ORIGINAL

No. 25-968

In the Supreme Court of the United States

KISHORE KUMAR KAVURU,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Tenth day of November, MMXXV

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit erred in denying a certificate of appealability (COA) by holding that no jurist of reason would find the petitioner's constitutional claim debatable, when another panel of the same court had found the identical constitutional claim "debatable among jurists of reason" in *United States* v. *Prasad*, No. 23-1968 (CA9 Aug. 26, 2024).

2. Whether the Ninth Circuit violated the mandate rule and equal protection principles by foreclosing appellate review to Mr. Kavuru while permitting similarly situated defendants, Mr. Prasad and Ms. Patnaik, to proceed with their materially indistinguishable appeals raising the exact constitutional materiality question under 18 U.S.C. § 1546(a). *See United States* v. *Patnaik*, 125 F.4th 1223 (CA9 2025).

RELATED PROCEEDINGS

United States District Court (N.D. Cal.):

United States of America v. *Kishore Kumar Kavuru*, No. 5:18-cr-00515-EJD (Nov. 23, 2021) (convicted)

United States of America v. *Kishore Kumar Kavuru*, No. 5:24-cv-01735-EJD (Dec. 3, 2024) (habeas corpus petition denied)

United States Court of Appeals (CA9):

United States of America v. *Kishore Kumar Kavuru,* No. 24-7568 (Jun. 17, 2025) (order denying certificate of appealability)

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The Ninth Circuit's order denying a certificate of appealability is unpublished. The order is reproduced in the Appendix at App.1.

JURISDICTION

The Ninth Circuit filed the *Patnaik* mandate on February 27, 2025. The Ninth Circuit denied Mr. Kavuru's request for a COA on June 17, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. amend. V
28 U.S.C. § 2253(c)(2)
28 U.S.C. § 2255
18 U.S.C. § 1546(a)

STATEMENT OF THE CASE

In 2018, Mr. Kavuru was charged with violating the fourth paragraph of 18 U.S.C. §1546(a) by making false statements with respect to a "material fact", that being the existence of "job offers" in the H-1B immigration application forms "required by the immigration laws and regulations prescribed thereunder". On November 23, 2021, he pled guilty, under protest, and was subsequently convicted and sentenced. His case took a turn in 2021, when six federal courts, mentioned *infra*, found

that the existence (or non-existence) of jobs was not a requirement at the time H-1B petitions are filed.

This case further raises a clear split within the Ninth Circuit on the same constitutional question presented under materially indistinguishable facts. Mr. Kavuru's request for a certificate of appealability was denied on the ground that he had not shown that "jurists of reason would find it debatable whether the [28 U.S.C. § 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." But in *Prasad*, the COA panel of the same court found that the identical constitutional claim concerning "materiality" in H-1B immigration under 18 U.S.C. § 1546(a) was not only debatable among jurists of reason, but warranted full appellate consideration. *See* App.2. The Ninth Circuit's decision disregarding this determination violates principles of intra-circuit consistency and equal treatment on a constitutional claim that is debatable.

Other circuits, including courts within the Northern District of California, have already addressed and resolved the substantive legal question at the heart of Mr. Kavuru's indictment—specifically, the issue of materiality—in Mr. Kavuru's favor. *See ITServe Alliance, Inc.* v. *Cissna*, No. 18-2350 (RMC), 443 F. Supp. 3d 14, 20 (2020); *Thatikonda* v. *USCIS*, No. 19-685 (RC) (2020); *Serenity Info Tech, Inc.* v. *Cuccinelli*, 461 F.Supp.3d 1271, 1288 (2020); *Stellar IT Solutions, Inc.* v. *USCIS*, 18-2015 (RC), D.C. Court (2020); *US*

Chamber of Commerce v. *US Dept. of Homeland Security, et al.*, 504 F.Supp.3d 1077, 1087-1095 (N.D. Cal. 2020); *United Sstates* v. *Patnaik*, No. 22-cr-00014-BLF (N.D. Cal. 2023). By 2023, it was established beyond a shadow of doubt that a specific, bona fide job offer is not and was never a requirement in an H-1B application for employment in the U.S., nor are they "material fact[s]" as required by the statute. If Mr. Kavuru's case is not corrected, it threatens to create a serious hurdle to establishing a uniform circuit rule on this question—especially given that no conflict exists among other courts nationwide regarding the immateriality of a specific job offer in H-1B visa applications.

REASONS FOR GRANTING THE PETITION

A. The Ninth Circuit erred in denying a COA after another panel found the Identical Issue "debatable".

The Ninth Circuit denied Mr. Kavuru's request for a COA stating:

> "Appellant has not shown that 'jurists of reason would find it debatable whether the [28 U.S.C. § 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'"

But this conclusion cannot be reconciled with the Ninth Circuit's opinion in *Prasad*, where it granted a COA on August 26, 2024 on the exact same legal issue:

> "Whether a false statement about the existence of an H-1B job assignment is 'material' under 18 U.S.C. § 1546(a) is a federal constitutional claim that is 'debatable among jurists of reason.'"

B. The Ninth Circuit violated Equal Protection and the Rule of Consistency by Treating Mr. Kavuru Differently from Similarly Situated Defendants within the same Circuit

Both Mr. Prasad and Ms. Patnaik were allowed to proceed to re-litigate their cases, despite raising the same legal and factual question as Mr. Kavuru: whether a misrepresentation concerning a job qualifies as material under § 1546(a). In *Patnaik*, 125 F.4th at 1227, the Ninth Circuit remanded for jury determination, explicitly refusing to resolve the issue as a matter of law.

"A jury could find Defendants' alleged false statements material."

The Ninth Circuit filed the *Patnaik* mandate on February 27, 2025. The *Patnaik* mandate is deferential. The Ninth Circuit has reaffirmed that "[t]he opinion by this court at the time of rendering its decree may be consulted to ascertain what was

intended by [our] mandate.". *Alaska Dept. of Fish & Game* v. *Federal Subsistence Board*, 139 F.4th 773, 788 (CA9 2025)

When one panel of the Ninth Circuit grants a COA on a particular legal issue, a subsequent panel may not ignore or contradict that determination in a materially indistinguishable case. *See* the mandate rule described in *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 256 (1895) ("it is important, in determining what was heard and decided by the Circuit Court in the first instance [...], to bear in mind the settled practice of courts of chancery, recognized and regulated by the rules established by this court for the Circuit Courts sitting in equity.")

The panel in this case did exactly what *Sanford Fork* and *Alaska* prohibit: it examined and contradicted the outcome of a prior panel without legal basis. That error alone warrants reversal. By contrast, Mr. Kavuru was denied even a hearing on the same issue. This is not merely inconsistent. It reflects a troubling inconsistency that undermines principles of fairness and judicial integrity. As this Court has said, "disparate treatment of similarly situated litigants implicates basic fairness and undermines the integrity of the judicial process." *Griffin* v. *Illinois*, 351 U.S. 12, 17 (1956).

C. The 2024 DHS Final Rule Confirms a Nationwide Consensus That Undermines the Basis for Kavuru's Conviction

Further strengthening the case for certiorari, the U.S. Department of Homeland Security (DHS) has now codified the consensus reflected in multiple judicial decisions. In its 2024 Final Rule titled *"Improving the H–1B Registration Selection Process and Program Integrity"*, DHS explicitly rejected the premise that a preidentified job offer or detailed end-client assignment is necessary for H-1B approval. DHS made it clear that:

> "DHS does not believe that requesting additional information about the beneficiary, the petitioner, or the underlying job offer or position, is necessary to effectively administer the registration system."

This administrative stance, now finalized after years of litigation and public comment, confirms what Congress and courts across the country have already held: that the representations at issue in Mr. Kavuru's case are not "material" under 18 U.S.C. § 1546(a). Leaving Mr. Kavuru's conviction undisturbed in the face of this formal rulemaking would create an irreconcilable split not only within the Ninth Circuit, but also between the judiciary and the agency empowered by Congress to interpret and enforce the INA.

D. Congress resolved Mr. Kavuru's Constitutional Claim long ago in his Favor

The statutory text of 18 U.S.C. § 1546(a) expressly incorporates "immigration laws or regulations prescribed thereunder.". One such regulation, 20 C.F.R. 655.731(c)(6)(i), that the statutory text of § 1546(a) incorporates, states that:

> **"For purposes of this paragraph (c)(6), the H-1B nonimmigrant is considered to "enter into employment" when he/she first makes him/herself available for work or otherwise comes under the control of the employer, such as by waiting for an assignment, reporting for orientation or training, going to an interview or meeting with a customer, or studying for a licensing examination, and includes all activities thereafter."**

20 C.F.R. 655.731 was introduced on December 20, 2000 to implement changes made to the Immigration and Nationality Act (INA) by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). 20 CFR 655.731(c)(6)(i) went into effect on January 19, 2001, years before Mr. Kavuru was charged. See 80218 Federal Register / Vol. 65, No. 245 / Wednesday, December 20, 2000 / Rules and Regulation.

Thus, years before Mr. Kavuru was charged, Congress had already resolved that H-1B employers may lawfully hire nonimmigrant workers even if no actual projects exist at the moment of petitioning. As the Supreme Court noted recently: "We must respect the formula that Congress prescribed". *Advocate Christ Medical Center* v. *Kennedy*, 605 U.S. ____, slip op. at 16 (2025).

Even before Mr. Kavuru's § 2255 motion was denied, the Ninth Circuit recognized this legislative framework and referred to 20 C.F.R 655.731(c) to explain the regulations that the H-1B employers are bound by. *Persian Broadcast Service Global, Inc.* v. *Walsh*, 75 F. 4th 1108, 1112 (CA9 2023). And in *Prasad*, the Ninth Circuit confirmed that "misrepresentation that H-1B visa beneficiaries had "actual existing work projects" is not a material fact under 18 U.S.C. § 1546(a)", is "one federal constitutional claim debatable among jurists of reason". Yet in Mr. Kavuru's case, the Ninth Circuit rejected these very developments, overlooking controlling regulations and its own precedents. That error not only undermines statutory clarity but denies equal application of the law. This Court should correct that mistake.

E. The congressional acts INA and IMMACT that created and ultimately launched the H-1B visa provide in its text that all requirements, except qualifications are prospective.

With respect to H classification visas, Section 203(a)(3) of the Immigration and Nationality Act of 1965 (INA), together with Section 121(b)(2)(A) of the Immigration Act of 1990 (IMMACT) that amended the INA, provides that "visas shall be made available to qualified immigrants who are members of the professions holding advanced degrees in the sciences, benefiting prospectively the national economy of the United States" (simplified) [1]. The use of the term "prospectively" reinforces Mr. Kavuru's position that neither an existing job nor a current project is required for such visas to be made available. That intent is coded in 20 C.F.R. § 655.731(c)(6)(i), that expressly permits an H-1B nonimmigrant to "enter into employment" by seeking qualifying assignments post-arrival by "going to an interview or meeting with a customer", as covered supra.

CONCLUSION

The Ninth Circuit's refusal to grant a COA on a constitutional claim currently deemed "debatable" by another panel of the same court creates an intra-circuit conflict warranting this Court's review. The Ninth Circuit's denial of a COA in Mr. Kavuru's case

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[1] *See* PUBLIC LAW 89-236-OCT. 3, 1965, 79 STAT. 913 and PUBLIC LAW 101-649-NOV. 29, 1990, 104 STAT. 4988

flatly contradicts its own precedents, violates the mandate rule, and deprives Mr. Kavuru of equal protection and due process. Moreover, the court's inconsistent treatment of identically situated defendants like Mr. Prasad and Ms. Patnaik reflects a breakdown in the rule of law and injects uncertainty into a settled area of immigration and criminal law. If this inequity is not corrected, it will create confusion across circuits and compromise the integrity of the judicial process.

Moreover, as the Supreme Court emphasized in *Camreta* v. *Greene*, 563 U.S. 692, 709 (2011), "district court decisions—unlike those from the courts of appeals—do not necessarily settle constitutional standards or prevent repeated claims." Mr. Kavuru's denial of his 28 U.S.C. § 2255 motion in the district court does not settle the constitutional question at issue, whether the existence or non-existence of a specific job offer in an H-1B petition constitutes a material fact under § 1546(a) to preclude appellate consideration.

Certiorari is warranted to resolve this conflict—both intra-circuit and with the broader national consensus—and to ensure that appellate justice is administered uniformly across all jurisdictions. If this issue is not resolved in Mr. Kavuru's favor, or if certiorari is not granted, it will mark a significant departure from the established national consensus and risk creating a fragmented and unpredictable legal landscape in an area of law that has otherwise been settled by Congress itself. It

will also result in a grave and manifest miscarriage of justice for Mr. Kavuru.

The relief Mr. Kavuru seeks is modest yet vital: he is not requesting reversal of his conviction or judgment at this stage, but merely the opportunity to pursue a collateral appeal. The threshold and standard for granting a certificate of appealability is not whether a petitioner is likely to prevail, but whether "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." *Slack* v. *McDaniel*, 529 U.S. 473, 484 (2000). That very constitutional claim concerning the materiality element of 18 U.S.C. § 1546(a) has already been deemed "debatable" by another panel of the Ninth Circuit, as well as by multiple federal courts and by DHS itself in its 2024 Final Rule. Based on the foregoing, Mr. Kavuru has made a strong showing that he is likely to succeed on the merits. However, he presently seeks only the basic appellate process that has already been afforded to similarly situated co-defendants, including Mr. Prasad and Ms. Patnaik.

Accordingly, Mr. Kavuru respectfully requests that this Court grant certiorari, reverse the Ninth Circuit's June 17, 2025 denial of his certificate of appealability, or remand the case so that he may pursue his appeal in a manner consistent with the treatment of other defendants who have raised the same constitutional claim and succeeded in relitigating their cases.

The Court may also grant any further relief it deems just and proper.

Respectfully Submitted

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Dated: November 10, 2025 *Pro Se Petitioner*