

Federal Court Considers Proskauer Amicus Brief on Behalf of 25 Leading Colleges and Universities in Setting Aside Visa Restrictions

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As we [previous reported](#), on October 30, 2020, Proskauer filed an [amicus brief](#) on behalf of 25 leading colleges and universities in support of a preliminary injunction, and, in the alternative, for partial summary judgment sought by the U.S. Chamber of Commerce in the Northern District of California against Interim Final Rules issued by the U.S.

Departments of Homeland Security and Labor. The new Rules would have substantially limited the ability of academic institutions to employ thousands of highly skilled international workers through the H-1B, H-1B1, E-3, EB-2, and EB-3 visa programs.

Because DHS and DOL issued the Interim Final Rules without providing the required notice-and-comment period under the Administrative Procedure Act (“APA”), these colleges and universities did not have the chance to weigh in on the effect the Rules would have on their institutions. Proskauer’s amicus brief gave these academic institutions an opportunity to have their voices heard and to educate the Court regarding the Rules’ significant impact on both international workers and the institutions that benefit from their groundbreaking contributions.

On December 1, 2020, Judge Jeffrey S. White of the U.S. District Court for the Northern District of California [granted Plaintiffs’ motion for partial summary judgment and set aside the Rules because they were promulgated in violation of the APA](#). In a thorough, twenty-three page opinion, which referenced Proskauer’s amicus brief, the Court considered the totality of the circumstances in holding that DHS and DOL failed to establish “good cause” to dispense with the notice-and-comment period required by the APA. Although the agencies asserted multiple reasons to support their claim of good cause, the Court found none of them to be persuasive.

First, because “some semblance” of the DHS Rule had been on the agency’s agenda since 2017, and the defendants did not suggest that the problems they sought to solve with the Rules were “new problems,” the agencies were not entitled to a presumption of urgency that could warrant excusing the notice-and-comment period. Further, the evidence provided with respect to unemployment rates in the sectors most relevant to H-1B visa applicants did not show a dire emergency that would constitute good cause, even during a pandemic, because the record evidence demonstrated a large number of job vacancies exist in the fields most affected by the Rules. The Court explained that the APA’s good cause exception “is to be narrowly construed” and focused on the pandemic’s impact on unemployment for the positions held by H-1B workers specifically, rather than overall unemployment rates. Finally, the agencies failed to proffer evidence to support their argument that the notice-and-comment period would not serve the public interest because it would allow employers to evade the new wage requirements by incentivizing them to act prior to the Rules’ final implementation.

For these reasons, the Court held that defendants failed to demonstrate there was good cause to dispense with the APA’s notice-and-comment requirements, granted Plaintiffs’ motion for partial summary judgment, and set aside the Rules.

Proskauer’s brief was filed on behalf of amici curiae New York University, Boston University, Brandeis University, Brown University, the Catholic University of America, Columbia University, Connecticut State Colleges and Universities, Dartmouth College, Emory University, The George Washington University, Grinnell College, Harvard University, Massachusetts Institute of Technology, The Mount Sinai Health System and Icahn School of Medicine at Mount Sinai, Northeastern University, the Pennsylvania State University, Princeton University, Rutgers, the State University of New Jersey, Syracuse University, Tufts University, the University of Chicago, University of Connecticut, University of Pennsylvania, Wellesley College, and Yale University.

The Proskauer team was led by [Joseph O’Keefe](#), [Lary Rappaport](#), and [Paul Salvatore](#), and included [Andrew Sherwood](#), [Abigail Rosenblum](#), [Scott Tan](#), [Valarie McPherson](#), and [Jonathan Gartner](#). Bobbi Preyer and Robert Linton also provided invaluable assistance.

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