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Businesses Face Tough Task In $100,000 H-1B Fee Immigration Court Case

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Donald Trump, accompanied by U.S. Commerce Secretary Howard Lutnick (L), takes a question from a reporter on September 19, 2025, before signing an executive order ... More

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To win their lawsuit in the $100,000 H-1B fee case, businesses must overcome a judge's apparent expansive view of the president's immigration authority. U.S. District Court Judge Beryl A. Howell spent nearly two hours at a Dec. 19 court hearing peppering attorneys for the U.S. Chamber of Commerce and the Association of American Universities with questions about why they believed the president did not have the power to block new H-1B visa holders from entering the United States without employers paying a $100,000 fee. The Trump

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proclamation.

According to guidance from U.S. Citizenship and Immigration Services, the $100,000 fee would not apply to "change of status" cases where people change from one category to another without leaving the country, such as moving from F-1 student status to H-1B status. It applies to situations in which a new H-1B visa holder needs to enter the United States.

H-1B temporary visas are often the only way for high-skilled foreign nationals to work in the United States long term. Employers must pay the higher of the actual or prevailing wage paid to U.S. professionals with similar experience and qualifications. When companies recruit at U.S. universities, they find that international students account for approximately 70% of full-time graduate students in AI-related fields, such as computer and information sciences. The H-1B annual limit is 65,000, with an exemption of 20,000 for individuals with master's degrees or higher from a U.S. university, or about 0.05% of the U.S. labor force.

Immigration Hearing On $100,000 H-1B Visa Fee

On Oct. 16, the U.S. Chamber of Commerce filed a complaint against the Department of Homeland Security, the U.S. State Department, DHS Secretary Kristi Noem and Secretary of State Marco Rubio in the U.S. District Court for the District of Columbia. The Association of American Universities later joined the lawsuit as a plaintiff.

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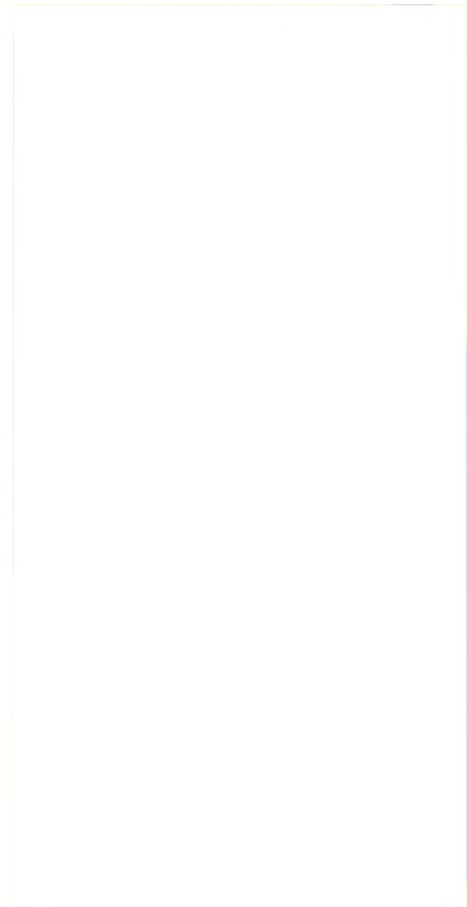

Few people listening to the Dec. 19 hearing on the complaint and motions would likely consider Judge Beryl Howell's questions and statements as favorable to the AAU and the U.S. Chamber of Commerce.

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During the federal district court hearing in Washington D.C., Judge Howell twice mentioned the Sept. 19 proclamation's findings, calling them "detailed findings that are far more detailed than many prior proclamations issued by other presidents." However, a National Foundation for American Policy analysis concluded, "The presidential proclamation's omissions, cherry picking and obfuscation of data indicate the administration decided on the policy details in the proclamation and later attempted to find material to support the policy rather than engage in a legitimate analysis that culminated in banning the entry of H-1B visa holders, absent a $100,000 fee."

The judge cited the proclamation's findings about a table released by the Federal Reserve Bank of New York that purported to show a relatively high unemployment rate for recent college graduates in some technology fields. Left out of the proclamation and hearing were significant facts. First, the Federal Reserve Bank of New York survey was done in 2023, two years before the H-1B proclamation was issued. The NY Fed survey used small sample sizes in determining unemployment rates for majors. The National Survey of College Graduates shows lower unemployment rates in comparable fields for individuals one to six years after completing a degree.

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The administration's proclamation was selective, not mentioning, for example, that the NY Fed survey showed an unemployment rate of only 2.2% in electrical engineering in

2023 for recent college graduates, or that the highest salaries for recent college graduates were in the technology fields it alleged H-1B visa holders damaged by their presence in the United States.

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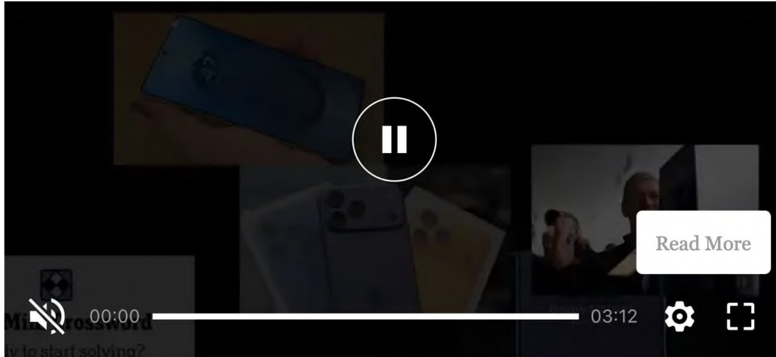

Second, the most recent Bureau of Labor Statistics data available before the White House issued the Sept. 19 proclamation showed the unemployment rate for computer and mathematical occupations dropped from 3.4% to 3.0% between August 2024 and August 2025, and fell from 1.7% to 1.4% during the same period for architecture and engineering occupations. The unemployment rate for college graduates between the ages of 23 and 27 is higher than in 2019, but was still a relatively low 4.2% in July 2025.

Third, and worse from the plaintiffs' perspective, the judge conflated two finding in the proclamation in a manner favorable to the Trump administration, stating, "I think what the proclamation is pointing out is that's part of the exploitation and abuse of the H-1B program because, based on the statistics, four companies that are used as examples, are laying off thousands and thousands of employees and replacing them by hiring H-B workers."

The proclamation presented no evidence that large technology companies that underwent layoffs replaced those laid-off employees with H-1B visa holders in the same positions, and did not even allege that they had done so. Instead, the administration listed two independent events—layoffs and H-1B hiring—and implied they were connected.

Even though Judge Howell, appointed by President Obama, said it was not the job of judges to make economic policy, she accepted the administration's economic arguments and questioned why plaintiffs included economic research in their complaint.

Research that did not appear in the complaint or at the hearing illustrates what businesses see as the high stakes for innovation

and the U.S. economy in the lawsuit's outcome. Economists Giovanni Peri, Kevin Shih and Chad Sparber found, "When we aggregate at the national level, inflows of foreign STEM workers explain between 30% and 50% of the aggregate productivity growth that took place in the United States between 1990 and 2010." According to George Mason University economics professor Michael Clemens, that means up to 1/6th of U.S. economic growth over that 20-year period was due to the flow of foreign-born professionals in science and engineering fields, primarily H-1B visa holders.

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The judge asked a plaintiffs' attorney why no company members of the U.S. Chamber of Commerce subject to the H-1B cap provided a declaration on the harm they would experience from the $100,000 fee. The attorney said that "in the current environment, there are significant pressures" that make companies more comfortable providing information to the Chamber and having the Chamber represent them, rather than making individual declarations. Declarations were submitted by entities not subject to the H-1B annual limit, including the University of Arizona.

Judge Howell's Apparent Expansive Reading Of The President's Immigration Authority

The case rests on whether Judge Howell believes the president has, in effect, unlimited authority to block the entry of H-1B visa holders or other aliens under Section 1182(f) and Section 1185(a). Based on statements and questions at the Dec. 19 hearing, it appears the judge may think the president possesses such unlimited authority, including the power to stop all immigration, not just entry, and that 1182(f) may allow the president to impose fees on H-1B visa holders beyond those set in statute or specifically delegated by Congress.

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In 8 USC Section 1185(a), it states, under "Travel control of citizens and aliens," that "Unless otherwise ordered by the President, it shall be unlawful - (1) for any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe."

"That is very broad authority, and it doesn't mention a need for any kind of presidential statement or finding about the national interest," said Judge Powell. "It doesn't mention classes of aliens or anything like that, which are all the arguments, a number of the arguments, that the plaintiff makes . . . So how, how do you get around 1185(a)(1)?"

Plaintiffs' attorneys argued that the section pertains primarily to travel documents and, in any case, could not be read as conflicting with other parts of the Immigration and Nationality Act. At a different point, a plaintiffs' attorney argued, "Our legal argument is entirely based on the fact that the proclamation is unlawful because it conflicts with Congress's reasoned judgment in the INA [on H-1B visa policy] and exceeds the president's authority under 1182(f)."

Section 1182(f) states, "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."

"In this statute, 1182(f), Congress has handed off for the president with a red ribbon on it three things that it authorizes the president to do," said Judge Howell. "He suspends the entry of all aliens, he suspends the entry of any class of alien, of immigrant or nonimmigrant, and then the first thing is to impose on the entry of aliens any restrictions he may deem to be appropriate. That also seems to be so broad that the proclamation could . . . suspend all H-1B movement. Do you agree?"

Plaintiffs' attorneys said they did not agree. They argued first that section 1185(a) "does not authorize these sorts of substantive restrictions," and the judge acknowledged that 1185(a) is much older than 1182(f), implying that Congress would not have needed to pass that statute if the president already possessed that authority under 1182(f).

According to plaintiffs' attorney, their lead argument is "that the substantive thing that the proclamation does, which is impose a fee premised on your employment, is not a restriction upon the entry of aliens within the meaning of 1182." Judge Howell asked, "So, it really depends on the meaning of the word *restriction*?" Plaintiffs' attorney Paul Hughes of McDermott Will & Schulte replied, "Yes, and I think the government would like this authority to be one to impose restrictions on aliens so that if you are imposing limits on noncitizens, anything goes, but it is narrower than that, it is restrictions on the *entry* of aliens."

The plaintiffs' attorney went on to argue that it is problematic that the proclamation targets employment in the United States and domestic conduct and that it aims to shift the incentives of businesses and institutions in the United States. "It is not, in

fact, a restriction on entry, especially on the entry of aliens, in the meaning of the statute."

At one point, the judge argued that the U.S. Chamber of Commerce could lobby Congress to narrow the scope of the statute. Later on, the plaintiffs' attorneys noted that if the Trump administration was not happy with the H-1B visa category, it should lobby Congress to change the law, not unilaterally alter the legal requirements beyond recognition.

The flow of questioning might have prevented plaintiffs' attorneys from spending more time on likely the strongest argument detailed in their complaint: "[U]under the Constitution, it is Congress, not the Executive, that has the power to impose taxes or otherwise reach into the pockets of American businesses and institutions. . . . Accordingly, in the context of immigration fees, either *Congress* must have directly legislated the fees (as it has for many fees applicable to H-1B petitions) or *Congress* must have explicitly delegated that authority to the Executive (as it has in Section 1356(m), while imposing limitations on the delegated authority). There is no third option."

The judge did not ask the Justice Department's attorney Tiberius Davis many questions, but the DOJ attorney offered an expansive view of the president's authority under 1182(f) in response to one query, such that it raises questions about the scope of the Congressional delegation of authority under the statute. "I think it is very broad and doesn't have very many limits," he said. "But that's not to say there are none."

He said the limits include that it has to be temporary, but "the Supreme Court says he doesn't have to put a date on it . . . I do think it can't be forever." Analysts note that presidents could renew the suspension as often they like, meaning the suspension could be forever or at least last for decades. "I don't think if there's a specific prohibition in the INA [Immigration and Nationality Act that] it necessarily overcomes a specific prohibition [and] it obviously can't apply to citizens. It's only aliens, and it's only on entry," he added. "If somebody's just doing something completely within the United States," such as an international student changing to H-1B status, "that can't be touched by 1182(f)."

If employers do not succeed in striking down the H-1B fee in the AAU-Chamber of Commerce lawsuit, they will have additional opportunities in other immigration legal actions. The first lawsuit filed against the Trump administration on the $100,000 H-1B fee was *Global Nurse Force v. Trump,* in the U.S. District Court for the Northern District of California, which included as

plaintiffs a church, unions, a pastor, a professors' group and a nurse staffing company. Plaintiffs in that case have filed a motion for a preliminary injunction. On December 12, 20 states, including California, filed a complaint against the Trump administration and the $100,000 H-1B fee.

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