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ATTORNEY GENERAL

May 26, 2026

*Submitted electronically via regulations.gov*

The Honorable Keith E. Sonderling  
Acting Secretary  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, DC 20210

**Re: State Attorneys General Comment on Department of Labor’s Notice of Proposed Rulemaking, “Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States” [Docket No. ETA-2026-0001]**

Mr. Secretary:

We the Attorneys General of Indiana, Alaska, Arkansas, Idaho, Kansas, Louisiana, Mississippi, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, and South Dakota write in support of the Department of Labor’s Notice of Proposed Rulemaking titled “Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States.” [DOL Docket No. ETA-2026-00001].

Mass migration has for years exerted and continues to exert a disruptive and destructive influence on our states and constituents. The uncontrolled and unregulated flow of new migrants into the United States permitted under past presidents poses grave risks to public health and safety, drains public resources, overcrowds our schools and hospitals, and undermines the social cohesion of our communities. As Secretary of State Marco Rubio recently noted, “in a pursuit of a world without borders, we opened our doors to an unprecedented wave of mass migration that threatens the cohesion of our societies, the continuity of our culture, and the future of our people.”<sup>1</sup> As state attorneys general, we confront the fallout of mass migration first hand in the work we do to protect

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<sup>1</sup> Secretary of State Marco Rubio at the Munich Security Conference, U.S. Department of State (Feb. 14, 2026) <https://www.state.gov/releases/office-of-the-spokesperson/2026/02/secretary-of-state-marco-rubio-at-the-munich-security-conference>.

American workers and consumers and keep our communities safe.

The adverse consequences of mass migration are not solely the result of illegal immigration and lax border enforcement. For too long, America’s legal immigration system has also facilitated the mass movement of foreign nationals into the United States in ways that do not benefit and often inflict harm on the American people. As President Trump has said, “struggling American families . . . deserve an immigration system that puts their needs first and that puts America first.”<sup>2</sup> Yet many features of America’s immigration laws—from chain migration that indiscriminately allows foreigners to gain permanent status in the United States without regard to merit or their capacity to assimilate to an asylum system and nonimmigrant visa programs that are highly vulnerable to abuse—fall far short of that goal. The H-1B nonimmigrant visa program embodies some of the worst failings of federal immigration law. As currently constituted and administered, the program facilitates the high-volume flow of low-cost foreign labor into the United States. Further, it lacks meaningful safeguards to prevent employers from using foreign labor to displace American workers and undercut Americans’ wages and working conditions. What safeguards exist have been made hollow by chronic underenforcement. Worse, the administration of the program from its inception has been carried out in open disregard of even the meager guardrails contained within the program’s authorizing statute.

Many aspects of America’s immigration system suffer from one or more of these failings. The H-1B program suffers from all of them. A dramatic course correction is needed.

The Department’s proposed increases in the prevailing wages that employers must pay foreign workers when using the H-1B, H-1B1, E-3, and PERM programs would be a critical step in addressing the severe defects in the current programs generally and the H-1B program specifically.<sup>3</sup> In many ways, the wage levels are central to the proper functioning of the program. The wage levels are the primary, if not only, feature of the program that in any way prevents employers from using the program to displace or undercut the wages and working conditions of American workers, particularly given that most H-1B employers are under no obligation to even attempt to find American workers who can fill the jobs for which H-1B nonimmigrant labor is sought. *See* 8 U.S.C. § 1182(n). Likewise, the wage levels are critical for ensuring the program serves its original purpose of allowing for the entry only of high-skilled labor into specialty

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<sup>2</sup> President’s Remarks on Immigration Reform Legislation, 2017, Daily Comp. Pres. Doc. 201700557 (Aug. 2, 2017) <https://www.govinfo.gov/app/details/DCPD-201700557>.

<sup>3</sup> We agree with the Department that, given its relative size compared to the other programs governed by the prevailing wage levels and its close relationship to the PERM program, it is appropriate—perhaps unavoidable—that the H-1B program is the focus of the Department’s analysis and reasoning in assessing how to modify the wage levels. *See* 91 Fed. Reg. 15463. Indeed, it would potentially be problematic were the Department *not* to focus its analysis on the program that far and away accounts for the largest share of workers covered by the prevailing wage levels. *See Nat’l Cmty. Reinvestment Coal. v. Consumer Fin. Prot. Bureau*, 2022 WL 4447293, at \*31 (D.D.C. Sept. 23, 2022) (noting that agency acted arbitrarily and capriciously when it failed to take into account the “disproportionate impact” its regulation would have on certain populations).

occupations. *See* 8 U.S.C. § 1184(i). Both of those objectives will be served by the Department’s proposed increase in the wage levels. Separately, the Department’s proposal will address the illegalities in how the existing wage levels were instituted.

For all these reasons, we support the Department’s proposal.

**I. Abuse of the H-1B Program harms American workers and undermines the purpose of the program.**

As the Department has identified in its proposal, there are numerous ways in which many employers abuse the H-1B program to displace and undercut American workers. Concern about these practices has been rightly expressed by leaders on both sides of the aisle for decades. By substantially increasing the prevailing wage levels employers must pay foreign workers in the program, the Department’s proposal would, if finalized, be one of the most significant, positive changes to the program to address these concerns since the program was first created.

One of the most glaring forms of abuse in the program is how some employers use it to replace their existing American workforce with lower-cost foreign labor. For example, in 2015, in response to one of the largest electric utility companies in Southern California, Southern California Edison, replacing hundreds of IT workers with H-1B workers from outsourcing firms, a bipartisan coalition of ten United States Senators from across the political spectrum requested that the Obama administration “investigate the unacceptable replacement of American workers by H-1B workers.”<sup>4</sup> In the case of Southern California Edison, a study showed that, by replacing its IT workers with H-1B workers, the company cut its wage costs by as much as 40%. To add insult to injury, the fired employees were forced to train their H-1B replacements.<sup>5</sup> Yet despite the outrage this incident and many others like it have provoked, there have been no meaningful reforms to the H-1B program to stop incidents like it from occurring again.

And this was by no means an isolated incident. Practices like this continue at some of the largest employers in our country. In recent years, companies including Amazon, Apple, Deloitte, Google, Disney, and Meta, for instance, have laid off thousands of employees while at the same time seeking to hire thousands of H-1B employees.<sup>6</sup> Thus, for many American workers, the H-1B program has become synonymous with job losses, wage cuts, and labor arbitrage—the very “adverse[] [e]ffects” that safeguards in the program are supposed to prevent. 8 U.S.C. §

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<sup>4</sup> H-1B Letter from Ten Senators to AG, DHS, and DOL (Apr. 9, 2015), [https://www.epi.org/files/2014/h1b\\_letter\\_10\\_senators.pdf](https://www.epi.org/files/2014/h1b_letter_10_senators.pdf).

<sup>5</sup> *See* Michael Hiltzik, *A loophole in immigration law is costing thousands of American jobs*, Los Angeles Times, (Feb. 20, 2015), <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150222-column.html>.

<sup>6</sup> *See* Grassley, *Durbin Take Aim at Tech, Finance and Retail Sectors for Favoring H-1B Visa Holders over American Workers.*, U.S. Senate Committee on the Judiciary (Sept. 25, 2025), <https://www.judiciary.senate.gov/press/rep/releases/grassley-durbin-take-aim-at-tech-finance-and-retail-sectors-for-favoring-h-1b-visa-holders-over-american-workers>.

1182(n)(1)(A)(ii).

Our institutions of higher education provide another example of how the H-1B program deprives U.S. workers of job opportunities and undermines the national interest. The institutions, which are exempt from the 85,000 annual cap on H-1B visas, often use the H-1B program to fill with foreign labor jobs that their own graduates could likely perform. For example, since 2009, Purdue University has hired approximately 1,980 H-1B workers according to the U.S. Citizenship and Immigration Services H-1B Employer Data Hub.<sup>7</sup> In 2021 alone, Purdue University was approved to hire 155 H-1B applicants.<sup>8</sup> That same year, Purdue was ranked #5 nationally for producing most graduates in STEM fields—fields in which H-1B workers are most commonly sought by employers. Likewise, Indiana University has posted a job listing for a “marketing generalist” position to be filled by an H-1B visa holder that pays \$68,000 per year, as an example.<sup>9</sup> Meanwhile, Indiana University has a marketing department with over 370 students in this year’s class, some of whom may very well be able to fill that position.<sup>10</sup> Examples such as these undoubtedly exist at many major universities around the country.

These examples are troubling given that unemployment rate for recent college graduates aged 22-27 is currently 6.3%.<sup>11</sup> The fact that institutions of higher learning—the institutions that are supposed to be preparing students to find jobs—are themselves resorting to the H-1B program to fill jobs that their own students could possibly fill suggests that the H-1B program creates significant incentives for employers to cut labor cost by prioritizing the hire of foreign workers and are doing so at the expense of Americans seeking work. It also raises the concern that, as President Trump noted in his executive order directing the Department to undertake this rulemaking, employers’ overreliance on the H-1B program is discouraging Americans from pursuing lucrative careers in the tech industry and other areas.<sup>12</sup>

By increasing the wage levels, the Department would reduce the incentives employers have to abuse the program in these ways.

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<sup>7</sup> See *H-1B Employer Data Hub*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/tools/reports-and-studies/h-1b-employer-data-hub>.

<sup>8</sup> See *Purdue ranked 5 nationally for most STEM graduates*, <https://stories.purdue.edu/purdue-ranked-5-nationally-for-most-stem-graduates/>.

<sup>9</sup> Andrew Mark Miller, *Red-state university ripped for offering entry-level job to foreign workers, not grads: ‘Woke mind virus’*, Fox News (Nov. 12, 2025) <https://www.foxnews.com/politics/red-state-university-ripped-offering-entry-level-job-foreign-workers-not-grads-woke-mind-virus>.

<sup>10</sup> See *Marketing major salaries*, Kelley School of Business Indiana University, <https://kelley.iu.edu/recruiters-companies/undergrad/statistics/salary-statistics/marketing.html>.

<sup>11</sup> See *The Labor Market for Recent College Graduates*, Federal Reserve Bank of New York, <https://www.newyorkfed.org/research/college-labor-market#--:explore=unemployment> (last updated May 5, 2026).

<sup>12</sup> See The White House, *Restriction on Entry of Certain Nonimmigrant Workers*, (Sept. 19, 2025) <https://www.whitehouse.gov/presidential-actions/2025/09/restriction-on-entry-of-certain-nonimmigrant-workers/>.

## II. The current wage methodology creates national security risks.

As the Trump administration has recognized, abuse of the H-1B program also poses national security risks.<sup>13</sup> In particular, overuse of the H-1B program has contributed to the introduction of many temporary foreign workers from foreign adversaries into the American tech industry. For example, in 2025, Amazon, Meta, Microsoft, Apple, and Google accounted for five of the top six companies with the highest number of approved new H-1B employment petitions, demonstrating just how heavily reliant American companies producing some of our country's most cutting edge and sensitive products are on the program.<sup>14</sup> In approximately the same period, close to one out of every eight H-1B workers granted a visa was a Chinese national.<sup>15</sup> That is serious cause for concern given that China is designated a foreign adversary by the federal government as well as by the laws of many of our states. *See, e.g.*, 15 C.F.R. § 791.4; Ind. Code § 1-1-15.3 (effective July 1, 2026). In this way, the H-1B program serves as a gateway for potentially hostile foreign actors to gain entry into sensitive industries in the United States.

Our states are taking action to address this and other threats posed by the program. For example, Texas Attorney General Paxton recently launched investigations into nearly thirty Texas businesses that are suspected of H-1B program abuse to crack down on businesses that use fraud to secure entry into the United States of foreign nationals who have no business being here.<sup>16</sup> Likewise, Indiana recently enacted a law to combat nefarious foreign influence in the state, including by placing restrictions on the kinds of contracts into which the state may enter with companies affiliated with foreign adversaries, including companies that employ individuals who are nationals of foreign adversaries.<sup>17</sup>

But states of course cannot tackle these problems on their own. Federal action is needed, and the Department's proposal is a good step in that direction. Increasing the prevailing wage levels, which would reduce the incentives employers have to abuse and overuse the program, would at least indirectly help address the threats to national security posed by high-volume influx of foreign nationals into the United States through the H-1B program.

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<sup>13</sup> *See* The White House, *Restriction on Entry of Certain Nonimmigrant Workers*, (Sept. 19, 2025)

<https://www.whitehouse.gov/presidential-actions/2025/09/restriction-on-entry-of-certain-nonimmigrant-workers/>.

<sup>14</sup> *See* National Foundation for American Policy, *NFAP Policy Brief: H-1B Petitions and Denial Rates in FY 2025*, (Nov. 2025), <https://nfap.com/research/new-nfap-policy-brief-h-1b-petitions-and-denial-rates-in-fy-2025/>.

<sup>15</sup> Pew Research Center, *What we know about the U.S. H-1B visa program* (Mar. 4, 2025), available at <https://www.pewresearch.org/short-reads/2025/03/04/what-we-know-about-the-us-h-1b-visa-program/>.

<sup>16</sup> *See* Attorney General of Texas, *Attorney General Ken Paxton Takes Legal Action as Part of Investigation into Nearly 30 North Texas Businesses Suspected of H-1B Visa Fraud*, (April 30, 2026), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-takes-legal-action-part-investigation-nearly-30-north-texas-businesses>.

<sup>17</sup> *See* Indiana General Assembly, *Senate Enrolled Act 256-2026*, Indiana General Assembly 2026 Session, <https://iga.in.gov/pdf-documents/124/2026/senate/bills/SB0256/SB0256.06.ENRH.pdf>.

### **III. The existing prevailing wage methodology is likely unlawful and inconsistent with the purpose of the program.**

The Department's reform of the prevailing wage levels is not just wise policy. It is, in our view, legally necessary to bring the H-1B program back into conformity with federal law. The current wage levels the Department administers violate the Administrative Procedure Act ("APA") in at least two important ways. In particular, the current wage methodology was improperly promulgated without undergoing public comment and is arbitrary and capricious because the Department has never articulated any reasoning for how the wage levels are currently set, and likely would be unable to do so. Thus, wherever the Department ultimately decides to set the revised wage levels, it is clear that the Department cannot revert back to the current unlawful wage levels and is well justified in undertaking this rulemaking.

Under the APA, agency actions are unlawful if they are arbitrary and capricious. 5 U.S.C. § 706(2)(A). Under the arbitrary and capricious standard, administrative action must be "rational[] [and] based on consideration of the relevant factors." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Insurance Co.*, 463 U.S. 29, 42-43, 103 S.Ct. 2856, 2866 (1983). That standard requires, among other things, that federal agencies "examine the relevant data" and "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made'" when exercising its administrative powers. *Id.* at 43 (citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). Likewise, a regulatory action generally will be "arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem" that is the subject of the rulemaking. *State Farm*, 463 U.S. at 43.

In setting the current wage levels, the Department did not just fail to articulate a rational explanation for why the levels it chose are appropriate—it did not even make the attempt. As noted in the proposed rule, the current wage levels were created through a combination of a 1998 memorandum of understanding between the Department and the Bureau of Labor Statistics and guidance issued by the Department in 2005. *See* 91 Fed. Reg. at 15458. Neither document contains any explanation whatsoever for why the current wage levels were selected or to how they are in any way related to "experience, education, and the level of supervision" of workers—the statutory factors the Department is obligated to consider in setting the wage levels. 8 U.S.C. § 1182(p)(4). Put another way, the Department says that the existing wage levels "us[e] the mean wage of the lowest paid one-third of the workers surveyed in each occupation to approximate the typical compensation for 'beginning level employees,'" but has never explained why the lowest paid one third of workers in any given occupation—as opposed to one quarter, one half, or some other calculation entirely—are somehow representative of entry-level workers in a specialty occupation. 91 Fed. Reg. at 15458.<sup>18</sup>

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<sup>18</sup> The flaw in the arbitrary assumption underlying the existing wage levels is especially apparent given that, as the Department notes, many of the occupational classifications included in the survey used to set the wage levels

Thus, as the Department has said in the past, the existing wage levels are “based on the assumption that the mean wage of the lowest paid one-third of the workers surveyed in each occupation could provide a surrogate for the entry-level wage, but the Department did not previously conduct any meaningful economic analysis to test its validity, or otherwise explain how these levels were consistent with the INA’s wage provisions.” *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*, 86 Fed. Reg. 3608, 3611 (Oct. 8, 2020).

That failure to explain how it set the current wage levels or to give any evident consideration to whether and how those wage levels are consistent with the H-1B program’s authorizing statute makes the current wage levels legally suspect. The Department’s “lack of explanation for its choice renders its decision arbitrary and capricious.” *Arrington v. Daniels*, 516 F.3d 1106, 1114 (9th Cir. 2008). That is reason enough to scrap the current wage levels and replace them with wage levels that are set based on a reasoned consideration of what specialty occupation workers with levels of education and experience comparable to that of H-1B workers employers seek to hire are paid. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1926 (2020) (Thomas, J., concurring in part and dissenting in part) (“[T]he unlawfulness of [a] program is a sufficient justification for its rescission.”).

Separately, the existing wage levels are arguably unlawful because they were never promulgated through notice and comment rulemaking. As the Department notes in its proposal, the existing wage levels are in essence a “practical, informal method” for determining the prevailing wage—they are not set by regulation. 91 Fed. Reg. at 15458. Yet the wage levels, insofar as they dictate in many instances exactly what employers must pay H-1B workers unquestionably qualify as substantive rules that “grant rights, impose obligations, or produce other significant effects on private interests.” *Batterton v. Marshall*, 648 F.2d 694, 701–02 (D.C. Cir. 1980). That means they are lawful only if set through a notice and comment process. *See* 5 U.S.C. § 553. They never were. The Department’s current notice of proposed rulemaking thus affords the public a long overdue opportunity to weigh in on how the wage levels are set and will rectify a significant legal deficiency in the current wage levels.

Finally, the current wage level methodology is also arguably inconsistent with the H-1B program’s authorizing statute. The INA sets clear parameters on how the H-1B program should operate. Specifically, H-1B labor must be performed in a specialty occupation that requires the “theoretical and practical application of a body of highly specialized knowledge.” 8 U.S.C. § 1184(i)(1)(A). And H-1B employers must provide “working conditions for [H-1B]

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undoubtedly include lower paid workers who perform work that would not qualify as “specialty occupation” work under the INA. *See* 91 Fed. Reg. at 15464-65 (“A review of the . . . occupations in which H-1B nonimmigrants most commonly work demonstrates that most H-1B workers fall within [occupational] classifications that include some number of workers who would not qualify for employment in a specialty occupation.”).

nonimmigrant[s] that will not adversely affect the working conditions of workers similarly employed.” 8 U.S.C. § 1182(n)(1)(A)(ii). The facts that the program is used heavily to obtain lower-wage, and therefore likely lower-skilled labor, often at the expense of U.S. workers, means the program is currently operating well outside those parameters, and the present, indefensibly low wage levels are a major reason why.

Increasing the wage levels as the Department proposes will help bring the program into conformity with these provisions of the INA. As the Department notes, “[a]s a worker’s education and skills increase, his wages are expected to as well.” 91 Fed. Reg. 15454, 15465. Although not a perfect metric, “wages are the best approximation” available for determining whether a migrant is highly skilled and likely to provide net positive benefits to the United States if allowed to work here.<sup>19</sup> Simply put, high wages equal higher skilled labor. That means the Department’s proposal to raise the wage levels is likely the single best reform the Department could undertake to restore the H-1B program to its purpose of only allowing entry into the United States for high-skilled workers in specialty occupations.

As President Trump has said, our immigration system should be one that is merit based and “that admits people who are skilled, who want to work, who will contribute to our society, and who will love and respect our country.”<sup>20</sup> As authorized by the INA, the H-1B program is supposed to be very much a merit-based nonimmigrant visa program that allows employer to obtain foreign labor only when the workers have unique and advanced competencies. The Department’s proposal will help restore the merit-based character of the program.

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America’s immigration system should serve Americans’ interests. The H-1B program generally and the prevailing wage levels specifically are a case study in how our system falls far short of that goal. A combination of a lack of safeguards to prevent abuse and lax to nonexistent enforcement of what safeguards there are—often in disregard of the law—has resulted in many aspects of our immigration system, including the H-1B program, becoming a detriment to the well-being of our citizens.

As Senator Henry Cabot Lodge recognized, “[t]here is no one thing which does so much to bring about a reduction of wages and to injure the American wage earner as the unlimited introduction of cheap foreign labor through unrestricted immigration.”<sup>21</sup> That is as true today as

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<sup>19</sup> O’Brien & Ozimek, *A Better Way to Select High-Skilled Immigrants*, City Journal (Mar. 6, 2025), available at <https://www.city-journal.org/article/high-skilled-immigrants-h-1b-labor-shortage-wages>.

<sup>20</sup> White House, *President Donald J. Trump Wants to Fully Secure Our Border and Reform Our Immigration System to Put America First* (May 16, 2019), available at <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-wants-to-fully-secure-our-border-and-reform-our-immigration-system-to-put-america-first/>.

<sup>21</sup> Senator Henry Cabot Lodge, Speech on the Restriction Of Immigration (Mar. 16, 1896).

it was in 1896 when Senator Lodge made the observation. The Department’s proposed increase in the prevailing wage levels is a critical step toward addressing the deleterious effects resulting from the mass migration that the H-1B program has long facilitated. It will help protect American workers, reduce abuses of the program, and make the program more consistent with its original purpose.

There are of course many other steps that can and should be taken to reform the H-1B program. The Department’s expanded enforcement efforts through Project Firewall are a welcome change from the nonenforcement posture of the Department under other presidents.<sup>22</sup> Likewise, we encourage the Department to consider reimplementing other reforms to the program that were pursued during President Trump’s first term, such as applying joint employer principles to the program so that businesses cannot skirt the program’s guardrails by using staffing companies to obtain H-1B labor.<sup>23</sup> Ultimately, the most significant changes to the program—such as imposing an obligation on employers to attempt to recruit American workers before hiring H-1B workers or completely overhauling if not scrapping the program entirely—will need to come from Congress. But the Department’s proposed increase in the wage levels is an important measure and the Department is right to prioritize it. It is likely the single most important change that could be made to the program through administrative action.

We fully support the Department’s proposal and encourage it to finalize the rule as speedily as possible.

Sincerely,



Todd Rokita  
Attorney General of Indiana



Cori Mills  
Acting Attorney General of Alaska



Tim Griffin  
Attorney General of Arkansas

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<sup>22</sup> U.S. Department of Labor, *Protecting America’s Highly Skilled Workforce with Project Firewall*, available at <https://www.dol.gov/agencies/whd/immigration/h1b/projectfirewall>.

<sup>23</sup> U.S. Department of Labor, *U.S. Department of Labor Revises Interpretation, Issues New Guidance Clarifying Filing, Compliance Requirements in H-1B Visa Program* (Jan. 15, 2026), available at <https://www.dol.gov/newsroom/releases/eta/eta20210115-2>.



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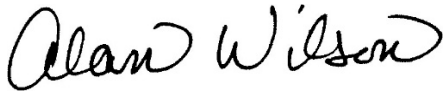
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