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Big Win on Pro Bono Suit Challenging Department of Labor's Midnight Rule Changing Prevailing Wage Determinations

WASHINGTON D.C. — Today, 17 individual and organizational plaintiffs, including institutions of higher education, nonprofit organizations, and businesses, represented by the American Immigration Lawyers Association (AILA), Jeff Joseph of Joseph and Hall PC, Charles Kuck of Kuck Baxter Immigration LLC, and Greg Siskind of Siskind Susser PC, won a summary judgment against the Department of Labor Interim Final Rule, "[Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States](#)." The judge agreed that the poorly-drafted, improperly-issued rule did not comply with the procedural requirements for rule-making and was substantively arbitrary, incorrect, and irrational and ordered the DOL to reissue prevailing wage determinations that were issued under the rule.

Jeff Joseph, lead counsel and Secretary of AILA stated, "This rule would have had a drastic impact on employers across every industry that relies on high-skilled foreign workers. DOL passed this massive rule without any input from the public. It is an affront to democracy to shut the public out of the rule-making process with no notice. Judge Sullivan did the right thing today. He told the government to go back to the drawing board and follow the rules."

Jesse Bless, director of federal litigation for AILA stated, "This was an abject failure on the government's part to provide the proper notice and opportunity for comment before making such dramatic changes. The arguments the administration made, purporting that the rule would strengthen the U.S. economy, were unsubstantiated. AILA was proud to stand with our fellow litigators and win this judgment on behalf of everyone impacted by this rule."

Charles Kuck, former AILA President and Emory Law Professor stated: "DOL issued this rule knowing it was not in compliance with federal law, creating havoc in an already complicated visa and residency processing scheme. The DOL is now ordered to reissue all of these non-compliant wages rapidly and efficiently to ensure that the damage it created in its attempt to pander to the current administration is quickly rectified."

Greg Siskind, Member of the AILA Board of Governors added, "As we're celebrating today the great achievement of man in rapidly developing and releasing a vaccine that will save millions of lives around the world – a vaccine in which immigrant scientists played a critical role – we are thrilled with today's news on *Purdue University v. Scalia*. The illegal rule at the center of this case makes it impossible for many employers to hire those scientists,

as well as doctors and nurses and so many others. Today's decision reminds people how critical these global workers are to our country."