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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 CHAMBER OF COMMERCE OF THE
13 UNITED STATES OF AMERICA;
14 NATIONAL ASSOCIATION OF
15 MANUFACTURERS; BAY AREA
16 COUNCIL; NATIONAL RETAIL
17 FEDERATION; AMERICAN
18 ASSOCIATION OF INTERNATIONAL
19 HEALTHCARE RECRUITMENT;
20 PRESIDENTS' ALLIANCE ON HIGHER
21 EDUCATION AND IMMIGRATION;
22 CALIFORNIA INSTITUTE OF
23 TECHNOLOGY; CORNELL UNIVERSITY;
24 THE BOARD OF TRUSTEES OF THE
25 LELAND STANFORD JUNIOR
26 UNIVERSITY; UNIVERSITY OF
27 SOUTHERN CALIFORNIA; UNIVERSITY
28 OF ROCHESTER; UNIVERSITY OF UTAH;
and ARUP LABORATORIES,

Plaintiffs,

v.

23 UNITED STATES DEPARTMENT
24 OF HOMELAND SECURITY;
25 UNITED STATES DEPARTMENT
26 OF LABOR; CHAD F. WOLF,
in his official capacity as Acting Secretary of
Homeland Security; and EUGENE SCALIA,
in his official capacity as Secretary of Labor,

Defendants.

Case No. 20-CV-7331-JSW

DECLARATION OF MIRIAM FELDBLUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION TO STAY AGENCY ACTION OR FOR PARTIAL SUMMARY JUDGMENT

1 I, Miriam Feldblum, declare as follows:

2 1. I am the Executive Director of the Presidents’ Alliance on Immigration and Higher
3 Education (the Presidents’ Alliance). I make this declaration based on my own personal knowledge.

4 2. The Presidents’ Alliance is a partner project of the National Center for Civic Inno-
5 vation/Fund for the City of New York, a 501(c)(3) and our fiscal sponsor, headquartered in New
6 York City. Our office is in Washington, D.C. The Presidents’ Alliance is a non-partisan education
7 and advocacy organization with approximately 500 private and public college and university mem-
8 bers, represented by their respective presidents and chancellors as members. These institutions span
9 forty-two states, D.C. and Puerto Rico. For a list of our member presidents, see Presidents’ Alliance
10 on Higher Education and Immigration, *Member Presidents and Chancellors*, [https://www.presi-
11 dentsalliance.org/about/?fwp_staff_type=member-presidents-and-chancellors](https://www.presidentsalliance.org/about/?fwp_staff_type=member-presidents-and-chancellors).

12 3. Our members’ institutions and university systems reflect a wide range of nonprofit
13 higher education institutional types. Roughly one quarter of institutions grant Doctoral degrees,
14 twenty-seven percent offer Master’s level instruction, twenty-three percent offer only Baccalaure-
15 ate degrees, nineteen percent grant Associate degrees, and six percent are specialized institutions,
16 including law schools and medical schools. Our member institutions include the California Institute
17 of Technology; Cornell University; the University of California, Riverside; the University of Roch-
18 ester; and the University of Utah.

19 4. The Presidents’ Alliance brings college and university presidents and chancellors
20 and their institutions together on the immigration issues that impact higher education. We work to
21 advance just immigration policies and practices at the federal, state and campus level that are con-
22 sistent with our heritage as a “nation of immigrants” and the academic values of equity and open-
23 ness. As part of this mission, we coordinate with research organizations to publicize data and best
24 practices, educate our members on issues, and help coordinate amicus briefs on litigation of im-
25 portance to international education

26 5. Part of our mission is advocating for the ability of U.S. colleges and universities to
27 attract a broad range of international students and scholars. The institutions we represent sponsor
28 H-1B status for a wide array of positions that enrich their campuses, including tenure track faculty,

1 researchers, lecturers and instructors, specialty librarians, and senior information technology posi-
2 tions. Those with healthcare programs sponsor medical residents and fellows and clinical faculty
3 in nursing, medicine, dentistry, physical therapy and other specialties. The new regulations would
4 restrict our institutions' abilities to attract world-class experts to teach/instruct as well as new minds
5 in the development of advanced medical sciences.

6 6. Colleges and universities seek highly skilled candidates and encourage diverse can-
7 didate pools for their faculty and staff positions. However many of the above listed professions
8 currently have very low unemployment rates (under 4%).¹

9 7. Of the top 100 colleges and universities that sponsored H-1B workers in 2020, one
10 third of those on the list are members of the Presidents' Alliance.² Thus, the impact of these new
11 regulations to our member colleges and universities is significant. Many of our members are having
12 to spend significant time and resources now—in the middle of a semester already made challenging
13 due to the pandemic—to fully understand the impact of the rules on their efforts to hire and retain
14 faculty, researchers, and other staff; and the impacts on their international students and recent
15 alumni.

16 8. Our members' institutions enroll thousands of international students. For interna-
17 tional students considering where to study, the opportunity to participate in Optional Practical
18 Training (OPT) after graduation from a U.S. based college or university and/or be sponsored to
19 work in the U.S. via the H-1B program are crucial determinants for choosing a U.S. higher educa-
20 tion institution. The recruitment, admission and academic success of a diverse group of interna-
21 tional students are core to our institutions' academic missions and diversity goals. International
22 students and scholars contribute intellectually, economically, culturally, and socially to our cam-
23 puses and communities; they create jobs, spur technological innovation, and advance medical dis-
24 covery. These new regulations create new, arbitrary, and unreasonable obstacles for international
25 students, scholars, and alumni, which will deter these populations from coming to our institutions

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27 ¹ See U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*
(Oct. 5, 2020), perma.cc/VY7Y-P5QA.

28 ² Myvisajobs.com, *2020 H1B Visa Reports: Colleges, Universities, and Professional Schools*,
(as of October 22, 2020), perma.cc/77PZ-5AKF.

1 to pursue learning, study, research or work. Now, more than ever, our member institutions cannot
2 afford to turn away talent, devalue diversity, lose critical tuition dollars, and impede innovation.

3 **Impacts of the DOL Rule**

4 9. The DOL regulation implemented without notice and with very little to no time to
5 plan will alter many institutions' ability to continue to employ needed positions. The dramatically
6 higher wages implemented without notice mean that new positions cannot be filled, extensions will
7 not be possible for those already sponsored, and commitments for permanent residence Labor Cer-
8 tification cannot be kept. As just one of many examples, a newly hired computer science professor
9 (tenure track) in the Five College area of Massachusetts would now have to be paid \$88,700 (as
10 opposed to the wage earlier last week at fldatacenter.com of \$56,360 year). The lack of notice and
11 the flawed methodology³ used to impose these new wage levels will cause serious harms to Amer-
12 ica's institutions of higher education and upends the substantial reliance they placed on the existing
13 rules.

14 10. Colleges and universities have planned out budgets and salaries, and signed employ-
15 ment contracts, based in part on the Department of Labor wage surveys that have used the same
16 formula for decades. Our member presidents are now faced with re-visiting all of those plans, in
17 the midst of a pandemic and in the middle of an academic year.

18 11. As the National Student Clearinghouse Research Center reported Thursday, October
19 15, 2020, freshman enrollment has dropped more than 16 percent from last year at American col-
20 leges and universities—and by nearly a quarter at community colleges—as the threat of the coro-
21 navirus has disrupted the nation's higher education system.⁴ Colleges and universities already
22 struggling with less funding and enrollment tuition will now be forced to significantly increase the
23 wages for its critical skilled international workforce.

24 12. Additionally, the data reported by the DOL on prevailing wages within academia is
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27 ³ See David J. Bier, *DOL's H-1B Wage Rule Massively Understates Wage Increases by up to 26*
Percent, Cato at Liberty (Oct. 9, 2020), perma.cc/NZQ9-WQZZ.

28 ⁴ National Student Clearinghouse Research Center, *Stay Informed with the Latest Enrollment*
Information (Oct. 15, 2020), perma.cc/PR62-LTYQ.

1 confusing and complicated, so higher education institutions have spent years developing the meth-
2 odology according to DOL requirements. Our member presidents’ campuses have invested signif-
3 icant resources over the years to train international offices on DOL prevailing wage methodology,
4 including sending staff to NAFSA training courses on prevailing wage.⁵ It is not possible to re-do
5 years of training instantaneously. Thus, the immediate change by the DOL regulation does not
6 allow for a retooling of the methodology to ensure the intended purpose of the regulation.

7 13. I am aware that the stated purpose of the Interim Final Rule in the Preamble is to
8 protect U.S. jobs—“to the extent employers have reliance in the existing levels, the Department has
9 determined that setting the wage levels in a manner that is consistent with the text of the INA and
10 that advances the statute’s purpose of protecting U.S. workers outweighs such interests and justifies
11 such increased costs.” This statement is fundamentally flawed. Our members’ campuses contribute
12 significantly to economic growth in the United States, and their ability to hire a diverse and talented
13 group of international employees drives further creation of jobs for American workers, enriches the
14 educational experience for American students, and ensures U.S. remains the leader in higher edu-
15 cation worldwide, including for the most talented international students and scholars. Our member
16 institutions cannot maintain the same level of educational offerings without the robust ability to
17 attract international faculty, researchers, and staff.

18 14. Even for those member institutions who anticipate that they could comply with the
19 artificially high wage increases for foreign workers, these institutions will face serious harms due
20 to inequities between foreign workers and institutions’ American workforce. Institutions would
21 either have to pay their foreign workers vastly more than similarly situated counterparts and de-
22 velop strategies to combat the clear internal inequity that creates, or institutions would need to
23 increase wages for all employees in certain divisions to mitigate those internal inequities.

24 15. For example, at one of our member institutions, a research professor is currently
25 earning \$120,000, but the DOL Rule’s new prevailing wage would require an increase to \$205,000,
26 a 71% increase. For another individual, who is serving as a budget analyst currently earning

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28 ⁵ See e.g., NAFSA, *Navigating the Nuances of Prevailing Wage Determinations* (as of Oct. 22, 2020), perma.cc/C52N-7APL.

1 \$104,000, the DOL Rule’s new prevailing wage would require an increase to \$177,000. In both
2 instances, these increases would impact larger cohorts of employees.

3 16. The rules thus create a lose-lose situation for institutions: they must either (1) not
4 renew or hire the international faculty, researchers, or staff; forgo the value from investments al-
5 ready made; and cripple their educational and research missions or (2) if they have the resources to
6 devote (and many do not), they must dramatically increase wages for entire cohorts out-of-line with
7 market rates.

8 17. These harms institutions will suffer are immediate, substantial, and irreparable.

9 **Impacts of the DHS Rule**

10 18. I understand that the DHS Rule redefines what constitutes a “specialty occupation,”
11 narrows the definitions of fields, restricts eligibility, and lowers the validity period of visas issued
12 to H-1B workers employed at third-party job sites from three years to one year. Unless enjoined,
13 the DHS Rule will also result in substantial irreparable harm to many of our members and their
14 institutions.

15 19. For example, some member institutions have current employees, hired via the H-1B
16 program, that manage academic and campus programs and who have degrees and extensive expe-
17 rience pertinent to effectively managing those programs. But these highly qualified individuals will
18 likely no longer qualify for renewal based on the revised stringent requirements and definition of
19 specialty occupation under the DHS rule because the person’s degree might not precisely match
20 the subject of the program or because the new rule rejects flexibility to incorporate extensive equiv-
21 alent experiences. The loss of these individuals, who have been highly recruited and trained, for
22 the institutions will also redound on the programs they manage and the students enrolled in those
23 programs. Their experience cannot be replaced.

24 20. The DHS Rule also interferes with member institutions’ planning of academic pro-
25 grams. Some academic majors previously believed to satisfy the “specialty occupation” require-
26 ment for particular jobs will no longer meet the definition for not being sufficiently specialized or
27 directly related. Member institutions will thus be forced to retool academic programs, especially so
28 that highly skilled international students seeking STEM degrees retain the opportunity to pursue H-

1 1B, EB-2, and EB-3 opportunities at our nation's businesses.

2 21. These harms institutions will suffer are immediate, substantial, and irreparable.

3 **Opportunity for Notice and Comment**

4 22. Had the DOL and the DHS provided formal notice and offered a comment period
5 before issuing the Rules, the Presidents' Alliance would have submitted comments detailing the
6 flaws in the DOL and DHS Rules, the substantial harms they will impose on higher education
7 institutions, their employees, and students, and the substantial reliance interests higher education
8 institutions placed on the existing DOL and DHS Rules, consistent with the many concerns I have
9 expressed above. The Presidents' Alliance would have explained that the many professions in
10 which H-1B, EB-2, and EB-3 individuals participate have extremely low unemployment rates (un-
11 der 4%)⁶ and higher education institutions recruit, hire, and train highly skilled international fac-
12 ulty, researchers, and other staff, who fill crucial roles on our campuses, in our labs, and in our
13 teaching hospitals; our research, teaching, and campus operations rely on these talented interna-
14 tional employees. The Presidents' Alliance would have explained the nature of our academic pro-
15 grams, majors, and concentrations, on which our international students rely, and expressed deep
16 concerns with rules that narrow field definitions and restrict eligibility. We would have also ex-
17 plained that higher education has suffered a freshman enrollment decline of more than 16%, se-
18 verely impacting higher education tuitions, and that massive increases in wages makes even more
19 difficult an already difficult situation.⁷ DOL and DHS would have had to consider these comments
20 and reliance interests before making Rules effective.

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

22 Dated: October 23, 2020
23 Brooklyn, NY



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MIRIAM FELDBLUM

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26 _____
27 ⁶ See U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*
(Oct. 5, 2020), perma.cc/VY7Y-P5QA.

28 ⁷ National Student Clearinghouse Research Center, *Stay Informed with the Latest Enrollment Information* (Oct. 15, 2020), perma.cc/PR62-LTYQ.

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