

# Immigration Alert

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## \$100,000 Restriction on Certain H-1B Visa Applications Vacated

On June 8, 2026, the U.S. District Court for the District of Massachusetts (the “Court”) vacated the \$100,000 fee applicable to H-1B visa applications for beneficiary employees applying from outside of the U.S., which has been in place since September 21, 2025, providing immediate relief to those impacted by the fee. The full text of the case, *State of California et al. v Markwayne Mullin, et al.* is accessible [here](#).

### Background

On September 19, 2025, President Trump issued a Proclamation imposing a \$100,000 fee on new H-1B visa petitions submitted after September 21, 2025, for beneficiary employees outside of the U.S. The Proclamation is accessible [here](#) and our September 2025 alert on this major change is accessible [here](#).

## The Ruling

The Court determined that the President lacked the power to issue and implement the fee on certain H-1B visa applications. The Plaintiffs, which included 20 U.S. states, successfully argued that the policies imposing the fee unlawfully intruded on Congress's taxing power. In the decision, the Court states: *Here, the substance and application of the \$100,000 payment reveal that it is a tax, regardless of what the payment is called and emphasizes that the President has no standalone power to impose taxes without congressional delegation.*<sup>1</sup>

The Court also found that the policies implementing the fee violated the Administrative Procedure Act ("APA"). The APA allows the U.S. public to comment on proposed rules and regulations under the Act's notice-and-comment procedures. However, the policies implementing this fee were adopted without first complying with the APA's notice-and-comment procedures. The Court also concluded that the policies violate the APA because the President and acting agencies exceeded their statutory authority in implementing the fee, and the policy change was arbitrary and capricious, meaning no reasoned explanation was offered for the fee, despite the significant increase in cost it posed.

## Relief

Citing to the APA, the Court exercised its authority to *'hold unlawful and set aside'* an agency action that it has determined to be arbitrary and capricious and contrary to law. The Court vacated in their entirety the policies implementing the fee, which include the U.S. Citizenship and Immigration Services (USCIS) Memorandum dated September 20, 2025; H-1B FAQ documents; and other government webpages providing information and directions regarding the fee. The Court's vacatur of the policies

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<sup>1</sup> [06082026h1b\\_ruling.pdf](#)

implementing the fee will now limit USCIS' ability to impose the fee on H-1B visa application.

## What's Next

Government spokespeople have indicated that they will appeal the Court's decision. The applicability and outcome of the fee will depend on a possible appeal, which could uphold or stay the decision, pausing the relief provided by this ruling.

## CONTACT

We will be monitoring the developments of the H-1B fee closely. Please contact [Allison Ahern Fillo](mailto:aaahernfill@davismalm.com) at [aaahernfill@davismalm.com](mailto:aaahernfill@davismalm.com) or 304.256.0503 or [Emily Tanji](mailto:emilytanji@davismalm.com) at [emilytanji@davismalm.com](mailto:emilytanji@davismalm.com) or 304.687.9179 in our [Immigration Law Practice](#) for guidance and new developments.