depicts looming catastrophe not based on mining, but rather based on the meatpacking industry. The reality of the last four months is that miners and mine operators have worked together to keep mines healthy and operational. Extensive government guidance and industry innovation have given companies the tools they need to create detailed mine-specific plans. Below is the story of how they have implemented and continually updated extremely robust, workplace-specific, proactive measures that seem to have successfully controlled the risks of COVID-19 in mining to date. An ETS could add nothing more to these far-reaching efforts.

## ARGUMENT

**I. Petitioners do not meet their burden for an ETS, because MSHA and the industry already have the tools necessary to respond to COVID-19.**

**A. Petitioners face a heavy burden to show that an ETS is necessary to protect miners.**

The ETS provision of the Mine Act requires the Secretary of Labor to issue an ETS if he determines that “miners are exposed to grave danger” and that an “emergency standard is *necessary* to protect miners from such danger.” 30 U.S.C. § 811(b)(1) (emphasis added). Petitioners must establish that necessity and, as the party seeking mandamus, must also show that an ETS is “warranted.” *In re Int’l Union, United Mine Workers of Am.*, 231 F.3d 51, 54 (D.C. Cir. 2000) (noting that for a writ to issue, the right must be “clear and indisputable”).

This Court has cautioned that determining what standards should be adopted is “committed to the agency’s expertise in the first instance.” *Id.*; *cf. Oil, Chem. & Atomic Workers Int’l Union v. Zegeer*, 768 F.2d 1480, 1488 (D.C. Cir. 1985) (recognizing the “complex scientific and technical issues” for MSHA in deciding standards). As such, this Court has regularly denied union petitions for a writ of mandamus to compel MSHA to implement an ETS. *See, e.g., In re Int’l Union, United Mine*

*Workers of Am.*, 231 F.3d at 54 (denying petition to compel ETS where union failed to satisfy burden of showing ETS was “warranted”); *Oil, Chem. & Atomic Workers Int’l Union*, 768 F.2d at 1487–88 (denying petition for review to compel agency action, including an ETS).

Further, the ETS provision of the Mine Act, 30 U.S.C. § 811(b), mirrors the Occupational Safety and Health Act (“OSHA”), 29 U.S.C. § 655(c). *See Oil, Chem. & Atomic Workers Int’l Union*, 768 F.2d at 1483 n.4. In that context, this Court has recognized that the decision to issue an ETS is “necessarily based on considerations of policy as well as empirically verifiable fact.” *In re Int’l Chem. Workers Union*, 830 F.2d 369, 371 (D.C. Cir. 1987) (quotation omitted).

Importantly, this Court recently denied a nearly identical petition in the OSHA context. *In re Am. Fed’n of Labor & Cong. of Indus. Orgs.*, No. 20-1158, 2020 WL 3125324, at \*1 (D.C. Cir. June 11, 2020). The Court reasoned that OSHA reasonably determined an ETS was not “necessary” because of “the unprecedented nature of the COVID-19 pandemic” and “the regulatory tools that OSHA has at its disposal to ensure that employers are maintaining hazard-free work

environments.” *Id.* Here too, MSHA reasonably determined an ETS was not necessary within the meaning of § 811(b) of the Mine Act.

**B. MSHA has all the enforcement tools it needs.**

Mine operators “with the assistance of the miners have the primary responsibility to prevent the existence” of “unsafe and unhealthful conditions and practices” in all mines. 30 U.S.C. § 802. For four months, as described below, the mining industry has demonstrated just how seriously it takes this responsibility in light of COVID-19. To date, those actions have been very effective as outlined below.

Significantly, as described in detail in the Secretary’s Brief, if a mine operator fails to protect its miners, MSHA is on the job. *See* Respondent’s Br., Addendum Tab 2 (*Letter from Assistant Secretary of Labor, Mine Safety and Health Administration, David G. Zatezalo, to Cecil E. Roberts, President, United Mine Workers of America*, p. 2-3 (June 26, 2020)). It has continued to inspect mines and investigate hazard complaints, discrimination complaints, and accidents throughout the pandemic. *Id.*

MSHA’s enforcement authority is incredibly broad. To quote Assistant Secretary Zatezalo, the Mine Act is an “unusually strong

enforcement statute and MSHA has many enforcement tools at its disposal.” *Id.* at p. 2-3. One of the strongest is the authority in the hands of every MSHA inspector to shut down even an entire mine, first with only a few spoken words and then with the stroke of a pen. *See* 30 U.S.C. § 817(a); *see also MSHA Citation and Order Writing Handbook for Coal and Metal and Nonmetal Mines*, p. 37, PH13-I-1(1) (December 2013) (authorizing verbal withdrawal order for imminent dangers).

If an inspector “finds that an imminent danger exists,” the inspector “shall . . . cause all persons . . . to be withdrawn from, and to be prohibited from entering, such area” until the danger no longer exists. 30 U.S.C. § 817(a). The inspector need not even find a violation of a regulatory standard to do so. *Id.*; *see also MSHA Program Policy Manual*, Vol. I (May 16, 1996) (order could also arise from natural causes without violation of a standard). Thus, an inspector who believes that miners are at risk of infection may order quick redress. *Id.*

In addition, “MSHA has a number of performance-based standards available in response to COVID-related complaints or conditions inspectors encounter.” Respondent’s Br., Addendum Tab 2, at 3 (citing and describing examples). As such, *amici* maintain that an



ETS is not necessary to protect miners during the pandemic. In reality, mine operators have taken action to effectively protect miners during the pandemic, and MSHA has all the enforcement tools it needs to compel any mine operator to protect the health and safety of miners.

**II. An ETS is not necessary because the industry has responded proactively and robustly to manage worker health in the face of the pandemic.**

Tellingly, the Petition does not describe a single mine where COVID-19 was transmitted at work, much less anywhere it spread uncontrolled. Instead, Petitioners cite wholly unrelated industries, such as “meatpacking,” Petition, 3, 20–21, 31, in hopes of depicting a catastrophe that simply has not occurred in mining. Indeed, the story of mining’s response to protect miners from catching COVID-19 at work is one of mine operators and miners working together to act early, proactively, and robustly.

Mines certainly are not immune from the virus. But with cultures already built around safety and health concerns, a workforce that understands the need for protective rules, and a duty to operate as part of the nation’s critical infrastructure, mines were well-positioned to address COVID-19. Indeed, from the early days of the pandemic, mining

professionals collaborated through their trade associations to adapt, develop, and share even more resources, which individual companies then implemented as appropriate for each workplace.

**A. The mining industry collaborated to develop unprecedented and innovative protective measures.**

*Amici* are national trade associations representing the overwhelming majority of the nation's mines, including a wide array of different operations. Beginning as early as March 2020, *amici* began sounding the alarm about COVID-19 and convening their members to develop solutions. Even in the early days when the CDC, the White House, MSHA, and OSHA were still releasing incrementally more detailed guidance, the private sector was applying what was known about the virus to protect miners.

To be sure, an aggressive, protective response is in the interests of *amici* and their member companies. Health and safety are longtime, ingrained core values in the industry. Mining can be dangerous if not done right, so modern mining companies have industrial hygiene and workplace safety baked into their DNA. Regulators, employees, and shareholders expect no less.

Moreover, COVID-19 reminded everyone how critical and essential mining is. Mining provides fuel to power hospitals and industrial minerals to manufacture medical respirators. Miners themselves are the most valuable part of any mining company. No company can afford to let COVID-19 spread at work lest it lose critical team members or the ability to continue operating.

For all of these reasons, *amici* moved quickly to channel COVID-19 resources to their member companies. *See, generally*, Harman Decl.; Franklin Decl.; Pritchard Decl.; Ellis Decl. As described in more detail in the attached declarations, from the pandemic's early days in mid-March, *amici* have:

- Fostered frequent and open communication among their members in all industry segments;
- Hosted regular conference calls and webinars;
- Facilitated companies sharing experiences, ideas, and materials with each other;
- Maintained open communication with government agencies and experts; and

- Developed a suite of strategies, tools, and resources that each company can adapt to its particular operations as appropriate.

These efforts began even before detailed government guidance existed. They accelerated and have continued as the CDC, MSHA, Federal Emergency Management Agency, OSHA, and others continue to learn and issue recommendations about COVID-19. This collective endeavor has covered all aspects of prevention, detection, and response, including but not limited to risk assessment, workplace best practices, employee communication and signage, methods for social distancing, facility access control, industrial and personal hygiene, and exposure response.

**B. Across the industry, companies have put these tools to work**

Armed with these extensive resources from government scientists, experts and regulators, as well as industry associations and peers, mining companies have developed and implemented robust, proactive COVID-19 plans since the beginning of the pandemic. There is no one-size-fits-all; every mine and workplace is different. That is why CDC

and others direct that the first step in pandemic response is assessing the particular risks of each workplace and worker role.

Even in a hospital treating COVID-19 patients, not all workers or work areas follow the same measures.<sup>5</sup> Mines are no different. The resources, protective measures, and recommendations from government and industry associations are simply a menu of tools that are available to adapt to each workplace based on particular exposure risks there. An emergency MSHA regulation could do no more than require this very process that already has occurred.

Mining companies across the industry have borrowed from this growing toolbox to make their own site-specific plans. The attached declarations are good examples, reflecting the detailed efforts of eight companies employing thousands of workers. As essential operations, these companies have been operating throughout the pandemic. Yet, every one has thus far effectively controlled the spread of COVID-19.

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<sup>5</sup> See, e.g., Centers for Disease Control, *Interim U.S. Guidance for Risk Assessment and Work Restrictions for Healthcare Personnel with Potential Exposure to COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html> (last accessed Jun. 28, 2020) (differentiating precautions based on worker activities/exposures).

For example, Genesis Alkali's underground trona mine, which the Petition itself actually mentions, began tracking COVID-19, educating its workforce, and planning a response as early as February. Ritchie Decl. ¶¶ 4-7. The IMA-NA member company started with incentivizing and requiring employees to stay home if sick, screening those entering facilities for symptoms, promoting hygiene, and creating robust disinfection protocols. *Id.* ¶¶ 7-11, 15. Extensive social distancing measures have included reducing on-site staff and contractors, promoting telework, adjusting shift schedules, changing transportation (including reducing the number of miners allowed in the shaft elevator cage), and dramatically reducing occupancy in break rooms, change houses, control rooms, and other communal areas. *Id.* ¶¶ 16-17, 30. A cage to access the mine designed to transport 65 miners now allows a maximum of nine at any one time. *Id.* ¶ 17.

To date, the company has detected four positive COVID-19 cases among its nearly 1,000 employees at its mine and processing plants. *Id.* ¶ 3. All who may have been exposed were quarantined, and workplaces were disinfected. *Id.* ¶¶ 23, 29, 40. Extensive contact tracing

established that all of the infections occurred outside of work at family and social events. *Id.* ¶ 3.

NSSGA member Luck Stone adopted a similarly aggressive and protective response as early as March at its 19 MSHA-regulated sites. Parker Decl. ¶ 4. CDC, MSHA, NSSGA, and other sources provided all the information it needed. *Id.* ¶ 13. A dedicated “Alert Team” of senior leadership has led the response. *Id.* ¶ 4. The company first liberalized leave so sick employees could stay home. *Id.* ¶ 6. Instead of congregating at time clocks or offices, miners walk directly between their personal vehicles and mining equipment or workstations. *Id.* ¶ 7. Safety meetings occur by radio. *Id.* Jobs involving two or more miners are postponed, minimized, or only performed with masks and disinfection. *Id.* ¶ 9. Of approximately 550 workers, just three have tested positive for COVID-19, but investigation revealed that all were infected outside of work, and co-workers were not exposed due to the effective measures above. *Id.* ¶ 12.

Cement producer Continental Cement, an active PCA member, operates multiple MSHA facilities, including cement plants, with about 400 employees and zero cases of COVID-19. Schlosser Decl. ¶¶ 2-3. It

also developed robust protocols for workplace disinfection, personal hygiene, at-home self-monitoring, social distancing, use of face coverings, and symptom screening. *Id.* ¶ 4. It split and adjusted shifts and minimized tasks involving more than one miner (requiring masks and disinfection, as well). *Id.* ¶ 5. They have limited communal areas and moved to self-service customer kiosks. *Id.* ¶¶ 6-7. For extra prevention, employees are asked to report not only their own exposures but also possible exposures by their family members. *Id.* ¶ 8. Auditors ensure that the workforce follows protocols. *Id.* ¶ 9.

Another example is LafargeHolcim, a member of both NSSGA and PCA, that produces cement, aggregates, asphalt, and concrete products at over 400 locations. Jacoby Delc. ¶ 1. It has both a Trigger and Action Response Plan, as well as site-specific checklists and requirements to address issues as diverse as hygiene standards; shared rooms; mobile equipment; site contingency planning; warehouse, dispatch, and material receiving; and site shutdown planning. *Id.* ¶¶ 3-5.

Entering a site involves medical screening. *Id.* ¶ 6. Extensive disinfection occurs before and/or after each shift. *Id.* ¶ 8. Many employees work remotely; others have staggered shifts. *Id.* ¶ 7. CDC



mask guidance applies where social distancing is not possible. *Id.* ¶ 10.

If an infection occurs, the company is ready for appropriate isolation, contact tracing, and disinfection, and employee training ensures that everyone understands their roles. *Id.* ¶ 15. Though operating consistently during the pandemic, the company is not aware of any workplace infections among its thousands of employees. *Id.* ¶ 17.

CalPortland, another PCA and NSSGA member, is the largest building materials company producing cement and construction material products on the West Coast. Rock Decl. ¶ 1. Its Infectious Disease Control Plan addresses every aspect of COVID-19, categorizing employees by level of exposure and risk. Employees must self-screen for symptoms daily and stay home if sick; at work, social distancing is everywhere, and the company provides face masks. *Id.* ¶¶ 4-7. The company has minimized tasks of more than one person. *Id.*

LarfargeHolcim will provide testing if employees or family members are exposed to COVID-19; positive tests would trigger self-isolation and disinfection. *Id.* ¶¶ 8-9. However, the company has had no employees test positive. *Id.* ¶ 10.

Another IMA-NA member described in the declarations produces multiple industrial minerals. Ellis Decl. ¶ 10. It developed a 20-page, single-spaced pandemic policy covering every workplace and scenario and leaves virtually no aspect of the operation untouched. *Id.* It covers details as minute as protocols for shared vehicles, donning and doffing protective gloves, laundry, and adjustments to arrival times, walkways, meetings, workstation placement, and breaks in order to keep people from congregating or working within six feet of each other. *Id.* ¶¶ 10-11.

A member of NMA in precious metals mining made similar top-to-bottom changes in operations to keep potentially ill people away from work and then prevent infection at work. Harman Decl. ¶ 9. For a mine in a remote area, the company arranged lodging, food, transportation, and new schedules for the workers to allow each new crew 14 days of quarantine to be sure everyone is virus-free before beginning a 28-day rotation. *Id.* ¶ 10. The company replaced in-person meetings with videoconferences, placed extreme limitations on outside visitors, and changed the configurations of everything from shuttle bus seating and elevator cages to changing rooms and workstations in order to maintain social distancing. *Id.*

Finally, an NMA member that operates underground coal mines has also managed to do what is necessary to protect its miners from workplace infection. *Id.* ¶ 11. Sick employees stay home with relaxed sick leave. *Id.* Temperature and medical screening occurs at gates and portals. *Id.* Miners practice social distancing throughout. *Id.* The mines have staggered shifts, reduced capacities in elevators and mantrips, and adopted face masks. *Id.* They engage in rigorous disinfection. *Id.*

Significantly, these protocols have actually worked to detect and contain illness. *Id.* ¶ 12. The company quickly detected three cases of COVID-19 over time. *Id.* It worked with local health authorities on contact tracing to identify anyone potentially exposed for 14-day home quarantine. *Id.* In the first instance, it adopted targeted quarantine. *Id.* In the second, out of abundant caution, it idled operations entirely for two weeks to prevent the virus from spreading at work. *Id.* There have been no further cases in the months since, and all protective measures continue. *Id.*

As a whole, these plans rebut the Petition. The Petition assumes that mine operators will only focus on COVID-19 subject to an emergency regulation, but the efforts above illustrate the proactive,

robust, and aggressive approach taken industry-wide for months. The Petition suggests that the worst is yet to come as state and localities begin to open because miners have not been at work, but most of the industry – deemed critical infrastructure – has been operating all along.

The Petition suggests more than once that miners face “particular dangers . . . traveling into, working in, and traveling out of mines that are not faced by other workers or the public,” Petition at 22, since they use elevators, mantrips, bathhouses, and showers, Petition at 29 n.12. The real-life programs above have found ways to address every one of these work areas – even in underground coal mines (a segment heavily emphasized by Petitioners even though representing just 12.7% of miners). The details vary, but the core protective principles remain the same: screening, hygiene, disinfection, social distancing, and isolation of those infected or exposed. Mining companies have smoothly adapted a range of tools and strategies to each work area.

**C. The results of these extensive efforts so far are promising and do not indicate any unusual unaddressed hazards.**

Petitioners suggest that mining offers risks of COVID transmission far above everywhere else, as if mines were “super-

spreader” sites, where dozens become infected. The Petition invokes “more than 14,800 infections tied to meat processing plants.” It tags an entire industry as putting people in “grave danger,” Petition at 21. If there were any truth to these claims, one would expect news articles, declarations, and testimonials about multiple mines where dozens, hundreds, or thousands contracted COVID-19.

But, quite tellingly, the Petition does not – and cannot, as far as *amici* are aware – cite any such clusters of illness at mines. Any employee can contract COVID-19 at the grocery store or a family gathering. Successful COVID-19 plans prevent people from bringing the virus to work, and even if asymptomatic employees come in, the programs prevent them from spreading the virus to co-workers. The company declarations show plans that work. Even when a case or two is detected, they have successfully contained the virus.

## CONCLUSION

It appears that COVID-19 will continue to be a challenge for some time to come. No one has the luxury of being complacent. *Amici* and their members certainly take nothing for granted and are continually following new developments and guidance. Fortunately, the last four

months of pandemic appear to show that these truly unprecedented and comprehensive efforts are succeeding in preventing just the kind of scenarios that Petitioners – and everyone in mining – seek to avoid. There is nothing more that an MSHA ETS could add. The Court should deny the emergency petition for a writ of mandamus.

Dated: June 29, 2020

/s/ Brian Hendrix

Brian Hendrix

Avi Meyerstein

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## CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) and 32(a)(7)(B), excluding the portions of the brief exempted by Federal Rule of Appellate Procedure 32(f) and D.C. Circuit Rule 32(e)(1), because the document contains 3,856 words.

I further certify that this document 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 document has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

Dated: June 29, 2020

/s/ Brian Hendrix

Brian Hendrix

**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/ Brian Hendrix  
Brian Hendrix



**RECORD NO. 20-1215**

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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**

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**ADDENDUM TO BRIEF OF *AMICI CURIAE* NATIONAL MINING  
ASSOCIATION; NATIONAL STONE, SAND, AND GRAVEL ASSOCIATION;  
PORTLAND CEMENT ASSOCIATION; AND  
INDUSTRIAL MINERALS ASSOCIATION – NORTH AMERICA  
IN SUPPORT OF RESPONDENT AND DENIAL OF WRIT**

---

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*Amici's* Brief Addendum

Tab No.	Attachment
1	Declaration of Mark Ellis (dated June 28, 2020)
2	Declaration of Charles Franklin (dated June 28, 2020)
3	Declaration of Thomas Harman (dated June 28, 2020)
4	Declaration of Scott Jacoby (dated June 28, 2020)
5	Declaration of Abel Parker (dated June 26, 2020)
6	Declaration of Elizabeth Pritchard (dated June 28, 2020)
7	Declaration of Barbara Ritchie (dated June 28, 2020)
8	Declaration of Mark Rock (dated June 28, 2020)
9	Declaration of Timothy Schlosser (dated June 28, 2020)

**Addendum-Tab 1**

Declaration of Mark Ellis (dated June 28, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF MARK ELLIS  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

---

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. Since 2004, I have been the President of the Industrial Minerals Association - North America (“IMA-NA”). A substantial part of my time focuses on mine health and safety issues. I have worked on these issues for my entire career, including as an attorney at the Federal Mine Safety and Health Review Commission, as a senior policy advisor to the Assistant Secretary of Labor for Mine Safety and Health, and in mining trade associations and in a mining company.

2. IMA-NA is the principal trade association representing industrial minerals producers in North America. Our members include firms that mine or process industrial minerals, as well as those that provide equipment and services to the industry. A central element of our mission is creating a forum for industry leaders to collaboratively promote best practices in health, safety, operations, and the environment. Health and safety is a major focal point of our activities, conferences, meetings, conference calls, and resources for members.

3. Our Safety and Health Committee is extremely active, drawing the participation of dozens of executives and senior safety and health professionals. Since the onset of COVID-19, the Committee has

been the place where IMA-NA has shared information, resources, and analysis with members on how to keep workplaces healthy, as well as a forum for members to collaborate and share ideas and strategies as they developed company-specific responses to the crisis. Their work benefits an estimated 10,000 miners.

4. Our team has spent hours each week helping members address COVID-19 at their workplaces. IMA-NA collected information and resources from agencies across the federal government and added our own analysis to provide a steady stream of tools to our members.

5. Starting in mid-March, just after the declaration of a national emergency, we distributed to members the *Guidance on Preparing Workplaces for COVID-19* prepared by the U.S. Department of Labor Occupational Safety and Health Administration and the Centers for Disease Control.<sup>1</sup> That guide continues to provide a thorough roadmap for companies in every industry to conduct COVID-19 health risk assessments, classify exposure risks for different workers, and develop plans for implementing appropriate engineering

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<sup>1</sup> Available at <https://www.osha.gov/Publications/OSHA3990.pdf>.

controls, administrative controls, work practices, and personal protective equipment strategies.

6. As mining and the mining workforce became widely recognized as essential operations and part of the nation's critical infrastructure, IMA-NA became a conduit to member companies of further evolving CDC guidance to help protect the mining workforce and to maintain the continuity of operations during the pandemic. By April 1, we already held our first COVID-related webinar, "Impacts of COVID-19 on Mining Operations: COVID-19 & Infectious Disease Control in the Workplace." Ninety-eight professionals from 42 companies registered for the webinar. The PowerPoint slides and a recording of the webinar subsequently became an ongoing resource for our network, sent to all registrants and posted on LinkedIn.

7. These efforts continued through April and May. During this time, IMA-NA connected members with: U.S. Department of Labor guidance on respiratory protection during shortages of PPE, CDC interim guidance on protecting critical infrastructure workers exposed to confirmed or suspected cases of COVID-19, information from manufacturers about disinfectants, and advice from law firms about

planning to safely return to work. On May 8, we circulated additional CDC interim guidance detailing how companies could reduce transmission and maintain healthy workplaces. On the 19th, we distributed a 25-page compendium of tools from National Safety Council (NSC)'s Safe Actions for Employee Returns (SAFER) Task Force.

8. IMA-NA continued to share recommendations as CDC developed them about reopening workplaces, disinfecting facilities, and returning office workers to workplaces. Earlier this month, we shared posters and web pages by MSHA and NIOSH with mining-specific COVID-19 reminders. At the end of July, IMA-NA is hosting another webinar on "Preventing the Spread of COVID-19 in the Mining Workplace." It will feature both NIOSH/CDC experts and safety and health professionals from a number of mining companies, who will share experiences, resources, and advice with others in industry.

9. From speaking with many of our member companies, it is clear that they have been able to use the tools from these many sources (including CDC, MSHA, OSHA, NIOSH, IMA-NA, and others) to assess and address individual workplace COVID-19 infection risks for all kinds of different operations, sites, and tasks. The protocols they have



adopted are detailed, extensive, and proactive. It is also clear that this is an ongoing effort as science, guidance, and the pandemic evolve. Our members continue to adjust as needed, and we continue to provide resources, support, and a forum for collaboration.

10. One member company, a producer of multiple industrial minerals, shared with me its written COVID-19 response plan, which seems to cover every part of the company's workplaces and every conceivable scenario. The document runs 20-pages long, single-spaced. Following hierarchy of controls principles, major sections in the policy include engineering controls for workstations, reconfiguring ventilation and facility management, adjusting work practices, disinfection protocols, employee hygiene and facility hygiene support (including supplies and refuse collection), social distancing rules, administrative controls, shift adjustments, visitor and pickup/delivery procedures, use of personal protective equipment ("PPE"), isolating those with symptoms, addressing contaminated areas, and training. The policy sets different protocols depending on the severity of the pandemic in the area of the facility.

11. It is apparent that the company had ample information and guidance to address all of its work areas in a site-specific manner, from break rooms and shared vehicles to delivery and production areas. It addresses details as minute as proper methods for donning and doffing protective gloves, how to handle laundry safely, and adjustments to arrival times, walkways, meetings, workstation placement, and breaks in order to keep people from congregating or working within six feet of each other. The program clearly reflects an extensive amount of diligence and effort to keep miners healthy. So that others could benefit, IMA-NA digested and distributed this information to its full membership distribution list because IMA-NA member companies regard safety and health as a collaborative, not a competitive, issue.

12. No doubt, the pandemic and the challenges it presents are far from over. What we learn from experts about COVID-19 and how we adapt workplaces has continued to evolve, and our vigilance will continue. However, everything I've seen and heard to date is promising as it appears that extensive efforts like these by IMA-NA's members have been extremely effective.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 28th day of June 2020.

A handwritten signature in black ink, appearing to read "Mark J. Ellis", written in a cursive style.

---

Mark Ellis

**Addendum-Tab 2**

Declaration of Charles Franklin (dated June 28, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

---

**DECLARATION OF CHARLES FRANKLIN  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

---

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Vice President and Counsel for Government Affairs at the Portland Cement Association (PCA). I work with PCA member companies to develop and implement regulatory advocacy strategies involving federal environmental, mining, health and safety, and infrastructure regulation. Prior to joining PCA, I spent fourteen years advising and representing companies, associations, and individuals on environmental, health, and safety regulation, litigation, transactions, and pro bono matters at a leading international law firm. Before that, I served for thirteen years as a government regulator and manager at the US Environmental Protection Agency (EPA), working on waste, chemical, and pesticide issues

2. PCA is the premier policy, research, education, and market intelligence organization serving America's cement manufacturers. PCA members represent 92 percent of US cement production capacity and have facilities in all 50 states. The Association promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure

investment. Indeed, PCA has an established alliance with MSHA, which has forged a public-private partnership to encourage training and education that helps producers safeguard workers.

3. PCA includes an Occupational Health and Safety Committee comprised of members' executives and senior safety and health professionals. The Committee focuses on workplace safety and health as a primary concern and priority in the operations of the aggregates industry. Through the Committee, the members have had a critical forum to collaborate with other industry members, and share and receive useful information, regarding protecting workers from COVID-19. Additionally, PCA has sent the Committee numerous emails with COVID-19 industry-specific information.

4. Since March 2020, PCA has also worked to provide its members with the latest guidance and recommendations and facilitate communication among members and industry stakeholders.

5. For example, PCA has hosted four webinars for its members with a variety of COVID-19 related topics, including COVID-19 workplace strategies, industrial hygiene, and considerations for return to office. One such webinar, which took place during the beginning of

the pandemic, was a combined webinar of the National Sand, Stone, and Gravel Association (NSSGA) and PCA members. This webinar was an interactive program that facilitated conversations and allowed roughly a dozen members of both associations to share what their companies were doing to address COVID-19. This webinar was particularly insightful as it incorporated ideas from diverse perspectives on how to protect workers in both aggregate and cement member companies. From the webinar, a COVID-19 Workplace Strategies document was created and disseminated to all PCA members, providing 56 industry specific strategies to address COVID-19

6. Additionally, PCA has assisted its members with their COVID-19 responses through its COVID-19 resource page on its website. This webpage is consistently updated with the latest guidance and recommendations for our members.

7. Finally, PCA has disseminated information on COVID-19 for members through joint PCA/NSSGA monthly safety calls. More than 50 members have participated and engaged in the two previously conducted calls.



8. PCA has strategically aligned with the NSSGA to bring the cement and aggregate industries together in responding to COVID-19. Most of the communication methods utilized to disseminate COVID-19 information have been shared between PCA and NSSGA membership. This demonstrates that none of the mining industry sectors are siloed. Rather, the mining industry is sharing information among sectors to ensure the health and safety of all miners, not just those who work in aggregate or those who work in cement. Health and safety are not proprietary; NSSGA, PCA and our member companies have shown through actions during the pandemic that we live by this mentality.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 28th day of June 2020.

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Charles L. Franklin

**Addendum-Tab 3**

Declaration of Thomas Harman (dated June 28, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF THOMAS HARMAN  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

---

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Senior Director for Safety and Health at the National Mining Association (“NMA”). I have spent a career working as a safety and health professional in the mining industry. My work to promote miner health and safety has involved roles working directly at underground and surface mine operations, as well as at trade associations and as a regulatory policy adviser at the U.S. Department of Labor Mine Safety and Health Administration.

2. NMA is a membership organization comprised of the nation’s leading producers of coal and mineral resources. Our mission includes supporting our members in their efforts to conduct mining in a safe, healthy, responsible, and sustainable manner. Keeping miners safe is our members’ top priority. We have a standing Safety and Health Committee, which I coordinate. Committee members include senior safety and health professionals from many of the nation’s largest mine operators.

3. Industrial hygiene and industrial hygienists have been an integral part of the mining industry for several decades now. The

mining industry, with NMA's help, has significant experience addressing hazards affecting the health and safety of mine workers.

4. Especially since the time of the President's March 13, 2020 declaration of a national emergency involving the COVID-19 pandemic, NMA and our Safety and Health Committee have been working intensively to help our members keep their workers safe. That very week, we convened professionals from across our member companies members in an industry-wide conference call to share information with and among members on addressing COVID-19 in the mining environment, impacts on operations, tools and strategies for protecting workers, options for monitoring and testing, and updates on government mandates, closures, and recommendations.

5. Within days, we launched a private member forum to facilitate extensive information-sharing as companies developed their COVID-19 response plans so that we could share with them, and they could share with each other, ideas and materials. These included templates on medical screening, sample infection control policies, workplace posters to remind people of preventive measures, and state and federal guidance on protecting workplaces from COVID-19.

6. As CDC, MSHA, FEMA, OSHA, and other agencies continued to learn and issue recommendations about COVID-19 in March, April, and May, we regularly updated members with the latest information. For example, in April we distributed CDC interim guidance on implementing safety practices for protected critical infrastructure workers from COVID-19. We also shared CDC and FEMA guidance on how to conserve and extend the shelf life of personal protective equipment, particularly respirators, in light of pandemic-caused shortages.

7. Our members have continued to consult and rely on readily-available guidance and recommendations from NMA and these sources. We are in constant communication with our members about new developments and approaches, as well as updates to guidance and recommendations. We all understand that the disease and control strategies continue to evolve. I understand that our members have conducted detailed risk assessments and then developed workplace-specific response plans for their operations following that guidance. I continue to discuss these COVID-19 response efforts with many of NMA's members, with MSHA, and with other industry stakeholders.

8. Our members have described an impressive, dynamic and extensive list of actions taken to mitigate the risk of infection and keep workers healthy and safe. From my conversations with NMA's members, it is clear to me that they understand the need to remain vigilant, active, and continually adjust protective measures to fit the place and the moment.

9. Some of our members shared with me their detailed COVID-19 response plans. One, a precious metals producer, has made changes top-to-bottom in how it operates to ensure that it follows CDC guidelines of first keeping symptomatic or infected people away from work and then preventing the possible spread of illness at work through social distancing, personal hygiene, enhanced disinfection, engineering and work practice controls, and personal protective equipment.

10. For example, for a mine in a remote area, the company has arranged lodging, food, transportation, and new schedules for the workers to allow each new crew 14 days of quarantine to be sure everyone is virus-free before beginning a 28-day rotation. Across its workplaces, the company has replaced in-person meetings with videoconferences, placed extreme limitations on outside visitors, and

changed the configurations of everything from shuttle bus seating and elevator cages to changing rooms and workstations in order to maintain social distancing.

11. Another company, which operates underground coal mines, has been addressing COVID-19 since the pandemic began. Its extensive policies started with requiring sick employees to stay home, providing relaxed sick leave, and establishing protective procedures to respond in case of positive cases. At work, they screen everyone entering gates and portals with temperature scans and screening questions. The mines implemented social distancing throughout. They have suspended use of hand scanners, staggered shifts, reduced capacities in elevators and mantrips, and adopted the use of face masks. Rigorous disinfection occurs throughout.

12. Significantly, these protocols worked. Early on, when one mine did detect a positive case of COVID-19, it worked with local health authorities to perform contact tracing and identify anyone potentially exposed for 14-day home quarantine. As governments began issuing stay-at-home orders, the mine found a few more workers with positive cases. Out of abundant caution, it idled operations entirely for two



weeks to ensure that the virus could not spread at the mines. The effort was successful. There have been no further cases at those operations in the many weeks since, and all protective measures continue.

13. While we must remain vigilant, to date, it appears to me that the actions taken by NMA's members to mitigate the risks posed by COVID-19 to our miners have been very effective to date, and we continue to work together to keep miners healthy.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 28th day of June 2020.

A handwritten signature in dark ink, appearing to read "Thomas Harman", written in a cursive style.

---

Thomas Harman

**Addendum-Tab 4**

Declaration of Scott Jacoby (dated June 28, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF SCOTT JACOBY  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Head of Health & Safety U.S. for the LafargeHolcim family of companies in the United States (“LafargeHolcim”). In the United States, LafargeHolcim produces cement, aggregates, asphalt, and concrete products, and provides construction services for infrastructure products. At LafargeHolcim, I am responsible for more than 400 sites across the United States. I am also the Vice Chair of the Occupational Health and Safety Committee of *amicus* Portland Cement Association. In total, I have over 20 years of experience in health and safety management.

2. Since the beginning of the COVID-19 pandemic, LafargeHolcim has put in place comprehensive policies and protocols for protecting employee health and safety. These policies and protocols were developed based on the experience of our in-house health and safety experts, the collective experience and knowledge of the cement and mining industry, and the guidance and resources provided by government agencies, including the Centers for Disease Control and Prevention (CDC) and the Mining Safety and Health Administration (MSHA). As circumstances, evidence, and external guidance have

evolved, and operating capacities change, LafargeHolcim has adjusted its protocols accordingly.

3. LafargeHolcim's response to COVID-19 is guided by an overarching Trigger and Action Response Plan ("TARP"). The TARP sets forth certain risk events and a corresponding detailed description of how to deploy minimum actions in response to each event. Once an event has happened and alert level has been reached, the corresponding actions should be undertaken, as a minimum. The TARP contains four different alert levels, to be ratcheted up or down based on the circumstances in a given location. This enables a detailed, site-specific response based on the latest local conditions.

4. While the TARP provides a high-level trigger-and-response framework, LafargeHolcim has also adopted numerous other policies and protocols for maintaining employee health and safety at specific worksites. A number of these policies are set forth below.

5. LafargeHolcim requires each of its individual facilities to complete site-specific checklists to communicate site-level requirements for managing health and safety risks associated with continued operation. The checklist requires each site to communicate specific

requirements about hygiene standards; shared rooms; mobile equipment; site contingency planning; warehouse, dispatch, and material receiving; and site shut down planning.

6. At LafargeHolcim facilities, access is controlled, and employees and visitors are screened. Employees or visitors are required to complete a paper or online self-screening checklist each day, providing information about symptoms and recent contacts.

7. To help maintain physical separation, many employees have been working from home in full or in part. Those who continue to work on-site have largely been placed on staggered schedules to reduce the number of people at a site at any particular time.

8. At all LafargeHolcim facilities, we use approved disinfectants to clean and disinfect high-touch surfaces at least before and/or after each shift (e.g., light switches, countertops, handles and handrails, office appliances, washrooms, rest areas, canteens, food utensils, hand tools, and mobile equipment).

9. LafargeHolcim stores a two-month supply of personal protective equipment (PPE) at each worksite in sufficient quantities for the estimated population.

10. LafargeHolcim is following the CDC's recommendations regarding the use of cloth face coverings, including the CDC's endorsement of wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain.

11. LafargeHolcim has ensured that hand washing facilities and hand sanitizer are available throughout the areas of each worksite where work activity takes place, with particular emphasis on entrance/exits, eating/rest areas, washrooms/showers, meeting rooms.

12. Each LafargeHolcim facility has installed comprehensive COVID-19 signage, including Spanish language as appropriate.

13. LafargeHolcim also has adopted plans to manage and respond to infection incidents. If someone reports or is identified as being infected, that employee is referred to a medical facility and isolated. Extensive contact tracing and appropriate testing are performed to ensure other LafargeHolcim employees are protected. And the infected employees' worksite is disinfected.

14. Recognizing that the COVID-19 pandemic has created potential safety and health risks for employees other than *the disease itself*, LafargeHolcim has implemented protocols for addressing the

introduction of new and escalated risks, including mental health difficulties, fatigue, lone working, and home office ergonomics.

15. To ensure that all employees are aware of the policies, protocols, and requirements, LafargeHolcim has created numerous training programs and has initiated multiple communications to its employees, both on-line and via U.S. Mail.

16. LafargeHolcim regularly monitors and reviews respective facilities' and employees' compliance with the company's COVID-19 policies and controls.

17. While LafargeHolcim remains vigilant, to date, it appears that the actions we have taken to mitigate the risks posed by COVID-19 to our employees have been very effective. Though we have been operating consistently during the pandemic, we are not aware of any cases of workplace infection at our facilities among approximately 7,000 employees.

I declare under penalty of perjury, that the foregoing is true and correct.



Executed on this 28th day of June 2020.



Scott Jacoby

**Addendum-Tab 5**

Declaration of Abel Parker (dated June 26, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF ABEL PARKER  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Director of Risk Management at Luck Stone, where my responsibilities include ensuring the health and safety of our employees. I have worked in mine safety for approximately 20 years, working both at the ground level in mines and in senior leadership.

2. Luck Stone is the nation's largest family owned and operated producer of crushed stone, sand, and gravel. We provide consistent, quality aggregate materials and services that serve as the foundation of the nation's roads, bridges, and buildings. Luck Stone operates quarries throughout the country, including 19 MSHA-regulated sites where approximately 550 employees work.

3. I am also an active participant on the National Sand, Stone, and Gravel Association's Safety and Health Committee. The Committee focuses on workplace safety and health as a primary concern and priority in the operations of the aggregates industry. Through NSSGA, we have had a critical forum to collaborate with other industry members, and share and receive useful information, regarding protecting workers from COVID-19.

4. Luck Stone began its initial response to COVID-19 in the beginning of March 2020. We rapidly accelerated our planning within a couple weeks by establishing our COVID-19 Alert Team, consisting of senior leaders in company: the Vice President of Human Resources, regional operations managers, the finance department, marketing department, and myself. Our task has been leading the company's response to protect the workforce during the pandemic. Luck Stone's senior leadership team also began meeting weekly on this issue, while our regional vice presidents and operations managers have met three times a week. The entire company leadership is engaged.

5. Within five days of the President declaring a national emergency, on March 18, 2020, we began disseminating information regarding our response to COVID-19 throughout the company. Ever since, the Alert Team has continued to make recommendations to the senior leadership team regarding our COVID-19 policies.

6. To protect our miners, we follow CDC recommendations, focusing first on keeping illness out of the workplace through a liberalized leave policy. This supports employees to report illness and stay home from work, with pay (but without affecting existing sick pay

or personal leave), for any COVID-related reason, including anyone showing signs of illness. Our human resources department, plant managers, and facility foremen all reinforce this message and ensure that employees do not come to work while sick. Supervisors check in with the team members at the beginning of each shift to make sure everyone is healthy.

7. In addition, at our quarries and worksites we have implemented extensive social distancing measures. Employees must stay at least six feet apart whenever possible. To avoid congregating, we have closed break rooms, lunch rooms, and other communal areas. Employees no longer have to clock themselves in and out at a time clock. At the start and end of the work shift, employees travel directly between their personal vehicles and their equipment or work station. Safety meetings now occur via radio or outdoors with social distancing. Customer tickets are now transferred digitally instead of on paper. The scale office is now locked, and a number of the people who worked there, including dispatchers, are working remotely.

8. Quarries are not places where many people generally work in close proximity for extended periods of time. If a quarry site has 25

employees, half of them may spend their shifts operating mobile equipment in the quarry, each in a single piece of equipment. The others are spread among the scale office, management, one or two in the shop, and plant operators. Most employees at our mine sites can easily observe social distancing.

9. A few tasks do sometimes require two people working together in proximity, such as two people using a manlift basket, working together on a screen, or traveling together in a vehicle. Wherever possible, we have postponed, eliminated, or minimized such tasks that are not absolutely necessary. If a two-person task is critical, we employees must maintain as much distance as possible, wear masks, and disinfect both before and after. Generally, just one person may be in a vehicle. Where this is not possible, they must wear masks and sit at the farthest corners apart. If an employee is in a high-risk group for COVID-19, we work to further minimize exposure to such tasks.

10. To ensure the success of our COVID-19 response, we have health and safety coordinators who assess compliance through audits. They observe from a distance how well miners are following these rules and offer coaching and reminders as needed. They also offer ideas

across mine sites for creative ways to continually improve our COVID-19 protocols.

11. If an employee does report symptoms consistent with COVID-19 or a positive test result, we conduct contact tracing to determine if co-workers may have been exposed; any who might have been are asked to quarantine. In addition to already enhanced regular deep cleaning and sanitation measures under EPA guidelines, if we discover that an employee is symptomatic, we engage contractors in further deep cleaning of all potentially exposed areas.

12. To date, it appears to me that the policies implemented at Luck Stone have been extremely effective due to the combined efforts of management and employees. Though we have been operating consistently during the pandemic, we are not aware of any cases of workplace infection at our facilities among hundreds of employees. Since the beginning of the pandemic, only three miners (at three separate facilities) have tested positive for COVID-19. In each case, investigation revealed that family and social events unrelated to work, where multiple attendees became sick, were the sources of infection. Thanks to the protocols we adopted, the virus was not able to spread at



work. The miner went directly from a personal vehicle to and from work equipment without interacting closely in-person with anyone else on site. Once symptomatic, the miner stayed home while recovering.

13. The guidance, information, and recommendations from the CDC, MSHA, FEMA, OSHA, NSSGA, and others provided us with all the information we needed to develop and implement our comprehensive and effective COVID-19 policies. Of course, we are highly motivated to create a safe and health environment for our employees. That is a core value of our company. It is also in our best interest so that together we can continue our essential operations. As such, we are committed to continuing to follow evolving guidance and update our protocols as appropriate.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 26th day of June 2020.

  
Abel Parker

**Addendum-Tab 6**

Declaration of Elizabeth Pritchard (dated June 28, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF ELIZABETH PRITCHARD  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Director of Construction Materials Safety Policy at the National Stone, Sand, and Gravel Association (NSSGA). In my position, I work to promote and defend the interests of NSSGA members on all health- and safety-related legislative and regulatory issues. I also provide technical assistance to members seeking to understand and comply with MSHA regulations.

2. NSSGA is a national trade organization that represents the interests of its member companies in the aggregates industry, including stone, sand, and gravel producers and the equipment manufacturers and service providers who support them. NSSGA advances public policies that protect and expand the safe, environmentally responsible use of aggregates used as essential raw materials in homes, buildings, roads, bridges, and public works projects. Indeed, NSSGA has an established alliance with MSHA, which has forged a public-private partnership to encourage training and education that helps producers safeguard workers.

3. The NSSGA includes a Safety and Health Committee consisting of members' executives and senior safety and health

professionals. The Committee focuses on workplace safety and health as a primary concern and priority in the operations of the aggregates industry. Through the Committee, the members have had a critical forum to collaborate with other industry members, and share and receive useful information, regarding protecting workers from COVID-19. Additionally, NSSGA has sent the Committee more than a dozen detailed email reports with COVID-19 industry-specific information.

4. Since March 2020, NSSGA has engaged with its members to disseminate the latest COVID-19 guidance and recommendations and facilitate communication among members and industry stakeholders about the response to COVID-19.

5. For example, NSSGA has hosted three health and safety-specific webinars for its members on a variety of COVID-19 related topics, including COVID-19 workplace best practices, industrial hygiene, and considerations for return to office. More than 150 members have participated in two of the three NSSGA-hosted webinars. One such webinar, which took place during the beginning of the pandemic, was a combined webinar of NSSGA and PCA members. This webinar was an interactive program that facilitated conversations and allowed

roughly a dozen members of both associations to share what their companies were doing to address COVID-19 with over one hundred other members. This webinar was particularly insightful as it incorporated ideas from diverse perspectives on how to protect workers in both aggregate and cement member companies. From the webinar, we created a Best Management Practices document that outlined 56 industry-specific strategies to share with all NSSGA and PCA members.

6. Additionally, NSSGA has assisted its members with their COVID-19 responses through its COVID-19 resource page on its website. This webpage is consistently updated with the latest guidance and recommendations for our members.

7. Finally, NSSGA has disseminated information on COVID-19 for NSSGA and PCA members through monthly safety calls. More than 50 members have participated and engaged in the two previously conducted calls.

8. NSSGA has strategically aligned with the PCA to bring the aggregate and cement industries together in responding to COVID-19. Most of the communication methods utilized to disseminate COVID-19 information has been shared between NSSGA and PCA membership.

This demonstrates that none of the mining industry sectors is siloed. Rather, the mining industry is sharing information among sectors to ensure the health and safety of all miners, not just those who work in aggregate or those who work in cement. Health and safety are not proprietary; NSSGA and its member companies have shown through actions during the pandemic that we live by this mentality.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 28th day of June 2020.

  
Elizabeth Pritchard

**Addendum-Tab 7**

Declaration of Barbara Ritchie (dated June 28, 2020)



ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF BARBARA RITCHIE  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Barbara Ritchie. I am the Director of Environment, Health, Safety, and Sustainability at Genesis Alkali, LLC. I have worked in environmental, health and safety (EHS) roles in the mining and chemical industries over the last 30 years.

2. Genesis Alkali is a global leader in mining and processing technology, producing natural soda ash from our plants in Green River, Wyoming, site of the world's largest natural reserve of trona ore. We employ about 950 people at an underground mine and eight processing plants.

3. As of today, Genesis Alkali has had four confirmed cases of COVID-19 among its nearly 1,000 employees. Through contact tracing, we have confirmed that none of these employees contracted the virus at work.

4. Genesis Alkali monitored world events closely as reports of COVID-19 began emerging from China in late 2019 and accelerated in the first quarter of 2020. In February, we formed an *ad hoc* task force to develop contingency planning for COVID-19 in the United States to avoid adverse impact to our employees and our business.

5. From the outset, Genesis Alkali monitored the Centers for Disease Control (CDC) website daily. In February, we shared the CDC recommendations on personal hygiene (washing hands, hand sanitizer usage, avoiding face touching), avoiding non-essential travel and staying home if you are sick with our workforce. We sent this guidance to all Genesis employees. We also began developing internal protocols, specific to our facilities and to the mine, to safeguard our workplaces from COVID-19.

6. At the end of February, four Genesis employees returned to the United States following a vacation in northern Italy, one day before the flights from the area were suspended. The employees return travel included a flight from or through Milan. Genesis' COVID-19 task force directed the employees not to return to work until they self-isolated at home for 14 days. At the time, tests for COVID-19 were not readily available.

7. By the end of February, the Genesis task force had developed the first formal protocols, policies and requirements to mitigate the risk of infection. The protocols were based on the guidance and recommendations from the CDC, Mine Safety and Health

Administration (MSHA), and Occupational Safety and Health Administration (OSHA), as well other public health agencies. Genesis Alkali has since implemented numerous policies and protocols to protect our employees' health and safety during the pandemic.

8. The requirements including limiting business travel; requiring immediate notification of potential exposure to anyone who had been exposed to COVID-19; severely limiting non-essential visitors and contractors on-site; requiring notification for personal travel abroad and cruises; staying home if you are sick; if you become sick at work, going home; and implementing the CDC's recommended hygiene practices.

9. We also modified our attendance policy to encourage employees who do not feel well—who may be experiencing COVID-19 symptoms—to stay home and voluntarily provided partial pay to assist employees and encourage them to stay home. Under Genesis' attendance policy, those policies will not be penalized. Additionally, the attendance policy accommodates absences by those employees who are managing new or different childcare responsibilities because of COVID-19 related school and daycare closures.

10. To ensure effective implementation, the task force developed a Q&A document for managers and supervisors to review with crews to educate employees on the measures that both the company, and each individual, needed to take to protect themselves and their families.

11. In addition, Genesis sent its COVID-19 protocols to all of the contractors, vendors and supply-chain service providers that Genesis works with. Genesis required each one to acknowledge that all who visited Genesis Alkali's facilities or mine would comply with Genesis' protocols. All visitors, contractors, vendors, and truckers visiting Genesis' facilities or mine were and continue to be screened against travel and health criteria. Genesis will deny entry to any visitor, contractor, vendor or trucker travelled to a "hot spot" or reported or exhibited any COVID-19 symptoms.

12. Genesis has rigorously enforced its COVID-19 protocols. In addition to enforcement, we have also taken other steps to protect our protect employees during the pandemic. For example, Genesis communicates frequently with employees about the pandemic. We set up a special email account/address specifically for COVID-19 related

communications, and we encourage employees to raise concerns or ask questions about the pandemic.

13. As the situation evolved around the world and in the United States, Genesis Alkali continued to increase its efforts to protect its employees. We obtained a waiver from MSHA to postpone the balance of our MSHA Annual Refresher Training (ART), which had been conducted in classroom sessions of 35 persons and had been scheduled throughout the month of March. We also obtained a waiver from MSHA mine rescue team training requirements and evacuation drills, neither of which could be conducted in a manner that would allow for the maintenance of social distancing.

14. Next, Genesis Alkali compiled a list of strategic supplies including PPE, cleaning products, and hand sanitizer and purchased them to ensure critical inventories were available to protect our employees and our workplace.

15. We also implemented enhanced cleaning protocols utilizing hospital-strength, EPA-approved disinfectants, trained all janitorial staff in the new procedures to ensure the safety of the janitors, and

mandated the use of all EPA-approved COVID-19 cleaning products in accordance with their intended use directions.

16. Genesis Alkali identified all jobs which could be performed effectively from home, and those employees have been asked to work from home since March. We identified other critical jobs which required significant time on-site and split them into teams to alternate work on-site and work from home to limit exposure potential. Virus incubation period was a key consideration for the timing of switching teams.

17. For other jobs that could not be performed effectively off-site, we implemented staggered start times and shift schedules to minimize the number of people in change houses, break rooms, control rooms, lunchrooms, and similar spaces. Maximum occupancy, based on approximately 28 square feet per person, was posted on all rooms where people could gather, and excess chairs were removed. Nowhere was this change more evident than in our underground operations, where the personnel-hoist occupancy to drop down into the mine was reduced from sixty-five to a maximum of nine miners to provide for social distance.

18. Prior to the COVID-19 pandemic, Genesis Alkali offered bussing as a courtesy option to its employees, with as many as 50

people per bus. We provided advance notice to employees that bussing would be suspended on March 25th so that they could make other arrangements. A stipend was provided for bus riders.

19. In March, we began publishing weekly newsletters to all employees to provide updates on COVID-19 developments, reinforce the reasons for our safeguards, and ensure accurate information was available on the evolving conditions and CDC recommendations.

20. Working with the Wyoming Mining Association, regular weekly discussions were scheduled with other mines and chemical plants in the immediate area to share best practices, experience, and protocols, and we regularly invited the county health department and hospital to share information and assist with supplies.

21. Genesis Alkali also set up temperature monitoring locations at entry points to our facilities and turned away anyone with a temperature greater than 100.4° F pursuant to CDC guidelines. Additionally, contractors were required to complete a daily checklist of questions to check for potential exposure to COVID-19.

22. With all the aforementioned protocols already instituted, in late March, one Genesis Alkali employee called in sick, went to his



doctor, and provided notification pursuant to our protocols that he had been tested for COVID-19. He was directed to stay home pending results.

23. When the test results for that employee were positive, Genesis Alkali mobilized resources to sanitize areas where this employee had worked and identified employees with whom he may have had contact in the days prior to his becoming ill. These employees were directed to be tested and remain off-site until their test results were available.

24. Ultimately, all additional Genesis Alkali employees tested negative. The Health Department's contact tracing resulted in linking our employee's infection to his attendance at a baby shower in another county earlier in the month.

25. As the CDC's recommendations have continued to evolve, Genesis Alkali has continuously updated our protocols, and on April 7<sup>th</sup>, we published an Alkali Social Distancing Policy which requires employees to practice social distancing, and if they cannot, they must wear a facial covering.

26. The Policy also required notification of travel out of state (consistent with the Governor of Wyoming's travel order) and of attendance at social gatherings with more than ten people. Each report we received was reviewed on a case-by-case basis by the task force and, in many cases, employees were asked to self-isolate, be tested, and not return to work pending the results.

27. Along with publication of the Policy, Genesis Alkali distributed bandanas to employees to use as facial coverings and has since continued to provide additional options such as neck gators and multiple styles of cloth masks to ensure that employees have the facial covering they are most comfortable wearing. The Union's elected officials have been role models in adopting the wearing of facial coverings. Wearing facial coverings at the mine has become 'habit strength' amongst our employees, with coaching provided in rare instances of deviation from the Social Distancing Policy.

28. Additionally, at the time of publication of the Policy, Genesis Alkali distributed small notebooks to every employee and asked them to keep note of the names and circumstances of each instance they could not practice social distancing. This practice was intended to raise

awareness, self-monitor compliance, and assist in the event contact tracing was required.

29. Eventually, in early April, Genesis Alkali had another employee test positive for COVID-19. We similarly mobilized resources to sanitize work areas and performed contact tracing. None of his co-workers tested positive, and the Health Department traced this case to his band playing a gig in another county a week earlier.

30. Genesis Alkali has continued to only allow essential visitors and contractors on the site. We have issued specific protocols for contractors coming onto our site to perform essential work, reviewing the locations where they have recently worked against a spreadsheet of current infection rates, and prohibiting entry from areas with greater than 20 cases/10,000 residents in the prior 21 days. 20 cases/10,000 residents has typically constituted the worst 15% of counties in the United States and is a reliable indicator of a COVID-19 hot spot.

31. The spreadsheet utilized in the analysis contains CDC provided data, is updated for all U.S. counties daily, and has been shared by Genesis Alkali with all other mines in the area for use as

they see fit. Many other mines have adopted its use for screening of employees and contractors.

32. Additionally, Genesis Alkali published Off-site Social Distancing Guidelines. We do not control the activities of our employees away from work, we wanted to provide helpful guidance to them when making choices about off-site activities.

33. MSHA is required by law to inspect all underground mines like ours in their entirety at least four times per year, and it is illegal for MSHA (or anyone else) to provide advance notice of an inspection. A Miners' Representative, designated by the miners, accompanies MSHA inspectors during inspections. As is the case with all underground mines, MSHA inspects the Genesis Alkali Mine frequently.

34. An MSHA inspector is on-site, at our mine, at least once every five days for a spot check. According to MSHA's "Mine Data Retrieval System," since January 1, 2020, MSHA has devoted more than 1,200 hours to inspection activities related to the Genesis Alkali Mine. MSHA has conducted two Regular Inspections, at least thirty-five Spot Inspections, two Compliance Follow-up Inspections, and three Verbal Hazard Complaint Investigations during that time.

35. MSHA conducted six Spot Inspections of the Genesis Alkali mine in May, and since June 1st, has conducted another six. MSHA's most recent Spot Inspection of the mine occurred on June 25, 2020. To my knowledge, MSHA has not investigated any COVID-19 related hazard complaints at our mine.

36. MSHA assigns multiple inspectors, typically four at a time, to conduct quarterly inspections, referred to as "Regular Inspections," of the Genesis Alkali Mine. On average, MSHA inspectors spends more than 400 manhours over a two-month period to complete a Regular Inspection of our mine. MSHA's most recent Regular Inspection of the mine started on April 6, 2020 and ended on June 10, 2020. Eight different inspectors conducted the inspection, and they devoted 427.5 hours manhours to it.

37. Genesis Alkali has proactively, on multiple occasions, discussed COVID-19 with MSHA, and has briefed MSHA about our COVID-19 protocols and the measures. MSHA has never expressed any concerns about or identified any issues with our protocols and the actions Genesis has taken to date.

38. The Wyoming Health Department's reports have identified an increase in positive cases in southwest Wyoming, including Sweetwater and Uinta counties, where the majority of our employees live. We have since had two additional employees test positive for COVID-19.

39. Based on contact tracing, the first of these employees was infected by the employee's spouse, who works at a health care facility that was temporarily closed following her positive test. The second employee was infected by one of the employee's co-workers who has been working from home since March. That employee had had dinner with the first employee and the employee's spouse before the spouse exhibited any symptoms.

40. Again, Genesis Alkali sanitized areas where the employees had worked prior to leaving the site and directed all employees who worked around the infected employee to get tested and to self-isolate pending their test results.

41. Genesis provides at least eight hours of MSHA Annual Refresher Training (ART) to its experienced miners. Genesis obtained a temporary waiver from this requirement from MSHA at the beginning

of the pandemic, but we have since modified our training programs, methods, and facilities in order to safely provide this training to miners during the pandemic. Genesis is now using a mix of videoconferencing technology, smaller classes that allow miners to maintain six feet of separation from one another, and facial coverings to train miners safely. We have similarly modified mine rescue training and evacuation drills to allow us to recommence drills while practicing social distancing. To date, we have nearly completed the requisite eight hours of MSHA Annual Refresher Training required for all of our experienced miners.

42. Genesis Alkali continues to closely monitor the COVID-19 situation, adheres to CDC guidelines, and implements its rigorous protocols, which have thus far successfully kept community transmission from propagating into workplace transmission.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this \_28\_ th day of June 2020.



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Barbara Ritchie

**Addendum-Tab 8**

Declaration of Mark Rock (dated June 28, 2020)



ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
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MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF MARK ROCK  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Senior Vice President of Risk Management for CalPortland, the largest building materials company producing cement and construction material products on the west coast of the United States. I have decades of experience in health and safety management and received the 2017 James M. Christie Safety & Health Professional of the Year Award for substantial commitment and contributions to safe and healthy practices.

2. CalPortland has operations in Alaska, Washington, Oregon, California, Nevada, and Arizona. Our operations were deemed essential by state and local governments. We have operated our facilities throughout the COVID-19 pandemic.

3. Since the beginning of the COVID-19 pandemic, CalPortland has relied on guidance from federal, state, and local governments to stay apprised of the continually evolving situation. We reviewed and implemented guidance from the Centers for Disease Control and Prevention (CDC), the Mining Health and Safety Administration (MSHA), and the Occupational Health and Safety Administration (OSHA).

4. Drawing from governmental guidance, as well as in-house expertise and the experience of the industry as a whole, CalPortland developed an Infectious Disease Control Plan. As changes in circumstances occurred and continue to occur, our Infectious Disease Control Plan has been modified accordingly numerous times.

5. Among other things, CalPortland put in place two risk assessment tools. First, we required every employee to complete a health self-assessment on a daily basis before arriving at the worksite. Second, we defined categories of risk—for example, based on the extent interaction with co-workers, outside contractors, customers and the public—and built different protocols to address each risk.

6. CalPortland has also made many other changes to daily operations to protect employee health and safety during the pandemic. Many tasks that conventionally were performed with two employees were converted to single-person tasks. We restricted access to our worksites to reduce the number of non-essential personnel. We placed comprehensive signage at our facilities. We have been enforcing social distancing in employee training, lunch rooms, and during employee

break times. And along with the daily self-assessment described above, we also implemented employee temperature screenings.

7. CalPortland has been providing face covers to employees who need to wear them while away from the facility at a jobsite or when tasks place them within six feet of co-workers.

8. Under CalPortland's policies, if an employee's family member or significant contact is exposed to COVID-19, then the employee is asked to get tested. CalPortland pays for the test, and if the exposed family member or contact tests positive, then the employee must self-isolate for 14 days with pay.

9. If there is a confirmed or suspected case of COVID-19 at a worksite, CalPortland's policies mandate that the potentially infected person not be allowed in CalPortland facilities; that any areas used by that person be closed off to others; and that those areas be disinfected.

10. As of today, none of our employees has tested positive for COVID-19.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 28th day of June 2020.

  
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Mark Rock



**Addendum-Tab 9**

Declaration of Timothy Schlosser (dated June 28, 2020)

ORAL ARGUMENT NOT YET SCHEDULED  
No. 20-1215

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN RE: UNITED MINE WORKERS OF AMERICA ET AL.,  
Petitioners,

v.

MINE SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR,  
Respondent.

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On Emergency Petition for a Writ of Mandamus

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**DECLARATION OF TIMOTHY SCHLOSSER  
IN SUPPORT OF BRIEF OF *AMICI CURIAE* THE NATIONAL  
MINING ASSOCIATION; NATIONAL STONE, SAND, AND  
GRAVEL ASSOCIATION; PORTLAND CEMENT ASSOCIATION;  
AND INDUSTRIAL MINERALS ASSOCIATION – NORTH  
AMERICA AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT  
AND DENIAL OF THE WRIT**

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Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am the Director of Environment, Health, and Safety at Continental Cement, as well as the Occupational Health and Safety Committee Chair for *amicus* Portland Cement Association (PCA). I have worked in the cement industry for almost 20 years, focusing for the majority of that time on health and safety responsibilities.

2. Continental Cement operates two cement plants, one hazardous waste facility, eight cement terminals, and a corporate office. We employ about 400 people.

3. As of today, Continental Cement has had zero confirmed cases of COVID-19 among its hundreds of employees.

4. Since the COVID-19 pandemic began, Continental Cement has implemented numerous protocols to protect our employees' health and safety. Relying on guidance from the Centers for Disease Control (CDC), Mine Safety and Health Administration (MSHA), and Occupational Safety and Health Administration (OSHA), we established protocols for workplace disinfection, personal hygiene, at-home self-monitoring, social distancing, use of face coverings, and symptom screening. We also placed CDC signage in our facilities.



5. To enable distancing and reduced in-person contact, we have significant changes to work schedules. For example, some shifts are split in order to separate workers and reduce potential exposures. Some facilities have modified shifts with half of the employees working on-site for a period of time while the other half works remotely. When employees absolutely must work near each other, such as for certain maintenance tasks, they are required to wear face coverings and practice hygiene and disinfection.

6. Continental Cement has made several changes in communal areas at our facilities. We have divided larger areas into separate socially-distanced spaces, removed chairs, and marked off tables. We have contracted with cleaners to regularly disinfect surfaces. And we emphasize the importance of personal hygiene, especially when using shared spaces.

7. At our plants and terminals, we have encouraged customers to use our self-service loading kiosks. Our employees disinfect frequently throughout the day all high-touch surfaces, such as door handles, kiosks, and other areas of the facility.

8. To be even more cautious, we have encouraged employees to report not only their own possible exposures to COVID-19 but also instances of non-work-related exposures, such as a family member who might have been exposed. Employees are asked to report to their supervisor, take leave, and seek medical attention. The employee is instructed to follow advice from medical professionals, which often means self-isolation for two weeks. Meanwhile, the facility undergoes extra disinfection. In short, we have not taken any chances with potential exposures.

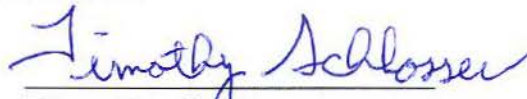
9. To ensure our facilities and employees are complying with COVID-19 protocols, our team performs regular compliance audits. We also have regular facility-wide and department meetings to communicate updates about the company's response to COVID-19 and to reinforce the importance of complying with protocols. Of course, providing clear communications and training is a key component.

10. The Continental Cement leadership team, including myself, frequently reviews the CDC website for the latest updates and guidance. We also continuously monitor and comply with state and local requirements and recommendations.

11. As mentioned, I am also the Occupational Health and Safety Committee chair for *amicus* PCA. Throughout the COVID-19 pandemic, PCA has shared information, guidance, and updates with all its member companies. PCA has encouraged its members to collaborate and keep each other informed. PCA has also compiled collections of strategies that various operators have employed so into a toolkit so that everyone can benefit from this collaboration.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on this 27th day of June 2020.

  
Timothy Schlosser