No. _____

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

APPENDIX

Kishore Kumar Kavuru
921 E Cardinal Dr
Sunnyvale, CA 94087
(408) 780-4445
kishorek0399@gmail.com

Pro Se Petitioner

Tenth day of November, MMXXV

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APPENDIX

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Appendix A
[Filed: Jun. 17, 2025]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. KISHORE KUMAR KAVURU, Defendant - Appellant.	No. 24-7568 D.C. Nos. 5:18-cr-00515-EJD-1 5:24-cv-01735-EJD Northern District of California, San Jose ORDER

Before: H.A. THOMAS and DESAI, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 3) is denied because 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." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

Any pending motions are denied as moot.

DENIED.

Appendix B
[Filed: Aug. 26, 2024]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. Abhijit PRASAD, Defendant - Appellant.	No. 23-1968 D.C. Nos. 3:18-cr-00368-CRB-1, 3:22-cv-01230-CRB Northern District of California, San Francisco ORDER

Before: SCHROEDER and NGUYEN, Circuit Judges.

Appellant's motion (Docket Entry No. 5) for leave to file an oversized request for a certificate of appealability, and motion for judicial notice (Docket Entry No. 8), are granted.

After reviewing the underlying motion and concluding that it states at least one federal constitutional claim debatable among jurists of reason, namely whether appellant's visa fraud convictions must be vacated because a misrepresentation that H-1B visa beneficiaries had "actual existing work projects" is not a material fact under 18 U.S.C. § 1546(a), we grant the request for a certificate of appealability (Docket Entry No. 6) with respect to the following issue: whether the district court properly determined that the above-stated

claim was procedurally defaulted, including whether appellant has shown cause and prejudice to excuse the default based on ineffective assistance of appellate counsel. *See* 28 U.S.C. § 2253(c)(3); *Gonzalez v. Thaler*, 565 U.S. 134 (2012); *Slack v. McDaniel*, 529 U.S. 473, 483-85 (2000); *Lambright v. Stewart*, 220 F.3d 1022, 1026 (9th Cir. 2000); *see also* 9th Cir. R. 22-1(e). The court notes that *United States v. Patnaik*, No. 23-10043, which concerns a similar materiality issue, is scheduled for oral argument on September 10, 2024.

A review of this court's docket reflects that the filing and docketing fees for this appeal are due. Within 21 days of the filing date of this order, appellant must either (1) pay to the district court the $505.00 filing and docketing fees for this appeal and file in this court proof of such payment, or (2) file in this court a motion to proceed in forma pauperis, accompanied by a completed Form 4 financial affidavit. Failure to pay the fees or file a motion to proceed in forma pauperis will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

The Clerk will serve a copy of Form 4.

If appellant pays the fees, the following briefing schedule will apply: the opening brief is due December 9, 2024; the answering brief is due January 8, 2025; the optional reply brief is due within 21 days after service of the answering brief. If appellant files a motion to proceed in forma pauperis, the briefing schedule will be set upon disposition of the motion.

The Clerk will serve on appellant a copy of the "After Opening a Case - Counseled Cases" document.

Appendix C
[Filed: Feb. 27, 2025]

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellant, v. NAMRATA PATNAIK and KARTIKI PAREKH, Defendants - Appellees.	No. 23-10043 D.C. Nos. 5:22-cr-00014-BLF-1, 5:22-cr-00014-BLF-2 U.S. District Court for Northern California, San Jose **MANDATE**

The judgment of this Court, entered January 14, 2025, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

Appendix D

7456 **Federal Register** / Vol. 89, No. 23 / Friday, February 2, 2024 / Rules and Regulations

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2766–24; DHS Docket No. USCIS–2023–0005]

RIN 1615–AC70

Improving the H–1B Registration Selection Process and Program Integrity

AGENCY: U.S. Citizenship and Immigration Services, DHS.
ACTION: Final rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) is amending its regulations to implement the proposed beneficiary centric selection process for H–1B registrations, provide start date flexibility for certain H–1B cap-subject petitions, and implement additional integrity measures related to H–1B registration.
DATES: This final rule is effective March 4, 2024.

FOR FURTHER INFORMATION CONTACT:

Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000.

SUPPLEMENTARY INFORMATION:

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Table of Abbreviations

CFR—Code of Federal Regulations
CPI–U—Consumer Price Index for All Urban Consumers
DHS—U.S. Department of Homeland Security
DOL—U.S. Department of Labor
FR—Federal Register
FY—Fiscal Year
HR—Human Resources
HSA—Homeland Security Act of 2002
IMMACT 90—Immigration Act of 1990
INA—Immigration and Nationality Act
LCA—Labor Condition Application
NEPA—National Environmental Policy Act
NPRM—Notice of Proposed Rulemaking
OMB—Office of Management and Budget
PRA—Paperwork Reduction Act
PRD—Policy Research Division
Pub. L.—Public Law
RFA—Regulatory Flexibility Act of 1980
RIA—Regulatory Impact Analysis
Stat.—U.S. Statutes at Large
TLC—Temporary Labor Certification
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services

I. Executive Summary

DHS is amending its regulations relating to the H–1B registration selection process. This final rule implements a beneficiary centric selection process for H–1B registrations, start date flexibility for certain

H–1B cap-subject petitions, and integrity measures related to H–1B registration. These provisions are being codified at new 8 CFR 214.2(h)(8)(iii)(A), (h)(8)(iii)(D), (h)(8)(iii)(E), (h)(10)(ii), (h)(10)(iii), and (h)(11)(iii)(A). At this time, DHS is not finalizing other provisions of the "Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers," Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on October 23, 2023 (October 23 NPRM).

A. Purpose and Summary of the Regulatory Action

The purpose of this rulemaking is to improve the H–1B registration selection process. Through this rule, DHS is implementing a beneficiary centric selection process for H–1B registrations. Instead of selecting by registration, U.S. Citizenship and Immigration Services (USCIS) will select registrations by unique beneficiary. Each unique beneficiary who has a registration submitted on their behalf will be entered into the selection process once, regardless of how many registrations are submitted on their behalf. If a beneficiary is selected, each registrant that submitted a registration on that beneficiary's behalf will be notified of the beneficiary's selection and will be eligible to file a petition on that beneficiary's behalf during the applicable petition filing period. *See* new 8 CFR 214.2(h)(8)(iii)(A)(*1*) and (*4*). DHS anticipates that changing to a beneficiary centric selection process for H–1B registrations will reduce the potential for gaming the process to increase chances for selection

and help ensure that each beneficiary has the same chance of being selected, regardless of how many registrations are submitted on their behalf.

DHS will also provide start date flexibility for certain H–1B cap-subject petitions. DHS is clarifying the requirements regarding the requested employment start date on H–1B cap-subject petitions to permit filing with requested start dates that are after October 1 of the relevant fiscal year, consistent with current USCIS policy, by removing the current regulatory text at 8 CFR 214.2(h)(8)(iii)(A)(*4*).

Additionally, DHS is implementing integrity measures related to the H–1B registration process, including requiring registrations to include the beneficiary's valid passport information or valid travel document information, and prohibiting a beneficiary from being registered under more than one passport or travel document. *See* new 8 CFR 214.2(h)(8)(iii)(A)(*4*). DHS is also codifying USCIS' ability to deny H–1B petitions or revoke an approved H–1B petition where: there is a change in the beneficiary's identifying information from the identifying information as stated in the registration to the

the proposed regulatory text at 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*), DHS reiterates that submitting false or incorrect information on the registration, including false attestations, is grounds for denial or revocation of the approval of the petition.

Additionally, in changing to the beneficiary centric registration, multiple frivolous registrations that may not represent legitimate bona fide jobs will no longer increase an individual's chances of being selected. As such, the beneficiary centric selection will remove the incentive to have multiple registrations solely to increase selection chances.

Comment: Many commenters voiced concern over frivolous registrations and fraud in the H–1B selection process, specifically the use of fraudulent companies to submit registrations and registrations from individuals without valid job offers.

Many of these commenters stated that the proposed changes do not go far enough and urged USCIS to bar certain types of entities from submitting registrations and/or invalidate certain types of registrations prior to running the lottery. These commenters stated that USCIS should:

• Block speculative entries from being considered in the selection process;

• Stop individuals from using fake job offers to register by closing loopholes that allow companies to submit registrations for individuals without valid job offers;

• Require beneficiaries working for consulting companies or third-party contractors to have valid client job offers;

• Implement a verification process for registrants, beneficiaries, documents (such as passports), and/or job offers at registration;

• Increase the transparency, oversight, reporting, and auditing of the selection process;

• Ban beneficiary-owners from submitting registrations or limit registrations from beneficiary-owners to only those who can demonstrate legitimate work; and

• Screen potential registrants for certain labor and employment law violations and disputes and prohibit any employer with recent or ongoing labor violations or disputes from participating in the H–1B registration process.

Response: DHS is unable to invalidate or bar certain registrations, such as registrations that are deemed frivolous or submitted by certain types of companies, at the registration stage because that would require USCIS to adjudicate the underlying registration. USCIS does not adjudicate a registration. Further, the registration process is not the stage at which USCIS assesses the veracity of documents, the bona fides of the job offer, or other aspects of the offered position. As previously stated in the NPRM, submission of the registration is merely an antecedent procedural requirement to properly file an H–1B cap-subject petition and is not intended to replace the petition adjudication process or assess the eligibility of the beneficiary for the offered position. 88 FR 72870, 72899 (Oct. 23, 2023). Additionally, as noted above, the beneficiary centric

registration removes the incentive for a beneficiary to have multiple registrations solely to increase their chance of selection, which DHS anticipates will reduce the number of frivolous registrations.

Comment: To reduce frivolous registrations, a few commenters suggested requiring additional information on the registration, such as: requiring companies to submit job offer letters, job descriptions, and documentation during registration; asking employers to provide full LCAs at the time of initial registration; and requiring registrants to document that it has a non-speculative position in a specialty occupation for the beneficiary as of the start date of the validity period requested on the registration.

Response: Beyond requiring valid passport or travel document information for the beneficiary on the registration, DHS is not requiring additional new information on the registration at this time. 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. Some of the additional information proposed by commenters (such as information about the job offer) is information that USCIS would require and review to determine eligibility in the adjudication of the H–1B petition. Establishing eligibility is not a requirement for submitting a registration. USCIS believes the change to require valid passport information or valid travel document information is sufficient to identify the beneficiary and reduce potential fraud and abuse of the registration system.

Comment: Several commenters noted continuing concerns with the registration process and advocated

for increased penalties to prevent further fraud and abuse, including:

- Review and investigate companies and beneficiaries who abused the H–1B system in previous years;
- A ban, such as for 5 or 10 years, for companies and beneficiaries who engage in fraudulent activities;
- A 10-year ban for beneficiaries and companies that do not file a petition after being selected;
- Charge fines to employers found to have flooded the registration process with frivolous registrations and collect additional fees from registrants to pass a portion of these fines and additional fees directly to the Department of Labor to fund their investigation and enforcement activities in the H–1B program;
- At the registration stage, audit all registrants with more than ten registrations and debar registrants found to have engaged in registration fraud;
- Revoke H–1B visas for those who have previously exploited the system; and
- Implementing consequences for companies that abuse the registration process and impose stricter penalties for those found guilty of abuse.

Response: DHS has undertaken efforts to deter abuse of the registration system and to ensure that those who abuse the registration system are not eligible for H–1B cap petition approval. As noted previously, in finalizing the proposed regulatory text at 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*), DHS reiterates that submitting false or incorrect information on the registration, including false attestations, is grounds for denial or revocation of the approval of the petition. If USCIS has reason to

believe that the attestations made during registration are not correct, it will investigate the parties in question, including examining evidence of collusion and patterns of non-filing of petitions. Where appropriate, USCIS will deny or revoke the approval of petitions where the attestations made at the registration stage are found to be false, including making findings of fraud or willful material misrepresentation against petitioners, if the facts of the case support such findings.

Regarding the suggestions that USCIS audit companies with 10 or more registrations, fine or ban certain companies from participating in the registration process after being found to have engaged in registration fraud, and charge additional fees to support investigations and enforcement activities, DHS declines these suggestions. DHS does not think that companies that submit more than a certain number of registrations for different beneficiaries necessarily

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Appendix E

80110 **Federal Register** / Vol. 65, No. 245 / Wednesday, December 20, 2000 / Rules and Regulations.

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1215–AB09

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor, in concurrence with the Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document contains interim final regulations implementing recent legislation and clarifying existing Departmental rules relating to the temporary employment in the United States of nonimmigrants under H–1B visas. On January 5, 1999, the Department published a notice of proposed rulemaking (64 FR 628) seeking public comment on

issues to be addressed in regulations to implement changes made to the Immigration and Nationality Act (INA) by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). In particular, the ACWIA requires H–1B-dependent employers and willful violators to comply with certain additional attestations regarding anti-displacement and recruitment obligations. The Department also sought further comment on certain proposals which were previously published for comment as a Proposed Rule on October 31, 1995 (60 FR 55339), and on certain interpretations of the statutes and its existing regulations which the Department proposed to incorporate in the regulations.

DATES: *Effective Dates:* These regulations are effective January 19, 2001, with the exception of §§ 655.731(a)(2) and 656.40, (c) and (d) which are effective December 20, 2000.

Applicabililty Date: Sections 655.731(a)(2) and 656.40 apply retroactively to any prevailing wage determinations thereunder which were not final as of October 21, 1998. Sections 655.720 and 655.721 are applicable to Labor Condition Applications filed on or after February 5, 2001.

Comment Date: Written comments on these regulations and issues raised in the preamble may be submitted by February 20, 2001, with the exception of any comments on Form WH–4, which must be submitted by January 19, 2001.

ADDRESSES: Submit written comments concerning Part 655 to Deputy Administrator, Wage and Hour Division, ATTN: Immigration Team, U.S. Department of Labor, Room S–3502, 200

Constitution Avenue, N.W., Washington, D.C. 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile ("FAX") machine to (202) 693–1432. This is not a toll-free number.

Submit written comments concerning Part 656 to the Assistant Secretary for Employment and Training, ATTN: Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. Comments may also be transmitted by facsimile ("FAX") machine to (202) 693–2769. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT:
Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–0745 (this is not a toll-free number).

James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The H–1B nonimmigrant program is a voluntary program that allows employers to temporarily import and employ nonimmigrants admitted under H-1B visas to fill specialized jobs not filled by U.S. workers. (Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(H)(I)(b), 1182(n), 1184(c)). The statute, among other things, requires that an employer pay an H–1B worker the higher of the actual wage or the prevailing wage, to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers.

Under the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (Act), and as amended by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, an employer seeking to employ an alien in a specialty occupation or as a fashion model of distinguished merit and ability on an H–1B visa is required to file a labor condition application with and receive certification from DOL before the Immigration and Naturalization Service (INS) may approve an H–1B petition. The labor condition application process is administered by ETA; complaints and investigations regarding labor condition applications are the responsibility of ESA.

On January 5, 1999, the Department of Labor (DOL) published a proposed rule which would implement statutory changes in the H–1B program made to the INA by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) (Title IV, Pub. L. 105–277). The ACWIA, as amended

by the American Competitiveness in the Twenty-First Century Act of 2000 (Pub. L. 106–313), among other things, temporarily (until October 2003) increases the maximum number of H–1B visas permitted each year; temporarily requires new non-displacement (layoff) and recruitment attestations by "H–1B dependent" employers (as defined by the ACWIA) and willfully violating employers; and requires employers to offer the same fringe benefits to H–1B workers on the same basis as it offers fringe benefits to U.S. workers. The public was invited to comment on the proposed rule, including the information collection requirements noted below. In addition, pursuant to the Paperwork Reduction Act of 1990, DOL submitted a paperwork package to the Office of Management and Budget (OMB), requesting review and approval of the information collection requirements included in the proposed rule.

Since publication of the NPRM, additional amendments to the H–1B provisions were enacted by the American Competitiveness in the Twenty-first Century Act of 2000 (Pub. L. 106–313, 114 Stat. 1251, October 17, 2000), the Immigration and Nationality Act—Amendments (Pub. L. 106–311, 114 Stat. 1247, October 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106– 396, 114 Stat. 1637, October 30, 2000) (collectively, the October 2000 Amendments). Most pertinent to these regulations were provisions that raised the ceiling on the number of H–1B visas that may be issued and extended the

1B nonimmigrant on the benefits provided to the nonimmigrant in his/her permanent work station (ordinarily the home country), and not offer the nonimmigrant the benefits that are offered to similarly employed U.S. workers, provided that the employer affords reciprocal benefits treatment for any U.S. workers (i.e., allows its U.S. employees, while working out of the country on a temporary basis away from their permanent work stations in the United States, or while working in the United States on a temporary basis away from their permanent work stations in another country, to continue to receive the benefits provided them at their permanent work stations). Employers are cautioned that this provision is available only if the employer's practices do not constitute an evasion of the benefit requirements, such as where the H–1B nonimmigrant remains in the United States for most of the year, but briefly returns to the "home country" before any 90-day period would expire.

(C) Where an H–1B nonimmigrant is in the U.S. for more than 90 consecutive calendar days (or from the point where the worker is transferred to the U.S. or it is anticipated that the worker will likely remain in the U.S. more than 90 consecutive days), the employer may maintain the H–1B nonimmigrant on the benefits provided in his/her home country (i.e., "home country benefits") (and not offer the nonimmigrant the benefits that are offered to

similarly employed U.S. workers) provided that all of the following criteria are satisfied:

(1) The H–1B nonimmigrant continues to be employed in his/her home country (either with the H–1B employer or with a corporate affiliate of the employer);

(2) The H–1B nonimmigrant is enrolled in benefits in his/her home country (in accordance with any applicable eligibility standards for such benefits);

(3) The benefits provided in his/her home country are equivalent to, or equitably comparable to, the benefits offered to similarly employed U.S. workers (i.e., are no less advantageous to the nonimmigrant);

(4) The employer affords reciprocal benefits treatment for any U.S. workers while they are working out of the country, away from their permanent work stations (whether in the United States or abroad), on a temporary basis (i.e., maintains such U.S. workers on the benefits they received at their permanent work stations);

(5) If the employer offers health benefits to its U.S. workers, the employer offers the same plan on the same basis to its H–1B nonimmigrants in the United States where the employer does not provide the H–1B nonimmigrant with health benefits in the home country, or the employer's home-country health plan does not provide full coverage (i.e., coverage comparable to what he/she would receive at the home work station) for medical treatment in the United States; and

(6) the employer offers H–1B nonimmigrants who are in the United States more than 90 continuous days those U.S. benefits which are paid directly to

the worker (e.g., paid vacation, paid holidays, and bonuses).

(iv) Benefits provided as compensation for services may be credited toward the satisfaction of the employer's required wage obligation only if the requirements of paragraph (c)(2) of this section are met (e.g., recorded and reported as "earnings" with appropriate taxes and FICA contributions withheld and paid).

(4) For salaried employees, wages will be due in prorated installments (e.g., annual salary divided into 26 bi-weekly pay periods, where employer pays bi-weekly) paid no less often than monthly except that, in the event that the employer intends to use some other form of nondiscretionary payment to supplement the employee's regular/pro-rata pay in order to meet the required wage obligation (e.g., a quarterly production bonus), the employer's documentation of wage payments (including such supplemental payments) must show the employer's commitment to make such payment and the method of determining the amount thereof, and must show unequivocally that the required wage obligation was met for prior pay periods and, upon payment and distribution of such other payments that are pending, will be met for each current or future pay period. An employer that is a school or other educational institution may apply an established salary practice under which the employer pays to H–1B nonimmigrants and U.S. workers in the same occupational classification an annual salary in disbursements over fewer than 12 months, provided that the nonimmigrant agrees to the compressed annual salary payments prior to the commencement

of the employment and the application of the salary practice to the nonimmigrant does not otherwise cause him/her to violate any condition of his/her authorization under the INA to remain in the U.S.

(5) For hourly-wage employees, the required wages will be due for all hours worked and/or for any nonproductive time (as specified in paragraph (c)(7) of this section) at the end of the employee's ordinary pay period (e.g., weekly) but in no event less frequently than monthly.

(6) Subject to the standards specified in paragraph (c)(7) of this section (regarding nonproductive status), an H–1B nonimmigrant shall receive the required pay beginning on the date when the nonimmigrant "enters into employment" with the employer.

(i) 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.

(ii) Even if the H–1B nonimmigrant has not yet "entered into employment" with the employer (as described in paragraph (c)(6)(i) of this section), the employer that has had an LCA certified and an H–1B petition approved for the H–1B nonimmigrant shall pay the nonimmigrant the required wage beginning 30 days after the date the nonimmigrant first is admitted into the U.S. pursuant to the petition, or, if the nonimmigrant is present in the United States on the date of the approval of the

petition, beginning 60 days after the date the nonimmigrant becomes eligible to work for the employer. For purposes of this latter requirement, the H–1B nonimmigrant is considered to be eligible to work for the employer upon the date of need set forth on the approved H–1B petition filed by the employer, or the date of adjustment of the nonimmigrant's status by INS, whichever is later. Matters such as the worker's obtaining a State license would not be relevant to this determination.

(7) Wage obligation(s) for H–1B nonimmigrant in nonproductive status.

(i) Circumstances where wages must be paid. If the H–1B nonimmigrant is not performing work and is in a nonproductive status due to a decision by the employer (e.g., because of lack of assigned work), lack of a permit or license, or any other reason except as specified in paragraph (c)(7)(ii) of this section, the employer is required to pay the salaried employee the full pro-rata amount due, or to pay the hourly-wage employee for a full-time week (40 hours or such other number of hours as the employer can demonstrate to be full-time employment for hourly employees, or the full amount of the weekly salary for salaried employees) at the required wage for the occupation listed on the LCA. If the employer's LCA carries a

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UNITED STATES OF AMERICA,
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SUPPLEMENTAL APPENDIX

Kishore Kumar Kavuru
921 E Cardinal Dr
Sunnyvale, CA 94087
(408) 780-4445
kishorek0399@gmail.com

Pro Se Petitioner

Fifteenth day of December, MMXXV

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SUPPLEMENTAL APPENDIX

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Supplemental Appendix A
[Filed: Dec. 3, 2024]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KISHORE KUMAR KAVURU, Defendant.	Case No. 5:18-cr-00515 EJD **ORDER DENYING § 2255 MOTION** Re: ECF Nos. 83, 95

Defendant Kishore Kumar Kavuru moves to set aside or vacate his criminal conviction under 28 U.S.C. § 2255. Because Kavuru waived his right to collaterally attack his conviction and because his motion is untimely in any event, the Court DENIES his motion.

I. BACKGROUND

On October 18, 2018, a grand jury indicted Kavuru on twenty counts of mail and visa fraud. Indictment, ECF No. 1. Almost three years later, Kavuru entered a guilty plea as to one of those counts of visa fraud, and the Court accepted Kavuru's plea. Minutes, ECF No. 49. Kavuru's plea agreement included the following collateral attack waiver:

> I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was ineffective.

Plea Agreement ¶ 5, ECF No. 50. On November 22, 2021, the Court sentenced Kavuru to fifteen months of imprisonment followed by three years of supervised release. Minutes, ECF No. 67. Kavuru did not appeal his conviction or sentence.

On March 19, 2024, Kavuru filed his § 2255 motion as a pro se litigant. Mot., ECF No. 83. In his motion, Kavuru essentially argued that his conviction and sentence were invalid because the misstatements that he was charged with making were not material under the applicable visa fraud statute. In relevant part, the government opposed Kavuru's motion on jurisdictional grounds, as barred by his collateral attack waiver, and as untimely. Opp'n, ECF No. 92. Kavuru then secured counsel to assist him in preparing his reply. Not. of Appearance, ECF No. 93. On reply, Kavuru argued that his motion raised an ineffective assistance of counsel claim so that his collateral attack waiver did not apply, and that his petition was timely due to intervening court decisions. Reply, ECF No. 94.

II. LEGAL STANDARD

Federal criminal defendants may collaterally attack their convictions under 28 U.S.C. § 2255.

However, there are limits on a defendant's ability to raise such collateral attacks. For one, a defendant may waive her right to seek relief under § 2255—except for certain claims of ineffective assistance of counsel—if she does so knowingly and voluntarily. *See United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993); *Washington v. Lampert*, 422 F.3d 864, 870–71 (9th Cir. 2005). In addition, a defendant must usually file her § 2255 motion within one year of her criminal judgment becoming final unless one of a limited set of exceptions applies. 28 U.S.C. § 2255(f).

III. DISCUSSION

A. Jurisdiction

Before proceeding with the rest of its analysis, the Court must first address the jurisdictional issues raised by the government. Specifically, the government contends that the Court lacks jurisdiction because Kavuru is no longer in custody. Opp'n 7. In doing so, the government appears to make two separate jurisdictional arguments: (1) that Kavuru does not satisfy § 2255's statutory "in custody" requirement, and (2) that Kavuru's motion is moot. Neither deprives the Court of jurisdiction.

First, the Court finds that Kavuru satisfies the "in custody" requirement. Although courts have jurisdiction over a § 2255 motion only if the defendant filing the motion is "in custody," 28 U.S.C. § 2255(a), supervised release is considered custody for such purposes. *Matus-Leva v. United States*, 287 F.3d 758, 761 (9th Cir. 2002). And although the

Court subsequently terminated Kavuru's supervised release, a defendant need only be in custody when she files her motion. *United States v. Reves*, 774 F.3d 562, 565 (9th Cir. 2014); *see also Bailey v. Hill*, 599 F.3d 976, 979 (9th Cir. 2010) (same in the context of § 2254). Here, Kavuru was under supervised release when he filed his motion—Kavuru filed his motion on March 19, 2024, but the Court did not terminate his supervised release until August 28, 2024. Mot.; Order Granting Mot. for Early Termination, ECF No. 88. Thus, the Court has statutory jurisdiction to consider Kavuru's motion.

Second, the fact that the Court terminated Kavuru's supervised release while his § 2255 motion was pending does not moot his motion. There is still an injury that the Court can address because there are collateral consequences stemming from Kavuru's conviction, and vacating Kavuru's conviction removes those consequences. The government suggests that Kavuru has not established any such collateral consequences, but in the Ninth Circuit there is an "irrefutable presumption that collateral consequences result from any criminal conviction" because, "[o]nce convicted, one remains forever subject to the prospect of harsher punishment for a subsequent offense as a result of federal and state laws." *Chaker v. Crogan*, 428 F.3d 1215, 1219 (9th Cir. 2005) (alteration in original) (quoting *Chacon v. Wood*, 36 F.3d 1459, 1463 (9th Cir. 1994), *superseded on other grounds by* 28 U.S.C. § 2253(c)); *see also Blowers v. United States*, No. 09-cv-617, 2013 WL 11310638, at *1 n.3 (D. Ariz. Aug. 20, 2013), *aff'd*, 600 F. App'x 548 (9th Cir. 2015). Accordingly, the

Court has Article III jurisdiction to consider Kavuru's motion as well.

B. Collateral Attack Waiver

Having resolved the jurisdictional issues, the Court turns to Kavuru's collateral attack waiver. The Court concludes that Kavuru's motion is barred under his collateral attack waiver to the extent he raises any claims other than ineffective assistance of counsel. Courts will enforce a collateral attack waiver if (1) the waiver covers the grounds raised in a collateral attack [1] and (2) the waiver was knowingly and voluntarily made. *Davies v. Benov*, 856 F.3d 1243, 1246 (9th Cir. 2017) (citation omitted).

Kavuru's waiver encompasses all potential grounds for collateral relief except for ineffective assistance of counsel. Plea Agreement ¶ 5. Kavuru also expressly affirmed that he entered into his plea agreement, including the collateral attack waiver, knowingly and voluntarily. *Id.* ¶¶ 17–20. Kavuru never argues that his waiver was anything other than knowing and voluntary, and the record would not support such an argument in any event. Therefore, the Court finds that Kavuru's collateral attack waiver is enforceable and, on that basis, denies Kavuru's § 2255 motion as to all grounds other than ineffective assistance.

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[1] One exception is that collateral attack waivers cannot bar certain ineffective assistance of counsel claims. *Washington v. Lampert*, 422 F.3d 864, 870 (9th Cir. 2005) (collecting cases). However, that is not an issue here because Kavuru's waiver explicitly carves out such claims. Plea Agreement ¶ 5.

C. Timeliness

The Court does not construe Kavuru's motion as raising any claim for ineffective assistance of counsel that would survive his collateral attack waiver. [2] But even if the Court did, Kavuru's ineffective assistance claim would still be barred as untimely.

A defendant typically must bring her § 2255 motion within one year of her judgment of conviction becoming final. 28 U.S.C. § 2255(f)(1). One way a criminal judgment becomes final is when the time for filing a direct appeal expires and the defendant does not pursue a direct appeal. *United States v. Gilbert*, 807 F.3d 1197, 1199 (9th Cir. 2015). That is what happened here. The Court entered judgment on November 24, 2021. Judgment, ECF No. 68. Since Kavuru did not appeal, that judgment became final on December 8, 2021 when the time to appeal expired. Fed. R. App. P. 4(b). Kavuru did not file his § 2255 until March 2024, well over a year after his judgment became final. Therefore, his motion is

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[2] Kavuru initially filed his § 2255 motion as a pro se litigant, so the Court must construe his motion liberally. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010). However, Kavuru's motion makes no mention of anything resembling an ineffective assistance claim except to make the general observations that defendants can raise ineffective assistance claims under § 2255. So even liberally construed, Kavuru's motion does not raise ineffective assistance as a ground for relief. And to the extent Kavuru attempts to raise ineffective assistance for the first time via his reply, such attempts do not properly place that issue before the Court. *United States v. Huqueriza*, No. 08-cr-0119, 2011 WL 13305188, at *2 (N.D. Cal. June 17, 2011) (collecting cases).

untimely unless one of the circumstances in §§ 2255(f)(2)–(4) applies.

In this case, Kavuru invokes § 2255(f)(4), which tolls the statute of limitations for § 2255 motions until "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." According to Kavuru, two district court cases—*United States v. Patnaik*, No. 22-cr-0014, 2023 WL 1111829 (N.D. Cal. Jan. 30, 2023), and *United States v. Prasad*, No. 18-cr-0368, 2023 WL 4983155 (N.D. Cal. Aug. 3, 2023)—supplied the missing facts for an ineffective assistance claim. Reply 11. There are multiple problems with this argument.

To begin, new facts are not the same thing as new case law. Structurally, § 2255 treats facts and case law differently by addressing new facts in subsection (f)(4) while addressing new case law in subsection (f)(3). *Thompson v. United States*, No. 2:14-cv-05005, 2014 WL 3898446, at *2 (C.D. Cal. Aug. 11, 2014). And subsection (f)(3) permits only new Supreme Court case law to extend the time to file a § 2255 motion, not district court case law like Kavuru relies on here. Thus, *Patnaik* and *Prasad* cannot trigger § 2255(f)(4).

Moreover, even if the Court were to treat *Patnaik* and *Prasad* as new facts, they are not relevant to an ineffective assistance claim and therefore cannot contribute to the discovery of such a claim. To prevail on an ineffective assistance claim, a defendant must show that (1) her counsel's performance was objectively unreasonable and (2) that there was a reasonable probability that the proceeding would have ended differently but for

counsel's errors. *Smith v. Mahoney*, 611 F.3d 978, 986 (9th Cir. 2010) (citing *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984)). It is not unreasonable for counsel to fail to anticipate judicial decisions issued years after her client's conviction, and it is inconceivable that decisions not yet released could have affected the outcome of a proceeding. In other words, cases decided after counsel's representation of a client is over have no bearing on that client's ability to discover ineffective assistance.

In any case, Kavuru had sufficient information to discover his potential ineffective assistance claim before his judgment was even entered. The exhibits that Kavuru attached to his Reply show that he was already questioning his attorneys' understanding of immigration law before the Court entered judgment. Exs. B, E, ECF Nos. 95-2, -5. That is the same ground on which Kavuru now bases his purported ineffective assistance claim. Accordingly, § 2255(f)(4) does not apply to extend Kavuru's deadline for filing a § 2255 motion. *See United States v. Battles*, 18 F. App'x 495, 497 (9th Cir. 2001) (finding subsection (f)(4) to be inapplicable when a defendant "made two claims of ineffective assistance of counsel, both of which were based upon facts that were or could have been known to him when judgment was imposed").

In conclusion, to the extent that Kavuru's § 2255 motion can be construed as raising ineffective assistance of counsel, that claim is nonetheless time-barred.

IV. CONCLUSION

For the reasons above, the Court DENIES Kavuru's § 2255 motion. The Court OVERRULES the government's objection to Kavuru's reply evidence as moot, and the Court DENIES the government's motion for leave to file a sur-reply as moot. ECF No. 95. Since reasonable jurists would not find the Court's decision to be debatable, the Court DENIES a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IT IS SO ORDERED.

Dated: December 3, 2024

/s/ Edward J. Davila
EDWARD J. DAVILA
United States District Judge

Supplemental Appendix B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KISHORE KUMAR KAVURU, Defendant.	Case No. 5:18-cr-00515 EJD **JUDGMENT FOR 28 U.S.C. § 2255 PROCEEDINGS**

Pursuant to the Order signed today denying the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, judgment is entered in favor of the government and against defendant/movant. Defendant/movant shall obtain no relief by way of the Section 2255 motion.

IT IS SO ORDERED AND ADJUDGED.

DATED: December 3, 2024

/s/ Edward J. Davila
EDWARD J. DAVILA
United States District Judge