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July 10, 2020

**BY CM/ECF**

Mark J. Langer, Clerk  
United States Court of Appeals  
for the District of Columbia Circuit  
United States Courthouse, Room 5523  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

**Re:** *Duquesne University v. NLRB*, No. 18-01063

Dear Mr. Langer:

The United Steelworkers Union has filed a letter regarding *Our Lady of Guadalupe School v. Morrissey-Berru*, 519 U.S. \_\_ (July 8, 2020). In that letter, the Union claims that *Our Lady of Guadalupe* “refutes” the panel’s conclusion that the National Labor Relations Board cannot assert jurisdiction over the employment relationship between a religious university and its adjunct faculty without risking a violation of the university’s First Amendment rights. Letter at 2 (July 8, 2020).

The Union is wrong. The issue in this case is the scope of the exemption recognized in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), which limits the Board’s jurisdiction over the employment relationship between religious universities and their teachers. *Our Lady of Guadalupe* involves a different issue: the scope of the “ministerial exception” recognized in *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012), that bars certain employment discrimination suits against a religious institution. Like *Hosanna-Tabor*, *Our Lady of Guadalupe* neither cites *Catholic Bishop* nor undermines its reasoning.

As Duquesne has explained, *Hosanna-Tabor* and *Catholic Bishop* come from meaningfully different lines of precedent. *See* Resp. to Pet. for Reh’g at 14-16. In particular, *Catholic Bishop* relied on the doctrine of constitutional avoidance, reflecting the Supreme Court’s reluctance “to construe the [National Labor Relations] Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses.” 440 U.S. at 507. By contrast, *Hosanna-Tabor* forbids only those actions that would actually violate the First Amendment, *see* 565 U.S. at 181, and thus permits a more searching review.

Moreover, the fundamental principle underlying *Our Lady of Guadalupe*—that “[j]udicial review of the way in which religious schools discharge th[eir] [educational] responsibilities would undermine the independence of religious institutions in a way that the First Amendment does not tolerate,” slip op. at 2—is consistent with *Catholic Bishop* and the panel’s interpretation of it. *Our Lady of Guadalupe* supports, rather than undermines, the panel’s decision.

The petition for rehearing en banc should be denied.

Sincerely,

/s/ Neal Kumar Katyal

Neal Kumar Katyal

*Counsel for Duquesne University*

cc: All counsel of record (via CM/ECF)