



FOR IMMEDIATE RELEASE

Media Inquiries: [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

NCLA Lawsuit Seeks to Set Aside the Department of Labor’s Unlawful New Independent Contractor Rule

Colt & Joe Trucking LLC v. U.S. Department of Labor; Julie Su and Jessica Looman, in their official capacities

Washington, DC (April 26, 2024) – The New Civil Liberties Alliance has filed a [Complaint](#) in the U.S. District Court for the District of New Mexico, challenging the U.S. Department of Labor’s vague new independent contractor rule. Promulgated earlier this year, the rule distorts the standard for determining if someone hired by a company can be classified as an independent contractor, instead of an employee subject to the Fair Labor Standards Act’s (FLSA) wage and hour requirements. Representing the family-owned company Colt & Joe Trucking, NCLA asks the court to overturn this rule, which leaves small businesses like theirs completely unable to hire independent contractors without risking FLSA liability.

The Labor Department previously maintained a 2021 rule that generally allowed businesses to classify workers as independent contractors if they exercised independent judgment and control over their work and could profit as a result. Overthrowing this simple standard, the January 2024 rule effectively broadens FLSA’s definition of “employee” to cover anyone performing services for another company under essentially whatever circumstance the Department wants. To make matters worse, the new rule unlawfully allows companies like Colt & Joe Trucking to be retroactively punished for making worker classification decisions based on the old definition.

The Labor Department says it abandoned the old standard for classifying independent contractors because it conflicted with judicial precedent, but no precedent prohibits focusing on control and opportunity as the most probative factors in determining whether a worker is in business for himself. On top of all these fatal problems, Acting Labor Secretary Julie Su also lacked authority to promulgate the new rule in the first place, having claimed secretarial powers for over a year without Senate confirmation in violation of the Appointments Clause.

NCLA released the following statements:

“The Department is replacing a simple standard for determining whether a worker is an independent contractor or employee under the Act with a vague and indecipherable one. A vague standard means businesses have no idea what the law requires, while bureaucrats enjoy enormous power to penalize them for unpredictable violations.”

— **Sheng Li, Litigation Counsel, NCLA**

“The meaning of ‘independent contractor’ was well understood in the industry before DOL’s latest unnecessary intervention. Rather than clarify the law, this rule seeks to obtain a political goal Congress did not adopt when enacting the FLSA, namely dramatically reducing the number of independent contractors.”

— **Mark Chenoweth, President, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

###