September 24, 2026

U.S. Citizenship and Immigration Services
DHS
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Comment on Notice of Proposed Rulemaking to establish a $103,265 fee on H-1B cap-subject petitions. CIS No. 2861-26; DHS Docket No. USCIS-2026-0298.

Submitted online via www.regulations.gov.

On behalf of the National Foundation for American Policy (NFAP), a nonpartisan policy research organization, I submit this comment to provide information on the proposed rule to establish a $103,265 fee on H-1B cap-subject petitions.[1]

Our analysis raises questions that DHS did not answer in the proposed rule.

1) Why did DHS overestimate the amount of revenue it would receive by $6.1 billion annually? NFAP calculates that the fee would raise not $8.8 billion ($8,777,525,000) but only $2.6 billion ($2,649,143,715). NFAP arrived at this estimate after accounting for the 91.2% reduction in consular Initial Form I-129 H-1B petitions when the Trump administration imposed a $100,000 fee in September 2025 (i.e., a real-world impact of a similar fee) and additional lost revenue from other H-1B fees due to the far lower number of registrations and initial H-1B petitions because of the $103,265 fee. Doesn't this far lower revenue estimate—70% lower than DHS claimed—show DHS failed to seriously or forthrightly consider the most significant impact of its proposed rule (i.e., the impact of the $103,265 fee on the number of H-1B petitions filed) and that the purpose of the proposed rule is not to raise revenue to fund immigration functions but to tax and restrict the hiring of H-1B visa holders? DHS not only did not disclose the 91.2% decline in its discussion of the proposed rule but relegated it to a

[1] Parts of this comment are adapted from Stuart Anderson, "DHS Immigration Rule Proposes A $103,265 Tax On New H-1B Visa Holders," *Forbes*, August 25, 2026, and Stuart Anderson, "DHS Omits Describing H-1B Data Undermining Premise Of Immigration Rule," *Forbes*, August 26, 2026.

technical appendix and said its experience with the $100,000 fee confirmed that high fees do not deter immigration filings, which is not a true statement.

2) According to the presidential proclamation issued Sept. 18, 2026, “The 2025 Proclamation went into effect on September 21, 2025, and, since then, the $100,000 payment has been made for over 700 petitions.” Why did DHS not include this information in its discussion of the proposed rule? How does DHS believe 85,000 individuals will find employers willing to spend $103,265 each for them to work in America in H-1B status when only approximately 700 workers found employers willing to pay $100,000 for them to enter and work in the United States in H-1B status? That number suggests a 91.2% reduction may overstate how many employers are willing to spend an additional $100,000 or more to secure an H-1B petition. Given the global economy, many employers may believe it is less risky and more economical to place a highly skilled worker overseas. Why did DHS fail to consider research by economist Britta Glennon, who has demonstrated that companies respond to H-1B restrictions by increasing their hiring in other countries?[2]

3) DHS’s discussion of its fee authority appears to lack a limiting principle. Does DHS believe it has the authority to impose a $10 million fee on every temporary work visa holder (H-1B, H-2B, L-1, O-1 and others) and every family- and employment-based immigrant seeking a green card, even though such a policy would nullify nearly every law passed by Congress related to legal immigration?

4) Why is DHS asking for permanent authority to impose a $103,265 H-1B fee based crucially on a study that alleges H-1B visa holders earn 16% less than comparable natives (and, therefore, will still save money even with a $100,000 or higher fee) when it knows that the Labor Department will soon publish a final rule that eliminates the alleged underpayment by requiring far higher salaries, thereby ending the incentive that DHS relies upon to argue that employers will pay a $103,265 fee?

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[2] Britta Glennon, “How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program,” University of Pennsylvania, Working Paper, February 2020. https://economics.nd.edu/assets/361162/bglennon_immigration_offshoring.pdf.

Summary of the Proposed Rule

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. Companies recruiting at U.S. universities find that international students make up about 75% to 80% of full-time graduate students in AI-related fields, such as computer and information sciences.[3]

According to a summary of the proposed rule, "The Department of Homeland Security (DHS) proposes to establish a $103,265 fee, payable at the time of filing, for all H-1B cap-subject petitions, including those eligible for the advanced degree exemption, which would be imposed in addition to all other applicable fees or payments. This fee would serve as a dedicated revenue mechanism to help recover a portion of the federal government's costs of administering the lawful immigration system, including activities carried out by DHS, the U.S. Department of Justice (DOJ), the U.S. Department of State (DOS), and the U.S. Department of Labor (DOL)."[4]

"Applying this fee to a projected annual volume of 85,000 H-1B cap-subject receipts yields projected annual revenue of approximately $8.8 billion," according to DHS.

The term "H-1B cap-subject" refers to U.S. immigration law setting a 65,000 annual limit on H-1B petitions plus a 20,000 exemption for foreign nationals with an advanced degree for a total of 85,000.

In September 2025, the Trump administration issued a presidential proclamation imposing a $100,000 fee on new H-1B visa holders entering the country. In June, a federal judge struck down that fee, calling it an intrusion on Congress's taxing

[3] *AI and H-1B Visas*, NFAP Policy Brief, National Foundation for American Policy, February 2026.

[4] The text of the proposed rule can be found at https://www.federalregister.gov/documents/2026/08/25/2026-17324/fee-for-certain-h-1b-petitions.

authority. On September 18, 2026, the president issued a new proclamation extending the 2025 proclamation an additional 12 months.[5]

The proposed rule imposing a $103,265 fee complements and, in practice, may replace the currently blocked $100,000 fee because they share the same goal: to restrict employers' ability to hire high-skilled foreign nationals in H-1B status.

DHS reported that after the federal government imposed a $100,000 fee in the Sept. 2025 proclamation, H-1B petitions filed outside the country dropped by 91.2%.

Table 1
Initial Employment Consular Processing Form I-129 H-1B Receipts, 245 Day Time Frame

Sept. 21, 2024 to May 24, 2025	Sept. 21, 2025 to May 24, 2026	Percent Decline
13,823	1,212	-91.2%

Source: DHS, USCIS, Office of Performance and Quality (OPQ) tabulation of ELIS databases, queried Jun. 2026. *September 21 onwards.

"From September 21st, 2025 through May 24th, 2026, USCIS received 91.2% fewer initial consular Form I-129 H-1B petitions relative to the same time frame in the previous year," according to the proposed rule's technical appendix. (The $100,000 fee imposed in September 2025 applied to new H-1B petitions filed outside the country because the presidential proclamation used authority designed to block the entry of individuals.)

The administration hopes the proposed rule will pass judicial scrutiny. As discussed below, the proposed rule has multiple problems.

Data Show a 91.2% Decline in H-1B Petitions, Making DHS Revenue Estimates Implausible

DHS justifies the proposed rule by claiming it will raise $8.8 billion. That means if analysis shows the rule will likely raise much less than that amount, it demonstrates that DHS failed to consider the problem caused by the high H-1B fee

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[5] *Restriction on Entry of Certain Nonimmigrants*, Proclamation, White House, September 18, 2026. https://www.whitehouse.gov/presidential-actions/2026/09/restriction-on-entry-of-certain-nonimmigrant-workers-faad/.

and that the rule's purpose is to restrict immigration (without Congressional approval), not to fund immigration functions.

NFAP calculates that the $103,265 fee would raise not $8.8 billion but only $2.6 billion, 70% less than DHS claimed. NFAP arrived at this estimate after accounting for the 91.2% reduction in consular Initial Form I-129 H-1B petitions compared to the same period in the previous year after the Trump administration imposed a $100,000 fee in September 2025 and the additional revenue lost from other H-1B-related fees due to the far lower number of registrations and initial H-1B petitions caused by the $103,265 fee.

Table 2
H-1B Petitions and Revenue Raised in Response to the $103,265 Fee

Policy with $103,265 H-1B Fee	**Number of H-1B Petitions**	**Estimated Amount of Revenue Raised**	**Difference Between DHS Revenue Assumption and Expected Actual Revenue Raised**
DHS Revenue Assumption in Proposed Rule	85,000	$8,777,525,000	________
NFAP Estimate of Actual DHS Revenue	30,270	$2,649,143,715	-$6,128,381,285

Source: DHS, National Foundation for American Policy. NFAP arrived at this estimate after accounting for the 91.2% reduction in consular Initial Form I-129 H-1B petitions when the Trump administration imposed a $100,000 fee in September 2025 and additional lost revenue from other H-1B fees due to the far lower number of registrations and initial H-1B petitions caused by the $103,265 fee.

First, NFAP used DHS's results on the drop in filings to calculate what that means for the proposed rule. NFAP found that in the FY 2026 cap season, there were 343,981 eligible registrations, according to USCIS.[6] *A reduction of 91.2% would leave only 30,270 H-1B cap-subject petitions, or 54,730 fewer than the 85,000 H-*

[6] See H-1B Electronic Registration Process, USCIS website, last reviewed and updated 7/17/26. https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process.

1B annual limit: 30,270 x $103,265 = $3,125,831,550. (DHS asserts in the proposed rule that 85,000 H-1B cap-subject petitions will be received despite the higher fee.)

Second, NFAP found DHS also failed to calculate that receiving fewer cap-subject H-1B petitions and registrations would reduce revenue by $476,687,835 from various immigration fees, including the asylum fee, the anti-fraud fee and others. NFAP estimates that DHS is likely to receive $2,649,143,715 in revenue after combining the possible revenue gained from the $103,265 fee with the revenue lost from fewer filings related to other immigration fees.

A central premise of the proposed rule is that DHS can increase the cost of new H-1B petitions by $103,265 and raise $8.8 billion in revenue annually because employers will not significantly reduce their filings of new H-1B petitions. In the rule, DHS is explicit in assuming that USCIS will receive at least 85,000 registrations or petitions even with the high fee: "However, the success of the USCIS fee model and this rulemaking in generating the necessary revenue depends on the filing volumes of cap-subject H-1B petitions not falling short of those projected herein."

Important data, which DHS relegates to a technical appendix, show the premise is fundamentally flawed: there was a 91.2% reduction in consular Initial Form I-129 H-1B petitions compared to the previous year after the Trump administration imposed a $100,000 fee in September 2025.

A fee increase of this magnitude would significantly affect employer behavior and reduce the number of H-1B petitions.

Economic research and centuries of real-world experience show that the higher the price of a good or service, the less likely an individual or company is to buy it. DHS provides direct evidence that happened when it substantially raised the cost of hiring H-1B visa holders in September 2025.

The NFAP revenue estimate is conservative.

First, the presidential proclamation issued Sept. 18, 2026, states, "The 2025 Proclamation went into effect on September 21, 2025, and, since then, the $100,000 payment has been made for over 700 petitions."[7] That low number

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[7] *Restriction on Entry of Certain Nonimmigrants*, Proclamation, White House, September 18, 2026.

(“over 700 petitions”) indicates 30,270 petitions may be far too high an estimate of the individuals able to find employers willing to spend $103,265 to hire them to work in the United States in H-1B status.

Second, the Trump administration is proposing or implementing several policies that will further reduce the demand for H-1B petitions by employers and potential visa holders. These include:

- A Labor Department rule to substantially increase the prevailing wage required for H-1B visa holders and employment-based green card applicants.
- An upcoming DHS rule to impose new restrictions on the H-1B visa category.
- A rule to eliminate the ability of many spouses of H-1B visa holders to work in the United States.
- A proposed rule to eliminate the 60-day grace period for H-1B visa holders who lose their jobs.
- A final rule to restrict international students and J-1 visa holders to fixed four-year periods. A federal district judge recently postponed the final rule’s effective date.
- A rule on the regulatory agenda would impose a significant fee on Optional Practical Training for international students.

Implementing these and other policies will discourage employers from hiring high-skilled foreign nationals in the United States and create practical obstacles for international students and others seeking to work in the United States in H-1B status.

Second, NFAP did not calculate lost revenue from extensions of stay with the same employer, amended petitions with the same employer and changes of employer, all of which would be far smaller due to fewer H-1B petitions for initial employment approved annually. That could result in several hundred million dollars in lost revenue for DHS in future years. In sum, DHS failed to include or consider that fewer H-1B visa holders will be able to extend their stay in the United States if fewer receive initial H-1B petitions because of the $103,265 fee.

Third, the presidential proclamation issued on September 18, 2026, states, “There has also been a large reduction in consular processing requests, which are used to bring workers into the United States, noting a nearly 97 percent decrease from the FY 2025 to FY 2027 cap seasons.” That is another indication that the 91.2%

reduction from FY 2026 to FY 2027 may underestimate the impact of the new proposed fee.

DHS Was Not Forthcoming In Its Proposed Rule

DHS was not forthcoming in its description of the proposed rule, failing to mention the negative impact of the Sept. 2025 proclamation and the $100,000 fee on filings for new H-1B petitions at U.S. consulates. It also did not mention that, over 12 months, only about 700 individuals had employers that paid the $100,000 fee.

DHS did not write in its Federal Register discussion of the rule that initial consular Form I-129 H-1B petitions fell by 91.2% over the same timeframe as the previous year. Instead, in the Federal Register notice on the proposed rule, it only stated: "USCIS also evaluated information on initial H-1B registrations from cap-subject petitioners for cap FY 2027. These analyses are detailed in a separate Technical Appendix published to the proposed rule's docket. While the technical appendix discusses how registrations and consular processing receipts have responded to the $100,000 proclamation payment and prior fee increases, as USCIS has yet to observe the full current fiscal year behavior of H-1B petitioners, DHS continues to analyze FY 2027 cap-subject petitions."

No one reading that paragraph would know that the technical appendix reveals that "From September 21st, 2025 through May 24th, 2026, USCIS received 91.2% fewer initial consular Form I-129 H-1B petitions relative to the same time frame in the previous year." In other words, after the Trump administration imposed a $100,000 fee on new H-1B petitions, filings of new H-1B petitions plummeted at U.S. consulates by over 91% in one year.

DHS includes a misleading statement that downplays the revelation: "The implementation of additional fees or payments *modified* the receipt submission behavior of cap-exempt H-1B petitioners." (Emphasis added.)

DHS also did not discuss in the Fee Elasticity section of the rule that it had compiled data on 30 individual companies that also undermined the premise of the proposed rule. Table A-6 in the technical appendix shows that after requiring the $100,000 fee in Sept. 2025, filings at consulates by 13 of the 30 companies dropped by 85% or more between the FY 2026 H-1B cap registration and the FY 2027 H-1B cap registration.

Given that the proposed rule was published five months after the FY 2027 H-1B initial registration period ended, it is unclear how DHS could write in the proposed rule, "DHS continues to analyze FY 2027 cap-subject petitions." That phrasing appeared to replace a description of the dramatic declines in filings that undermine the rule's central premise: raising revenue.

DHS Misleading In Discussion of Fee Elasticity

DHS was also misleading in its discussion of fee elasticity, implying that high fees do not reduce immigration filings.

In its discussion of the proposed rule, DHS cites a January 2024 Regulatory Impact Analysis of fee changes on I-129, I-140, and N-400 forms. DHS links to a spreadsheet for its impact analysis, but it shows what many analysts would consider peculiar results: higher fees lead to more applications.

NFAP found DHS's estimated effects in the 2024 report it cites to support the new $103,265 H-1B tax go in the wrong direction. *The DHS regression suggests that increasing fees leads to increased applications*:

- Every $1 increase in I-129 fees leads to 1,031 more applications a year.

- Every $1 increase in I-140 fees leads to 99 more applications a year.

- Using four different models, every $1 increase in N-400 fees leads to between 219 and 638 more applications a year.

"Fee elasticity," as used by DHS, measures how sensitive applications are to fee increases. Mark Regets, a labor economist and NFAP senior fellow, raises two issues with how DHS discusses fee elasticity in the rule. "It's not responsible to look at small changes in fees when trying to predict the effects of large fee changes, such as introducing a $103,265 fee that is more than 100 times larger than the small fee changes DHS examined and cites in the rule. It's invalid to use the estimate that way." It is like a medical study concluding that drinking one can of soda a day is fine, so drinking 100 cans of soda daily is likely also fine.

DHS cites an analysis of a 2024 fee increase of less than $1,000 on H-1B petitions, which likely has little relevance to measuring the impact of a fee increase that is 100 times larger. DHS provides only limited information on its analysis of the effect of fee changes on H-1B requests from FY 2021 to FY 2025.

In the proposed rule, DHS stated that the fee elasticity of applications in response to changes in H-1B fees between FY 2021 and FY 2025 was "less than one." That provides little practical information. After reviewing the technical appendix, Regets points out that even the smallest estimate of the impact of raising fees indicates that nearly doubling fees would reduce applications by 62%, a significant amount. He notes that a $103,265 fee is far more than double. DHS failed to acknowledge this in the Fee Elasticity section in the notice of proposed rulemaking.

Proposed Rule Designed To Restrict H-1B Petitions, Not Fund Immigration Functions

The administration is attempting to justify the new rule under a novel theory: DHS has the authority to tax new H-1B visa holders to fund immigration services in several government agencies. In the Sept. 2025 presidential proclamation, the Trump administration said the $100,000 H-1B fee was intended to restrict the admission of H-1B visa holders.

Outside of the proposed rule, the administration reiterates that immigration restriction was and remains the purpose of the $100,000 fee, according to the presidential proclamation issued on September 18, 2026: "Since the effective date of the 2025 Proclamation and subsequent promulgation of the DHS final rule, there have been several measurable impacts on the H-1B program, including a significant reduction in H-1B registrations filed by large IT outsourcing firms," according to the proclamation. "There has also been a large reduction in consular processing requests, which are used to bring workers into the United States, noting a nearly 97% decrease from the FY 2025 to FY 2027 cap seasons."[8]

However, DHS claims in its proposed rule that a fee nearly identical in several ways "is designed . . . to recover a portion of the full costs of providing immigration adjudication and naturalization services incurred by multiple Federal agencies."

Vice President JD Vance made clear that he believes the proposed rule serves the same purpose as the Sept. 2025 proclamation: to prevent high-skilled foreign nationals from getting jobs in the United States. In response to an article about the proposed rule, Vance posted on X.com: "If an American corporation needs workers, it should hire and train Americans."

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[8] *Restriction on Entry of Certain Nonimmigrants*, Proclamation, White House, September 18, 2026.

An analogy would be a teenage boy whose parents reject his request to play video games at his friend's house on a school night, so he changes his reason for going to his friend's house to "the need to study for a big test."

DHS Ignores A DOL Proposed Rule It Says Will Raise H-1B Salaries Substantially

DHS attempts to justify the proposed rule by citing a paper Harvard University economist George Borjas, who served on the Trump administration's Council of Economic Advisers, wrote and published in February 2026. DHS cites the paper, which states, "On average, H-1B workers earn 16% less than comparable natives, suggesting that firms may be willing to pay a one-time fee to obtain the visa." Borjas and DHS assert that because his findings show companies save money on H-1B salaries, they should be willing to pay a $100,000 fee to petition for an H-1B visa holder.

However, the Department of Labor has proposed a rule that will require far higher salaries than the alleged 16% gap that Borjas and DHS cite to justify the $100,000 fee. After altering the formula to compute prevailing wage salaries at various levels, DOL reports that its proposed rule will raise the required salary for H-1B visa holders and employment-based immigrants by an average of 33% for Level I, 24% for Level II, 21% for Level III and 22% for Level IV.[9]

In sum, DHS is asking for permanent authority to impose a $103,265 H-1B fee based crucially on a study that alleges H-1B visa holders earn 16% less than comparable natives, even though the Labor Department will soon publish a final rule that eliminates the alleged underpayment, thereby ending the incentive that DHS relies upon to argue that employers will pay a $103,265 fee.

Economists Find Study DHS Relies Upon Flawed

A separate but related issue is that the Borjas study DHS relies upon is flawed. Many studies have found that H-1B visa holders are paid the same as or more than comparable U.S. professionals.

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[9] *Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States*, A Proposed Rule by the Employment and Training Administration, U.S. Department of Labor, March 27, 2026. https://www.federalregister.gov/documents/2026/03/27/2026-06017/improving-wage-protections-for-the-temporary-and-permanent-employment-of-certain-foreign-nationals.

The findings in the Borjas paper are considered implausible for several reasons. A National Foundation for American Policy analysis found the first red flag in Table 4. The table asserts that after controlling for age, education and geography, U.S.-born software developers earn $39,300 more than H-1B software developers ($146,900 vs. $107,600).

If companies routinely underpaid H-1B visa holders by almost $40,000 a year, as the Borjas paper implies, DOL should find potentially thousands of willful violations annually. That is not the case. The Department of Labor identified only two new willful violators during the first year of the Trump administration as of October 2025. (See the complaint filed in *Global Nurse Force v. Trump*.)

A second red flag appears in how the Borjas paper measures compensation. The data source Borjas uses for H-1B salaries includes only the starting salary at the firm. In contrast, the Census data the paper uses for U.S.-born workers includes not only salary but also bonuses, commissions and even earnings from second or third jobs.

A paper by George Mason University economist Michael Clemens concluded H-1B visa holders earn, on average, 6% more than comparable U.S.-born professionals "when using equivalent wage concepts and comparing workers of the same age, gender, education, and tenure, in the same occupation and local labor market." He reexamined the data and concluded that the Borjas "estimate suffers from substantial bias." Clemens writes, "By closely replicating and then revising his analysis, I trace the entire discrepancy to four choices, each of which inflates his estimate."[10]

First, Clemens finds "an undisclosed and erroneous imputation of missing education levels for more than a third of H-1B workers in FY2023 and 2024."

Second, he found Borjas compared "four years of H-1B data (FY2021–2024) against a single year of U.S. native data (2023), for no stated reason, rather than straightforwardly comparing within the same years."

Third, Borjas made a "unique decision to define local labor markets as Census Public Use Microdata Areas—units so small that (e.g.) metro New York City alone

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[10] Michael Clemens, *Immigrant-Native Wage Gaps and Immigration Tariffs: Examining the Case for an H-1B Visa Tax*, Rockwool Foundation, Berlin, March 13, 2026.

is split into 153 unconnected 'markets,' with H-1B workers assumed to compete only with natives whose residence lies in the handful of narrow neighborhoods where H-1B worksites are concentrated." Clemens notes that this method ignores U.S.-born workers who commute, even for short distances.

Fourth, Borjas fails to "consider that comparable U.S. natives have over six years of tenure on average, and commensurately higher wages for this reason alone . . . but almost no new H-1B employees have such tenure at the sponsoring firm." NFAP noted, as did Clemens, that most H-1B visa holders have little or no tenure with the employer that petitions them for H-1B status.

Clemens writes that while the point estimate of H-1B visa holders earning 6% more than comparable U.S.-born professionals contains "uncertainty," he does not find evidence that admits "a wage penalty of any magnitude" for H-1Bs.

A paper by Jiaxin He and Adam Ozimek for the Economic Innovation Group reaches conclusions similar to Clemens'. He and Ozimek conclude that the findings in the Borjas paper "result from substantial data errors."[11]

Proposed Rule Ignores the Likely Impact of Employers and Economic Benefits of Admitting H-1B Visa Holders

Trump officials ignore research showing employers have responded to past H-1B restrictions by increasing their hiring abroad. Research by Britta Glennon, an assistant professor at the Wharton School of Business at the University of Pennsylvania, concluded that new immigration restrictions on H-1B visas will push jobs out of the United States: "[A]ny policies that are motivated by concerns about the loss of native jobs should consider that policies aimed at reducing immigration have the unintended consequence of encouraging firms to offshore jobs abroad."[12]

A study by economists Giovanni Peri, Kevin Shih, Chad Sparber and Angie Marek Zeitlin found that denying entry to H-1B visa holders due to the H-1B annual limits inhibited job growth for U.S.-born professionals. "The number of jobs for U.S.-born workers in computer-related industries would have grown at least 55%

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[11] Jiaxin He and Adam Ozimek, *The Flawed Paper Behind Trump's $100,000 H-1B Fee*, Economic Innovation Group, February 21, 2026.
[12] Britta Glennon.

faster between 2005-2006 and 2009-2010, if not for the denial of so many applications in the recent H-1B visa lotteries," concluded the economists.[13]

A National Foundation for American Policy study by University of North Florida economist Madeline Zavodny found, "H-1B visa holders do not adversely affect U.S. workers. On the contrary, the evidence points to the presence of H-1B visa holders being associated with lower unemployment rates and faster earnings growth among college graduates, including recent college graduates."[14]

The DHS proposed rule does not attempt to quantify the significant damage it will likely inflict on the U.S. economy and on American companies' ability to innovate and compete in global markets. "Immigrants have founded or cofounded 59% (455 of 775) of America's privately held startup companies valued at $1 billion or more," according to a National Foundation for American Policy analysis. The collective value of the 455 immigrant-founded billion-dollar companies is $5 trillion, larger than the total market value of companies listed on stock markets in all but 7 countries.[15]

A large proportion of the immigrant entrepreneurs in the study gained H-1B status and later an employment-based green card before launching their companies.

No Limiting Principle for Amount of Fee, Could Be Used To End All Immigration And Nullify All Immigration Laws Passed by Congress

There is no limiting principle on the size of the fee, which means DHS believes, in theory, that it could attach a fee of any size to any immigration visa category and it would be legal. Based on the reasoning in the proposed rule, if it stands, DHS argues it could set a fee of $1 million or $10 million on applications in every immigration category, temporary or permanent, to raise revenue and thereby enact a moratorium on all forms of immigration to the United States. That would nullify nearly all laws Congress has passed related to legal immigration.

[13] Giovanni Peri, Kevin Shih, Chad Sparber and Angie Marek Zeitlin, *Closing Economic Windows: How H-1B Denials Cost U.S.-Born Tech Workers Jobs and Wages During the Great Recession*, New American Economy, June 4, 2014.
[14] Madeline Zavodny, *The Impact of H-1B Visa Holders on the U.S. Workforce*, NFAP Policy Brief, National Foundation for American Policy, May 2020.
[15] Stuart Anderson, *Immigrants and U.S. Billion-Dollar Companies*, NFAP Policy Brief, National Foundation for American Policy, June 2026.

DHS also faces other problems with the authority it claims. "The new fee is allegedly authorized by Section 1356(m)," said immigration attorney Jon Wasden. That section states, "That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected."[16]

"Two problems here for the government," said Wasden. "The massive increase is wholly detached from any fee analysis or explanation of cost recovery. The other problem is that from recent FOIAs we have performed, USCIS is sitting on a mountain of unused cash from fees paid for immigration processing. The agency is already overly funded, and this increased fee cannot be characterized as a recoupment."[17]

"Changing the legal authority does not eliminate the underlying challenge," said Jeff Robins, a senior counsel at BAL. "Opponents will argue that this still looks less like paying for an H-1B adjudication and more like using a tax to finance broader government operations. Combined with ongoing USCIS backlogs and questions about how existing fee revenue is being used, that argument is likely to feature prominently both in public comments and in any lawsuit challenging a final rule."[18]

In June, U.S. District Court Judge Leo T. Sorokin, in the District of Massachusetts, agreed with a coalition of 20 states, led by California Attorney General Rob Bonta, and supported the plaintiffs' motion for summary judgment against the administration's $100,000 fee imposed on the entry of new H-1B visa holders. He declared, "The Policy implementing the Proclamation is declared unlawful and is vacated in its entirety."

Judge Sorokin said the case raised significant constitutional separation-of-powers issues. "Plaintiffs allege both that the Policy exceeds the scope of the President's authority under the Immigration and Nationality Act, and that it encroaches upon Congress's exclusive power to tax under the Constitution," he wrote. "Thus,

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[16] See Stuart Anderson, "DHS Immigration Rule Proposes A $103,265 Tax On New H-1B Visa Holders," *Forbes*, August 25, 2026.
[17] Ibid.
[18] Ibid.

Plaintiffs do not simply claim that the Executive Branch failed to comply with the terms of the INA. Their allegations implicate weighty constitutional concerns regarding the balance of power between the executive and legislative branches."

The judge said the plaintiffs' argument that the president lacked the power to impose an additional $100,000 payment on H-1B applications intruded on Congress's taxing power fell "plainly" within the scope of judicial review. According to the judge, "The Supreme Court's reasoning in this pair of precedents supports a finding that the $100,000 payment requirement amounts to a tax, not a penalty." The two Supreme Court precedents are *Bailey v. Drexel Furniture Company* and *National Federation of Independent Business v. Sebelius*.

DHS has been selective about justifying fees based on an ability to pay. Under a proposed rule published in June 2026, the fee to apply online for naturalization will increase by 75%, from $710 to $1,280, and the fee for paper filing will increase by 80%, from $760 to $1,330. That proposed rule ends hardship waivers and reduced fees for low-income applicants.

Analysts point out that the proposed rule justifies the tax, in part, by claiming it is needed to provide more money to Immigration and Customs Enforcement, even though Congress appropriated approximately $75 billion for ICE in 2025 and $39 billion in 2026.

DHS attempted to minimize the controversial justification for its proposed rule: "DHS recognizes that the other agency costs that are included in this rule and used to establish the fee proposed in this rule are new. DHS also recognizes that DOS and DOL have not independently used the authority in section 286(m) of the INA, 8 U.S.C. 1356(m), to establish fees to cover the costs they incur for administering adjudication services."

The justification: "However, in 2024, for the first time, DHS established a new Asylum Program Fee of $600 to be paid to fund the asylum program by any petitioner filing a *Petition for a Nonimmigrant Worker,* Form I-129, a *Petition for a CNMI-Only Nonimmigrant Transitional Worker,* Form I-129CW, or an *Immigrant Petition for Alien Worker,* Form I-140. *See* 8 CFR 106.2(c)(13); 2024 Final Rule. Before that fee, DHS had never directly transferred the costs of one program to another." (Section 1356(m) of the Immigration and Nationality Act lists "including the costs of similar services provided without charge to asylum applicants," but spreading fee money throughout the federal government is not mentioned in the INA.)

The new $103,265 tax would not replace other employer costs. "The proposed fee, when required, would be in addition to any other applicable fees or payments, including any separate payment obligation required under a Presidential Proclamation," notes the proposed rule's executive summary. "Accordingly, to the extent a petitioner is subject both to a proclamation-required payment and to the additional H-1B fee proposed in this rule, the petitioner would be required to pay both amounts."

Sincerely,

[Signature Redacted]

Stuart Anderson
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National Foundation for American Policy