

## Publications

### Court Strikes Down \$100,000 H-1B Entry Fee, But Fee Still Applies Pending Appeal

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On June 8, 2026, a federal court found unlawful and struck down the \$100,000 fee imposed on certain new H-1B visa petitions. However, just days later, the same court paused implementation of its decision, temporarily allowing the U.S. Citizenship and Immigration Services (USCIS) to continue requiring the fee while the government's appeal proceeds. The federal government filed its motion to stay the order for the duration of the appeal with the First Circuit Court on June 18, 2026. Employers should thus be aware that the fee remains in effect for qualifying H-1B petitions involving consular processing, and should also be alert to the possibility that further changes may occur as the case moves through the appeals process.

#### Background and Timeline of Events

On September 19, 2025, President Trump issued a sweeping Presidential Proclamation imposing a \$100,000 fee on new H-1B visa petitions, sparking immediate concern and confusion among employers and H-1B workers. The federal agencies subsequently issued guidance clarifying that the new, one-time fee applies only to *new* H-1B petitions filed on or after September 21, 2025, that are approved for consular processing.

In response, on December 12, 2025, a coalition of state attorneys general filed a lawsuit in the U.S. District Court for the District of Massachusetts challenging the fee introduced by the Presidential Proclamation (*California et al. v. Trump et al.*).

On June 8, 2026, Judge Leo Sorokin vacated the \$100,000 H-1B fee, ruling it an unlawful tax. Just days later, Judge Sorokin temporarily stayed the court's decision, reinstating USCIS's authority to collect the fee for H-1B petitions that had been subject to the fee – specifically, petitions filed for or only approvable through consular notification.

On June 18, 2026, the government formally filed its motion to stay Judge Sorokin's order for the duration of the appeals process. The First Circuit Court will soon decide whether the fee remains in effect during

the appeal. If Judge Sorokin's ruling goes into effect, it will apply nationwide.

Multiple other lawsuits challenging the fee remain pending in other federal courts.

## What Does This Mean for Employers?

- **Fee Still Required:** USCIS is currently permitted to require the \$100,000 fee for qualifying H-1B petitions involving consular notification.
- **Uncertainty Remains:** The legal status of the fee may change again, depending on the outcome of the appeal and further court orders.
- **Affected Petitions:** The fee applies to petitions for initial H-1B visa status that require consular processing (i.e., where the worker must obtain a visa at a U.S. consulate abroad before entering in H-1B status).

Given the ongoing lawsuits, the legal status of the \$100,000 fee remains fluid. Vorys attorneys will continue to track new legal developments pertaining to this fee and will continue to provide updates as new information becomes available.