# FEDERAL COURT STRIKES DOWN TRUMP'S $100,000 H‑1B FEE: INA § 212(F) IS NOT A TAXING POWER

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On Monday, June 8, 2026, a Massachusetts federal judge delivered a major decision for employers who rely on the H‑1B program. In *State of California et al. v. Markwayne Mullin et al.*, U.S. District Judge Leo T. Sorokin ruled that President Donald Trump's $100,000 payment requirement on new H‑1B visas is a tax that Congress never authorized the President to impose. He declared the fee unlawful and vacated it in its entirety.

The lawsuit, brought by 20 Democratic state attorneys general, challenged a September 2025 Proclamation that announced an additional $100,000 "supplemental payment" for each new H‑1B petition, dramatically increasing the cost of sponsoring highly skilled foreign workers. Judge Sorokin rejected the government's central argument that the President's broad authority under INA § 212(f) to "impose on the entry of aliens any restrictions he may deem to be appropriate" provided legal support for the payment. The court concluded that Congress did not confer taxing power on the President through the Immigration and Nationality Act. As Judge Sorokin wrote, "The court finds that the policy imposes a tax on H‑1B petitions without the requisite delegation by Congress."

This district court decision is a major victory for H‑1B employers and a sharp reminder that presidential power under INA § 212(f) has real limits although it has been endorsed by the Supreme Court in *Trump v. Hawaii* to restrict the entry of nationals of certain countries. The court rejected the Trump Administration's attempt to use § 212(f) to impose a flat $100,000 "supplemental payment" on every new H‑1B petition. In the court's view, the payment is a tax, the INA does not clearly delegate taxing authority to the

President, the implementing Policy violates the Administrative Procedure Act (APA), and the Policy is therefore vacated nationwide.

The court's core holding is that § 212(f) is not a blank check to tax H1B petitions. The government leaned heavily on the phrase "any restrictions he may deem to be appropriate," arguing that this language is as broad as the tariff authority the Supreme Court upheld in *Algonquin* under Section 232 of the Trade Expansion Act. The court, however, relies on the Supreme Court's more recent *Learning Resources* decision, which sharply narrows how far *Algonquin* can be pushed.

In *Learning Resources*, the Supreme Court contrasted Section 232 with the International Emergency Economic Powers Act (IEEPA). Section 232(b) authorizes the President to "adjust imports" and to "take such action . . . as he deems necessary" to do so, in a statutory setting that explicitly references "duties" and "import restrictions." That context made it natural to read Section 232 as including tariff authority. IEEPA, by contrast, only allows the President to "regulate" imports, omits the "such action as he deems necessary" language, and contains no mention of duties or tariffs. The Supreme Court therefore refused to treat IEEPA's general regulatory grant as a delegation of tariff or taxing power.

Applying that same framework to the INA, Judge Sorokin notes that §§ 212(f) and 215(a) let the President suspend or restrict entry and prescribe "reasonable rules, regulations, and orders" and "limitations and exceptions" governing entry, but they never mention duties, taxes, or any other revenueraising fees. Even though § 212(f) appears broad in isolation, it lacks the specific, dutyfocused context that justified *Algonquin's* limited reading of Section 232. *Learning Resources* underscores that the Supreme Court has long been reluctant to read extraordinary delegations of Congress's core powers into ambiguous text, especially where the "power of the purse" is involved. Taxing authority, the Court has said, is "core to Congress," and Judge Sorokin finds nothing in the INA that clearly hands that power to the President.

In his opinion, he emphasizes that the Supreme Court has "long expressed reluctance to read into ambiguous statutory text extraordinary delegations of Congress's powers," and that "separation of powers principles and a practical understanding of legislative intent suggest Congress would not have delegated highly consequential power through ambiguous language." Those principles, he

explains, “apply with particular force where, as here, the purported delegation involves the core congressional power of the purse.” The opinion also notes that the government itself conceded that the taxing power is “core to Congress.” Against that backdrop, Judge Sorokin concludes that these considerations “preclude reading INA §§ 212(f) and 215(a) as delegating Congress’s exclusive power to tax.”

That reasoning closely tracks what we identified in our prior blog as a form of the major questions doctrine at work in the immigration context. Without using the label “major questions,” Judge Sorokin applies the same basic logic. The court treats the imposition of a massive, program‑wide $100,000 charge as a “highly consequential power” that Congress would not have handed to the Executive through vague references to “restrictions” on entry. In his view, a de facto tax of that magnitude - one that would fundamentally reshape the cost structure of a central employment‑based visa category - is a decision of great economic and political significance. In that situation, generalized language about “restrictions” on entry is not enough. When the Executive claims authority to take such a consequential step, courts will look for, and insist on, a clear statement from Congress. The major questions doctrine, discussed at length in *Learning Resources*, and addressed in our prior blog, has implicitly been acknowledged in this recent decision.  The Supreme Court's tariffs decision in *Learning Resources* influenced the court in *California v Mullane* in finding Trump's $100,000 fee unlawful, and although this court did not state so explicitly, under the major questions doctrine where executive actions have major economic or political significance there has to be explicit Congressional authorization, and here there was none notwithstanding the broad authority given to the President under INA 212(f) in determining the entry of noncitizens into the US.

The government tried to recast the $100,000 payment as an incident of the President’s immigration or commerce powers, invoking nineteenth‑century state head‑tax cases (*Smith v. Turner* and *Henderson v. Mayor of New York*) and *Merrion v. Jicarilla Apache Tribe*. The court is not persuaded. *Smith* and *Henderson* were about state taxes on arriving foreign passengers and the boundary between state and federal power over foreign commerce. They did not suggest that a tax on entry is purely a commerce regulation or that delegating commerce powers to the Executive silently includes taxing authority. *Merrion*, in turn, addressed the inherent sovereign power of a tribe to tax on its

own reservation. Tribal taxing power does not derive from the U.S. Constitution, whereas the President has no inherent authority to raise revenue at all. That power lies exclusively with Congress under Article I, Section 8. In *Skinner*, the Supreme Court held that Congress must clearly indicate any intent to delegate taxing power to the Executive. The court sees no such clear indication in the INA, so these lines of cases do not rescue the Proclamation.

The government also argued that the $100,000 payment is simply a "restriction on entry" authorized by § 212(f). The court confronts that argument directly. Textually, § 212(f) speaks of "restrictions." In ordinary usage, a tax is not a "restriction" on entry. It is a fiscal measure. Congress did not say "any tax, penalty, or condition" but instead chose narrower language. Structurally, the government's reading would leave "no perceivable limits" on presidential power. On that view, the President could demand a percentage of a company's equity as a condition for obtaining an H1B, require a U.S. citizen sponsoring a spouse to surrender half her assets, or even try to impose incarceration as a "condition" on sponsoring a relative. Government counsel conceded at argument that incarceration would collide with other constitutional protections, but that only underscores how far the asserted reading strays from statutory text and congressional intent. The court's hypotheticals make this part of the opinion particularly valuable for future litigation, because they show in concrete terms why § 212(f) cannot be converted into an allpurpose tool for extracting economic value from U.S. sponsors or reengineering large parts of the immigration system.

Once the court concludes that the $100,000 payment is an unauthorized tax, its APA analysis follows logically. The government tried to insulate the Policy from APA review by describing it as a mere "extension of the President's action." The court adopts what is becoming the prevailing rule: agency actions taken to implement a presidential directive are subject to APA review unless the underlying authority has been committed by Congress to the sole discretion of the President. The authority to tax H1B petitions was never delegated to the President at all, much less committed to his exclusive discretion, so DHS and State cannot shelter behind the Proclamation.

The court finds that the memoranda, FAQs, updated webpages, revised H-1B fee schedule, and online payment system collectively amount to "final agency action" under *Bennett v. Spear*. They marked the consummation of the agencies' decision making and immediately changed the legal obligations of H-1B

petitioners by making payment of $100,000 a prerequisite for approval.

On the APA’s procedural requirements, the court holds that the Policy is a legislative rule adopted without notice-and-comment. Because the President lacked statutory authority to tax H-1Bs, his Proclamation did not itself have the force of law. It was the agency materials that created rights, assigned duties, and imposed obligations. That makes them legislative rules subject to § 553. The court rejects the argument that agencies were compelled to follow the Proclamation: agencies are not obligated to comply with unconstitutional or ultra vires directives, and they cannot use such directives as a shortcut around APA rulemaking. Nor can the foreign-affairs or good-cause exceptions save the Policy. The government identified no “definitely undesirable international consequences” that would have flowed from using notice-and-comment, and it pointed to no emergency threatening life, property, or public safety that would meet the high bar for good cause. The agencies did not contemporaneously invoke good cause in their documents. The court also refuses to treat the violation as harmless, because notice-and-comment might have affected the substance of the policy or forced serious consideration of its impact on state employers and cap-exempt institutions.

On the substantive side of the APA, the court translates its separation-of-powers discussion into an “excess of statutory authority” holding. Agencies literally have no power to act unless Congress has conferred it. No INA provision authorizes DHS or State to impose a $100,000 tax on H-1B petitions. Section 1356(m) is limited to cost-recovery adjudication fees, and by the government’s own admission, the Proclamation does not impose a fee to cover costs, does not displace existing fees, and is not collected or used like other adjudication fees. Because §§ 212(f) and 215(a) also do not confer taxing power, there is simply no statutory hook for the Policy. As a result, it is “in excess of statutory jurisdiction, authority, or limitations” under 5 U.S.C. § 706(2)(C).

The court further finds that the Policy is arbitrary and capricious. The agencies offered only thin, high-level rhetoric about addressing “systemic abuse” of H-1B visas and protecting American workers, with no reasoned explanation of why a flat $100,000 tax is a rational or tailored response. They failed to identify or assess reliance interests, despite the obvious reality that state schools, hospitals, and universities had built long-term staffing models around the existing H-1B cost structure, particularly for cap-exempt roles. The record

shows no consideration of alternatives, such as lower amounts, exemptions or discounts for public or cap‑exempt employers, or less disruptive tools targeted at specific abuses. There is also a stark sector mismatch: the Proclamation's rationale is aimed at STEM and IT sectors and private tech firms, but the Policy applies equally to human‑services sectors like education and healthcare without any sector‑specific analysis or justification. Finally, the court rejects the argument that agencies cannot be arbitrary when they are merely following a presidential directive. The directive itself was not lawful, and even under a lawful directive, agencies must implement it "to the extent permitted by law," which includes satisfying APA reasoned‑decisionmaking requirements.

On remedy, the court emphasizes that the APA's instruction to "set aside" unlawful agency action has long been understood to authorize vacatur. It distinguishes vacatur from injunctions: an injunction is directed at particular parties, while vacatur operates on the rule or policy itself, nullifying the government's authority to act under it. The court sees no need to limit relief to the plaintiffs and rejects res judicata arguments based on overlapping membership with parties in other cases, noting that mere association membership does not create the kind of privity needed for claim preclusion. It issues a declaratory judgment that the Policy is unlawful and vacates it in its entirety, concluding that a separate permanent injunction is unnecessary so long as vacatur is available.

For immigration practitioners and H‑1B employers, the immediate effect is straightforward. Agencies may not condition H‑1B approval on payment of the vacated $100,000 charge. H‑1B costs are again limited to the statutory charges Congress has enacted and to cost‑recovery adjudication fees lawfully set by DHS under § 1356(m). The decision also sends a broader signal about executive power in immigration. It marks a strong limit on § 212(f), making clear that "restrictions on entry" cannot be used to impose taxes, confiscate equity, or extract other unrelated economic concessions from U.S. sponsors. It reinforces a clear‑statement rule for taxation: if the Executive wants to tie immigration benefits to revenue‑raising exactions, it must point to explicit statutory authority and comply with APA procedures and reasoned‑decision making standards.

The ruling also provides a template for litigation strategy. It shows how to challenge executive actions that blur the line between regulating entry and raising revenue, particularly when they are implemented via FAQs, web

postings, and internal memoranda rather than formal rulemaking. The court's hypotheticals and its reliance on *Learning Resources* offer useful language to resist overbroad readings of § 212(f) that would erode the INA's structure.

Practitioners should adjust current H1B counseling and filings to reflect that no $100,000 "supplemental payment" may be imposed under this vacated Policy. It is prudent to monitor closely for any new attempts, whether by rulemaking or new proclamation or through the government appealing the decision, to alter the H1B fee structure, and to scrutinize those efforts for a clear statutory basis and APA compliance. For clients who hesitated to file H1Bs because of the proposed charge, counsel can now revisit those decisions and, where appropriate, move forward under the restored statutory framework, while keeping an eye on potential appeals or replacement policies that might test these same legal boundaries in new ways.