26-5429 **ORIGINAL**

No. ___________

In The Supreme Court of the United States

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MAY 05 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ABHIJIT PRASAD

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

ABHIJIT PRASAD
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Pro Se Petitioner

QUESTIONS PRESENTED

1. Whether an individual may be criminally prosecuted and convicted for conduct that Congress intentionally authorized and that its duly enacted statutes and implementing regulations specifically permit.

2. Whether 18 U.S.C. § 1546(a) requires proof of a false statement "with respect to a material fact," and whether some courts may treat that statutory phrase as surplusage notwithstanding decisions of multiple circuits recognizing "material fact" as an essential element of the crime under § 1546(a).

3. Whether the Fifth and Sixth Amendments are violated where a jury is specifically instructed to disregard the *materiality* element and permitted to convict under a legally impermissible theory of fraud, thereby altering the framework within which the trial proceeds.

4. Whether a court may deny a defendant his Sixth Amendment right to present a complete defense where the trial record establishes eligibility for the immigration benefit underlying the prosecution.

LIST OF PARTIES

Petitioner: Abhijit Prasad

Respondent: United States of America

No party is a publicly traded corporation.

RELATED PROCEEDINGS

The United States Supreme Court:

Kavuru v. United States of America, No. 25-968 (Petition for a Writ of Certiorari denied on Mar. 23, 2026).

Abhijit Prasad v. United States, USCA9 No. 19-10454 (Petition for a Writ of Certiorari pending).

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

United States of America v. Abhijit Prasad, No. 3:18-cr-00368-CRB-1 (Aug. 3, 2023) (habeas corpus petition denied). See App.56-67.

United States of America v. Namrata Patnaik, No. 5:22-cr-00014-BLF (Jan. 30, 2023) (Motion to Dismiss Indictment granted). See App.106-113.

United States Court of Appeals (CA9):

United States v. Namrata Patnaik, 125 F. 4th 1223 (9th Cir. 2025) (reversed and remanded)

United States v. Abhijit Prasad, No. 23-1968 (9th Cir. Aug. 26, 2024) (certificate of appealability granted). See App.53-55.

United States v. Abhijit Prasad, 18 F. 4th 313 (9th Cir. 2021) (conviction affirmed).

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The Ninth Circuit's Memorandum (hereafter "*Memorandum*") denying Prasad's collateral appeal (No. 23-1968) is unpublished. The *Memorandum* is reproduced in the Appendix at App.2-5.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 2025. The petition for rehearing was denied on February 19, 2026. App.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS

U.S. Const. amend. V

U.S. Const. amend. VI

18 U.S.C. § 1546(a)

8 U.S.C. § 1182(n)

28 U.S.C. § 2255

28 U.S.C. § 2253(c)(2)

8 U.S.C. § 1153(b)(2)(A)

20 C.F.R. § 655.731(c)(6)(i)

20 C.F.R. § 655.810(b)(1)(iii) and (2)(ii)

STATEMENT OF THE CASE

This case presents a recurring and consequential question at the intersection of criminal law and the immigration system: whether courts may convict an accused under 18 U.S.C. § 1546(a) based on requirements that Congress and the governing regulations neither impose nor recognize, and in fact permit.

Petitioner Abhijit Prasad ("Prasad"), a small H-1B employer, was charged in 2016 with multiple counts of H-1B visa fraud under the fourth paragraph of 18 U.S.C. § 1546(a) for allegedly making a "false statement with respect to a material fact," specifically, "actual existing work projects," [1] in H-1B filings "required by the immigration laws and regulations prescribed thereunder." Prasad pleaded "not guilty" and proceeded to trial. After the government rested, Prasad testified on direct, cross-, and redirect examination that evidence of an existing job in an H-1B application "is not even a normal requirement."

[1] See Eastern District of California Indictment: 2-16-cr-00244-KJM, Doc 1

In their closing argument, the prosecution urged the jury to focus on the first two elements of the constitutionally required 5-element Judge's jury instruction (see App.98), stating, "So really, as we go through each of these counts, I want you to focus on the first two elements. The Defendant made a false statement and he knew at the time that the statement was untrue" [2], thereby preventing the jury from considering every essential element, including *materiality*, and compliance by "immigration laws or regulations prescribed thereunder". And just before the jury received the marching orders to deliberate, the lead prosecutor, in her closing rebuttal, firmly instructed the jury to "put that aside" the USCIS agency's evidentiary standards: "And you heard some talk about a probable cause standard at the agency. Put that aside". [3]

The jury returned guilty verdicts on all counts. The trial record showed that some of Prasad's workers had jobs upon arrival, while others found jobs after arriving and attending interviews. [4] The government summarized Prasad's conduct as follows:

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[2] See Closing Argument (Transcript of 8/5/2019 at 936)

[3] See Rebuttal Argument (Transcript of 8/5/2019 at 968)

[4] As an example, M.B. [actual name of H-1B worker withheld] testified,

> Q. Did he [meaning Prasad] tell you that you were going to have an interview at Cisco?
> A. I think so, that's what I remember.

"None of the workers discussed at trial went on to work at Cisco or Ingenuus in the manner Prasad said they would. Most went on to work at completely different companies, oftentimes having to find employment on their own. A small handful did go on to work at Cisco, but not in the capacity Prasad stated on the visa petition forms." [5]

However, the government acknowledged that "Prasad's workers went on to gainful employment once they came to the U.S." [6]

During the sentencing hearing, the district court adopted the government's theory of visa fraud ("His case is a separate case, which is, while these people are qualified to do the work, they don't meet the second prong -- which, by the way, is a key prong. I'm not saying, oh, it's minor -- the job itself.") See App.87.

Prasad appealed, and the Ninth Circuit affirmed his H-1B visa fraud convictions. See *United States v. Prasad*, 18 F. 4th 313, 317 (9th Cir. 2021)

Q. Did you eventually have an interview at Cisco?
A. Yes, I did, in October.
Q. And that was with Cisco employees?
A. Yes, it was with two of the Cisco employees.
Q. And after the interview, did you find out whether or not you received the position at Cisco?
A. After the interview, in the evening I got the call that I have been -- they selected me and I got that position, yeah, on that date, I got notified that I was selected.

[5] Case 3:18-cr-00368-CRB, Doc 186 at 6

[6] Case 3:18-cr-00368-CRB; Doc 96 at 5

(*Prasad*). The Ninth Circuit articulated the basis of Prasad's convictions as follows:

> **"Prasad violated the law by falsely representing in the H-1B petitions that there were specific, bona fide positions available for the H-1B beneficiaries when those positions did not exist."** *Id.* 317.

While Prasad remained in custody, intervening legal developments clarified the legal landscape. At least six federal courts, covered infra, clarified that the existence (or non-existence) of specific jobs at the time an H-1B petition is filed is not a requirement of the H-1B program, and such requirements were "arbitrary and capricious," *not material*, and contrary to the congressional mandate, thereby vindicating Prasad's long-held position. Prasad thereafter filed a habeas motion under 28 U.S.C. § 2255 in the district court, collaterally challenging the legality of his conviction of visa fraud under 18 U.S.C. § 1546(a) on both statutory and constitutional grounds. On August 3, 2023, the district court denied his § 2255 motion. See App.56-67.

On August 26, 2024, the Ninth Circuit granted a certificate of appealability ("COA"), recognizing that the issue was substantial and that a related case, *United States v. Patnaik*, No. 23-10043, involved a similar *materiality* question. See *United States v. Prasad*, No. 23-1968, 2024 WL 5065551 (9th Cir. 2024), reproduced at App.53-55. Pursuant to the COA, Prasad proceeded with his collateral appeal in Case No. 23-1968.

Many had expected that *United States v. Patnaik*, No. 23-10043, would resolve the *materiality* question for a conviction under § 1546(a), the decision instead addressed *materiality* only at the indictment stage. The Ninth Circuit noted that "[s]o whether USCIS violated the INA "is legally irrelevant to the validity of" an indictment under § 1546(a)." *United States v. Patnaik*, 125 F.4th 1223, 1229 (9th Cir. 2025) (*Patnaik*). The *Patnaik* panel remanded the case "for reinstatement of the criminal charges," explaining that "a jury could find Defendants' alleged false statements material." *Id.* 1227. Ms. Patnaik has not been convicted of H-1B visa fraud following that decision, and her matter is scheduled for a jury trial on January 11, 2027 (see App.101-103), for the jury to decide the *materiality* element.

Nevertheless, on September 19, 2025, the Ninth Circuit affirmed Prasad's convictions. See *Memorandum* stating that "In *United States v. Patnaik*, we recently addressed the same issue," 125 F.4th 1223, 1227 (9th Cir. 2025), and concluded that "*Patnaik* forecloses Prasad's materiality claim." App.4. In doing so, the Ninth Circuit treated a decision addressing only the sufficiency of an indictment in a still-pending prosecution as dispositive of the legality of a completed criminal conviction. Prasad sought rehearing, which was denied on February 19, 2026. See App.1.

REASONS FOR GRANTING THE PETITION

This case exemplifies a recurring pattern of prosecutions that depart from the statutory and regulatory framework enacted by Congress under the INA. This petition presents an exceptional question: whether conduct permitted by Congress may nonetheless be converted into a crime through judicial expansion of a federal criminal statute. This Court recently made clear that "[t]o distinguish between the permissible and the impermissible [...], this Court asks whether Congress has set out an "intelligible principle" to guide what it has given the agency to do." *FCC v. Consumers' Research*, 145 S. Ct. 2482, 2488 (2025). As shown below, Congress has set forth clear statutes and regulations governing the conduct at issue and made plain that the existence or non-existence of a job is neither a prerequisite to lawful H-1B employment nor a "material fact" under the H-1B program.

A. Review Is Warranted Because the Decision Below Imposes Criminal Liability for Conduct Congress and the INA's Implementing Regulations Permit

Prasad's conviction rests on what the Ninth Circuit explained, "as the government acknowledges," namely that Prasad violated the law by falsely representing that specific, bona fide positions were available for the H-1B beneficiaries when those positions did not exist. *Prasad* at 317. Prasad respectfully submits that the above findings of fact and conclusions of law are inconsistent with the governing statutory and regulatory framework.

Congress enacted the Immigration and Nationality Act (INA) and later the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) that amended the INA. The federal regulation, 20 C.F.R. § 655.731(c)(6)(i) was promulgated in 2000 to implement changes made to the INA by the ACWIA [7], which recognizes that an H-1B nonimmigrant may "enter into employment" upon arrival or making him/herself available for work, and may thereafter find an assignment through various avenues, including going to an interview or meeting with customer. [8]

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[7] See relevant pages of Federal Register dated December 20, 2020 as in App.99-100.

[8] Judge Bumatay, who sat on the panel in *Patnaik* and on the panel issuing the *Memorandum* disposition here, appeared during oral argument to recognize INA's chosen framework, as reflected in the governing regulation, 20 C.F.R. § 655.731(c)(6)(i). The following exchange occurred during the *Patnaik* oral argument. See https://www.youtube.com/watch?v=SlyaQqqUzkg&t=435s

> Hon. Bumatay (9:09): "That does not preclude staffing agencies from ever applying for H1s, B1s, that's just the nature of businesses, means they bring the workers in and when the job materializes, they staff them out."
>
> Government: "Respectfully no, your Honor."

The above exchange reflects the panel's awareness of the ordinary operation of H-1B staffing businesses under the governing regulatory scheme. The government nevertheless urged the panel to adopt a theory untethered to the INA.

The text of 20 C.F.R. § 655.731(c)(6)(i) is as follows:

> **"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."**

The above federal regulation has not been amended or withdrawn.

Federal regulations operate to enforce federal law and to preserve the ability to achieve the law's congressionally mandated objectives that the Constitution seeks to protect. *Geier v. American Honda Motor Co.*, 529 US 861, 872 (2000). And because Prasad's predicate statute, § 1546(a) incorporates such "regulations prescribed thereunder," the governing regulatory scheme above defines the legal boundaries of permissible conduct of all the H-1B employers.

As the district court put it, "But the problem he [meaning Prasad] had, essentially, and the theory that the government advanced -- and one which I agree with – was people came to the United States who otherwise would not have been admitted because of the absence of a job," (see App.87). **The district court erred as a matter of law because 20 C.F.R. § 655.731(c)(6)(i) specifically permits an H-1B nonimmigrant to "enter into employment" even if the worker does not**

yet have a specific assignment and may secure one thereafter after arriving in the United States.

Certiorari is warranted because the decision below sustains a criminal conviction for conduct that the congressional Acts, including ACWIA that amended the INA, and their implementing regulations permit under the H-1B program, effectively converting lawful conduct into visa fraud. Because § 1546(a) is both a criminal and a fraud statute, the Government must prove not only criminal conduct but also fraud as defined by the statute.

B. Congress Established a Civil Enforcement Scheme for H-1B Immigration Violations, Including the Conduct at Issue Here

1. Congress Prescribed Civil Penalties, Not Criminal Liability, For Alleged Misrepresentations of Material Facts in H-1B Applications Under 8 U.S.C. § 1182(n)

In SEC.205(c)(3) of "Immigration Act of 1990" (IMMACT), that launched the H-1B visa program, Congress prescribed civil monetary penalties (CMPs) for misrepresentations of material facts in H-1B visa applications [9]. The enacted statute 8 U.S.C. § 1182(n)(2)(C)(i)-(ii) treats *misrepresentation of material fact in an application*, including *a willful misrepresentation* (same as in Prasad's charges)

[9] See PUBLIC LAW 101-649 – November 29, 1990 104 STAT.4978

as *violation* subject to *civil monetary penalties*, instead of a crime. § 1182(n)(2)(C) is the portion of the INA that governs H-1B program. *Kutty v. US Dept. of Labor*, 764 F. 3d 540, 547 (6th Cir. 2014). As we know, no court, including "this Court", has "no right to cancel (sorry, 'update') a duly enacted statute on the theory that it knows better." *Louisiana v. Callais*, 608 U.S. ___, ___ (2026) (slip op., at 43).

"Congress ordinarily does not intend to punish the same offense under two different statutes." *Barrett v. United States*, 146 S. Ct. 482, 485 (2026). Prasad's visa fraud convictions under 18 U.S.C. § 1546(a) for allegedly misrepresenting a material fact within the H-1B program, cannot be reconciled with § 1182(n)(2)(C)(i)–(ii) that treats misrepresentation of material facts in H-1B applications by the H-1B employer as a violation subject to civil penalties.

Additionally, a specific statute like § 1182(n) cannot be controlled or nullified by a general one, regardless of the priority of enactment. See *Morton v. Mancari*, 417 US 535, 550-51 (1974). *Morton v. Mancari* made clear that "when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective". *Id.* 551. § 1546(a) and § 1182(n)(2)(C)(i)-(ii) can co-exist because the statutory text of § 1546(a) incorporates "immigration laws," such as § 1182(n).

Even if § 1546(a) did not include "immigration laws or regulations," in its statutory text, the specific-governs-the-general canon confirms that § 1182(n) controls here, because "the specific provision comes closer to addressing the very problem posed by the case at hand and is thus more deserving of credence." *Shoshone-Bannock Tribes v. U.S. Dep't of Interior*, 153 F.4th 748, 775 (9th Cir. 2025) (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012)). "[I]t is a commonplace of statutory construction that the specific governs the general." *NLRB v. SW General, Inc.*, 137 S.Ct. 929, 941 (2017).

"Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes." *Whitman v. American Trucking Assns., Inc.*, 531 US 457, 468 (2001). Certiorari is warranted because the decision below imposes criminal liability for conduct that Congress chose to regulate through civil penalties under § 1182(n), the INA provision governing the H-1B program, which § 1546(a) incorporates by reference.

2. <u>The Implementing Regulation, 20 C.F.R. § 655.810, Likewise Treats the Conduct at Issue as a Civil Violation</u>

Under 20 C.F.R. § 655.810(b)(1)(iii) and (2)(ii), *a misrepresentation of a* *material fact* in an H-1B petition is treated as a *violation* subject to *Civil Monetary Penalties*. § 1546(a) itself incorporates "regulations prescribed thereunder." Where both the statute, § 1182(n), and the regulation, 20 C.F.R. § 655.810(b), prescribe civil penalties for *misrepresentation of a material fact*, neither the government nor the judiciary may transform that conduct into a criminal offense.

Certiorari is warranted because the decision below imposes criminal liability for conduct that Congress and the governing H-1B regulations treat only as a civil violation under the "regulations prescribed thereunder" incorporated into § 1546(a).

3. Congress Carefully Defined the Criminal Penalties Under 18 U.S.C. § 1546(a)

Congress has long distinguished the criminal penalties prescribed in § 1546(a) from other statutory enforcement schemes. In the Immigration and Nationality Act of 1952, Congress fixed the fine for violating § 1546(a) at $2,000 [10]. Legislative proposals addressing immigration enforcement continue to reflect that distinction. For example, in the "American Jobs First Act of 2021", Congress continues to refer to "PENALTIES" if the petitioner's false statements in H-1B

[10] See INA (1952), Pub. L. No. 82-414, 66 Stat. 275–76 (June 27, 1952).

applications are based on FINDING OF POSSIBLE CRIMINAL VIOLATION. [11]

In 2021, the Board of Immigration Appeals confirmed in *Matter of Nemis*, 28 I&N Dec. 250 (BIA 2021), that violations of the fourth paragraph of 18 U.S.C. § 1546(a) in case of a H-1B immigration, the same provision underlying the indictment here, are punishable by "fine or imprisonment," confirming the civil penalty structure incorporated within the immigration laws referenced in §§ 1546(a), 1182(n).

Certiorari is warranted because the decision below collapses Congress's carefully maintained distinction between criminal penalties under § 1546(a) and the separate enforcement schemes governing immigration violations, including those specific to the H-1B program.

C. The INA and IMMACT Confirm Congress's Intent That H-1B Visa Issuance Depends on Qualifications, Not Employment Availability

The Supreme Court has "explained that, at bottom, "the reviewability question turns on congressional intent, and all indicators helpful in discerning that intent must be weighed."" *Food and Drug Admin. v. RJ Reynolds Vapor Co.*, 145 S.

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[11] See H.R. 865 Bill introduced in the House of Representatives to amend the INA to improve the H-1B visa program on February 5, 2021.

Ct. 1984, 1998 (2025). The congressional intent relevant to this case confirms that conclusion.

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) 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) [12].

"The starting point in discerning congressional intent is the existing statutory text," see *Hughes Aircraft Co.* v. *Jacobson,* 525 U. S. 432, 438 (1999). The above congressional intent is codified in 8 U.S.C. § 1153(b)(2)(A) which states that:

> "Visas shall be made available, [...] to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States."

The term "**prospectively**" used above is given effect through the implementing regulation, 20 C.F.R. § 655.731(c)(6)(i), which reflects Congress's design that qualification for the employment visa comes first, while specific

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

employment arrangements may occur afterward, allowing H-1B nonimmigrants to "enter into employment" upon arrival and then seek assignments post-arrival, including "going to an interview or meeting with a customer," as covered supra.

The same intent appears in the USCIS Policy Manual (2020), Volume 2 - Nonimmigrants - Part H, which states that ("**Either the beneficiary will be employed in a lesser capacity or he or she will seek other employment immediately upon arrival**") [13]. See App.105. The U.S. Supreme Court has relied on the USCIS Policy Manual (2020) as a trustworthy source to address questions of admissibility as it applies to noncitizens. *Barton v. Barr*, 140 S.Ct. 1442, 1459 (2020). Clearly 20 C.F.R. § 655.731(c)(6)(i) and the USCIS Policy Manual (2020) do not require H-1B employers to file H-1B applications only when a job or work exists.

As the Supreme Court has emphasized "Congress' choice of words is presumed to be deliberate" and deserving of judicial respect". *SAS Institute Inc. v. Iancu*, 584 US 357, 1355 (2018). In *Lawrence v. Holder*, 717 F. 3d 1036, 1041 (9th Cir. 2013), the Ninth Circuit honored the interpretations of the First, Second, Third, Fourth, Sixth, and Seventh Circuit's use of the word "admissions" in the

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[13] See page 24 of https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm31-external.pdf

amendment to § 212(c) under the IMMACT, but did not honor the use of the word "prospectively" in the amendment to § 212(n) under the IMMACT that forms the basis of 8 U.S.C. § 1153(b)(2)(A) and 20 CFR § 655.731(c)(6)(i), and that permit H-1B beneficiaries to obtain nonimmigrant status without a preexisting job at the time of petition.

Certiorari is warranted because the statutory scheme reflected in §§ 1182(n), 1153(b)(2)(A), and 20 C.F.R. § 655.731(c)(6)(i) do not treat misrepresentation of material facts in H-1B applications as a criminal offense and permits H-1B beneficiaries to seek employment assignments after arrival.

D. The Decision Below Invents New "Material Facts" Not Recognized by Congress or the Governing Regulation

The terms "material fact" and "materiality" are not interchangeable. While *Patnaik* addressed the concept of "materiality" (*Id.* 1227), even at the indictment stage, it did not consider or define the statutory phrase "material fact," [14] which appears in the text of 18 U.S.C. § 1546(a). The term "Material facts are those necessary to the proof or defense of a claim, and are determined by reference to the

[14] *Patnaik* referred to material facts by stating that "the representations ... cease to be misrepresentations of material facts when the act [Agricultural Adjustment Act ("AAA")] itself falls" or "if the provisions of the [AAA were] void". *Id.* 1227-28, 1230. By contrast, the INA and ACWIA, that are relevant in this case, remain fully operative, and their provisions have neither fallen nor been found void.

substantive law." *Nat'l American Ins. Co. of Cal. v. Underwriters*, 93 F. 3d 529, 533 (9th Cir. 1996) citing *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 248 (1986) (*Anderson*). "That is, while the materiality determination rests on the substantive law, it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." *Ibid.* No court in Prasad's line of cases, apart from the certificate of appealability panel (see App. 53) has addressed this distinction under 18 U.S.C. § 1546(a) with respect to H-1B immigration law.

The applicable substantive law governing the H-1B program is grounded in the series of congressional enactments that identify the material facts relevant to H-1B immigration. See Amicus Brief of Sunitha Guntipally that traces the roots of the chosen H-1B material facts to various Congressional Acts, as in App.13-28.

Congress gave Labor rulemaking authority for H-1B. *Outdoor Amusement, Inc. v. DHS*, 983 F.3d 671, 686 (4th Cir. 2020). "For purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency." *SEC v. Chenery Corp.*, 318 US 80, 88 (1943). The Department of Labor approved eleven (11) H-1B "material facts" for the H-1B program.

““Material fact” means a significant item of information on the LCA [15]. A material fact may include any of the following: the number of H-1B workers sought; the occupational classification for which the worker is sought; the rate of pay; the address where documentation is kept; the three-digit occupational group code; the job title; the part-time status of the employee(s); the prevailing wage rate and its source; the period of employment; the additional employer labor condition statements; and the location where the H-1B worker will work.”

Department of Labor, FIELD OPERATIONS HANDBOOK (Sept. 27, 2016) Chapter 71, Revision 721 Section 71d16(c). See App.76.

The above list of H-1B material facts does not include “actual existing work projects” (from Prasad’s Indictment) or “specific, bona fide positions” (from *Prasad* at 317), or terms with similar meaning. With respect to H-1B immigration, Honorable Amy Totenberg of the Northern District of Georgia who looked at 33 H-1B cases correctly pointed out that “Judge Collyer noted that "Congress devised a definition for an 'occupation', not a 'job'"”. *Serenity Info Tech, Inc. v. Cuccinelli*, 461 F.Supp.3d 1271, 1288 (2020).

Prasad’s criminal conviction under 18 U.S.C. § 1546(a) is, therefore, plainly erroneous, as those terms are not included among the material facts governing the H-1B program under the substantive law, besides not being requirements (covered supra). To be convicted under 18 U.S.C. §1546(a), Prasad had to misrepresent a “material fact”, which he did not. *Prasad* did not engage in an analysis of the

[15] “The LCA is the document that a prospective H-1B employer files to initiate employment of an H-1B worker. See 20 C.F.R. 655.700(b).

substantive law governing the identified H-1B material facts. *Patnaik*, and the *Memorandum* relying on it, likewise failed to undertake that analysis. As a result, the phrase "with respect to a material fact" in § 1546(a) was effectively rendered surplusage, solely to accommodate the government's theory.

Certiorari is warranted because only Congress (or its authorized agent), not the courts, has the authority to expand the list of material facts established under the substantive law governing immigration, yet the decision below imposes criminal liability based on "material facts" that neither Congress nor the governing H-1B regulations recognize.

E. In affirming Prasad's conviction, the Ninth Circuit rendered "with respect to a material fact" in § 1546(a) Surplusage, Creating a Conflict with Every Major Sister Circuit

It is well established that "when the statute's language is plain, the sole function of the courts — at least where the disposition required by the text is not absurd — is to enforce it according to its terms." *Lamie v. United States Trustee*, 540 US 526, 534 (2004). The decision below deepens a conflict among the courts of appeals regarding the interpretation of 18 U.S.C. § 1546(a), further underscoring the need for this Court's intervention.

The weight of circuit authority confirms that § 1546(a) requires a false statement "with respect to a material fact". For example, the Third Circuit declined to follow the Second Circuit's holding in *United States v. Khalje,* 658 F.2d 90, 92 (2d Cir. 1981) (per curiam) explaining that such an analysis "makes no effort to explain, based on the statutory language, why it finds one antecedent is applicable to `any such false statement' but excludes the other [`with respect to a material fact']," *US v. Ashurov*, 726 F. 3d 395, 402 (3rd Cir. 2013). In 2025, the Second Circuit also clarified that "Paragraph 4 punishes "knowingly mak[ing] under oath ... any false statement with respect to a material fact" in an immigration application. 18 U.S.C. § 1546(a)". *U.S. v. Greenberg*, 127 F. 4th 410, 413 (2d Cir. 2025). As per the Eleventh Circuit, "Paragraph four of § 1546(a) criminalizes making false statements of material fact in certain immigration documents." *Germain v. US Atty. Gen.*, 9 F. 4th 1319, 1325 (11th Cir. 2021). The Eighth Circuit affirmed a § 1546(a) conviction after it found that the defendant "falsely failed to disclose a material fact, whether materiality is an issue of fact or law in a 8 U.S.C. § 1546(a) prosecution." *US v. Samuels*, 874 F. 3d 1032, 1037 (8th Cir. 2017). As per the Fifth Circuit, "18 U.S.C. § 1546(a) makes it a crime to "knowingly make[] under oath ... or... under penalty of perjury ... any false statement with respect to a material fact". *US v. Ongaga*, 820 F. 3d 152, 163 (5th Cir. 2016).

"Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another," *Bittner v. United States*, 598 US 85, 94 (2023). Section 1546(a) reflects that deliberate design: although the statute elsewhere criminalizes "false" statements, its fourth paragraph narrows false statements "with respect to a material fact." That deliberate choice must be given effect and cannot be treated as surplusage.

Certiorari is warranted because the decision below renders the statutory phrase "with respect to a material fact" meaningless. It should be granted because, on November 17, 2025, after the *Memorandum*, the Supreme Court noted that when a circuit erroneously resolves an important issue of federal law on which there is a circuit split, such cases cry out for review. *Hutson v. United States*, 607 U.S. ___ (2025). The *Memorandum*'s conclusion that *Patnaik* foreclosed Prasad's materiality claim raises such an issue, because our sister circuits have declined to adopt such a sweeping view of materiality under 18 U.S.C. § 1546(a).

F. Multiple Federal Courts Have Concluded That "Existing Work" or "Specific Job" Requirements Have No Basis in the INA or the Governing Regulations

Immediately, after Prasad's judgment of conviction was filed on December 23, 2019, six federal courts, at the least, addressed and resolved Prasad's substantive legal question at the heart of his indictment and visa fraud conviction, in Prasad's favor.

1. *ITServe Alliance, Inc. v. Cissna*, 443 F. Supp. 3d 14 (March 10, 2020) (*ITServe*)

Two months after Prasad's Judgment was filed, Honorable Rosemary Collyer of the District of Columbia summarized a fiercely contested H-1B immigration case, by finding that:

> "The CIS requirements that employers (1) provide proof of non-speculative work assignments (2) for the duration of the visa period is not supported by the statute or regulation and is arbitrary and capricious as applied to Plaintiffs' visa petitions. These requirements were also announced and applied without rulemaking and cannot be enforced." *Id.* 20.

While delivering her Opinion, she relied on the fact that "("Congress has laid out eligibility standards for the granting of H-1B specialty occupation visas.") (citing 8 U.S.C. § 1101(a)(15)(H)(i)(b)).". *Id.* 21. As per *ITServe*, the requirement of proof of non-speculative work assignments by the USCIS was arbitrary and capricious, because "the agency "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."" *Id.* 30.

2. <u>*Thatikonda v. USCIS*, No. 19-685 (RC) (May 5, 2020) (*Thatikonda*)</u>

Fast-forward two months, Honorable Judge Rudolph Contreras found that USCIS's interpretation of H-1B regulations requiring availability of work at the time of petition was "plainly erroneous".

> "As she [Judge Collyer] noted, only one of the four criteria [set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)] mentions specific duties, and this isolated reference could not "be expanded, under the guise of policy, to require advance notice of all assignments and work duties at the time of petition." *Id.* Judge Collyer concluded that USCIS's interpretation of the relevant regulations were plainly erroneous". *Thatikonda* citing *ITServe.*

3. <u>*Serenity Info Tech, Inc. v. Cuccinelli*, 461 F.Supp.3d 1271, 1288 (May 20, 2020) (*Serenity*)</u>

Two weeks later, Honorable Amy Totenberg of the Northern District of Georgia looked at 33 H-1B cases and found that there was nothing in the regulations that required the availability of qualifying work when H-1B petitions were submitted, making her finding very pertinent because the fourth paragraph of 18 U.S.C. § 1546(a) under which Prasad was convicted relies on "the immigration laws or regulations prescribed thereunder".

> "In conclusion, the Court finds that there is no basis in the INA or the Agency's regulations for requiring a petitioner to submit evidence of specific, qualifying work requirements and micro location information for every single day of the visa period." *Serenity* at 1288.

4. <u>*Stellar IT Solutions, Inc. v. USCIS*, 18-2015 (RC), D.C. Court (June 12, 2020) (*Stellar*)</u>

Immediately thereafter, Honorable Judge Rudolph Contreras seconded *ITServe* findings one more time stating that "[w]ith respect to the "specialty occupation" requirement, Judge Collyer found that USCIS's requirement that employers provide proof of non-speculative work assignments for the duration of the visa period was not supported by statute or regulation and was arbitrary and capricious.". *Id*. In *Stellar*, the Court found "that a "searching inquiry into the specific services that [an H-1B beneficiary] would perform" is not "necessary or consistent with the broader statutory and regulatory framework."". She determined that the agency's action was arbitrary and capricious because it relied on "factors that Congress had not intended it to consider".

5. <u>*US Chamber of Commerce v. US Dept. of Homeland Security, et al.*, 504 F.Supp.3d 1077 (December 1, 2020) (*Chamber*)</u>

The ink had not dried on those decisions when DHS introduced new interim regulations that added "actual work" and "bona fide job offer" as requirements,

> " *D. Corroborating Evidence of Work in a Specialty Occupation*
>
> ...USCIS interprets this statutory provision to require that the petitioner must actually have work in the specialty occupation listed in the H–1B petition available for the beneficiary as of the start date of intended employment. Therefore, DHS is making it clear at new 8 CFR 214.2(h)(4)(iv)(C) that the petitioner must establish, at the time of filing, that it has actual work in a specialty occupation available for the beneficiary as of the start date of the validity period as requested on the petition. New 8 CFR 214.2(h)(4)(iv)(C) complements the revised definition of "United States employer" at new 8 CFR 214.2(h)(4)(ii) requiring evidence of a bona fide, non-speculative job offer"

in its Interim Final Rule *Strengthening the H-1B Nonimmigrant Visa Classification Program*, Section V.D. [16] and tried to legislate them. However, on December 1,

[16] See pages 63918, 63928, 63933 of Federal Register 85 Fed. Reg. 63,918 (Oct. 8, 2020) Rules and Regulations titled "Strengthening the H-1B Nonimmigrant Visa

2020, Honorable Jeffrey White of the Northern District of California set aside that Interim Rule stating in part that to accord an agency "deference would be to run afoul of congressional intent" and then concluding that those requirements were promulgated in violation of the law. *Chamber* at 1095.

6. *U.S. v. Patnaik*, No. 22-cr-00014-BLF, ND California (January 30, 2023) (*Patnaik-Dist*)

In *Patnaik-Dist*, Honorable Beth Freeman concluded that the false statements made by the defendants that certain H-1B beneficiaries would be working onsite at their office on internal projects were not material as a matter of law. She specifically wrote that "Since specific project and location are improper considerations for determining whether to grant an H-1B visa under the governing law, a false statement about location and work assignment could not have been considered and thus is immaterial as a matter of law." App.111-112.

In *Patnaik-Dist*, the Court found that,

> "The Government has not explained how Defendants' alleged fraudulent statements could be material given that USCIS is prohibited from asking for this information. The Court therefore finds that Defendants' allegedly fraudulent statements that certain H-1B beneficiaries would be working at PerfectVIPs's office on internal projects were not material as a matter of law.". App.111.

Classification Program". https://www.govinfo.gov/content/pkg/FR-2020-10-08/pdf/2020-22347.pdf.

In the hearing, she said "I don't find this an issue of retroactivity at all. If it was arbitrary and capricious when the D.C. district court looked at it, it always has been because the underlying congressional mandate has not changed."

The above six decisions differ from *Prasad* and the *Memorandum* in one critical respect: those courts grounded their rulings in the substantive law enacted by Congress, whereas *Prasad* and the *Memorandum* accepted the government's theory whole-cloth despite the absence of any support for that requirement in the INA or the governing regulations. This Court should correct that anomaly.

Certiorari is warranted because the decision below sustains a criminal conviction based on a requirement that multiple federal courts have concluded finds no support in the INA or the governing regulations. Review is warranted to ensure that criminal liability under 18 U.S.C. § 1546(a) remains tethered to the immigration laws and regulations Congress actually enacted.

G. The *Memorandum* denied Prasad his "guaranteed" constitutional right of "complete defense" that would have resulted in acquittal

A complete defense is a type of defense that nullifies an entire claim against the defendant [17].

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[17] See LII. (2016). *complete defense | Wex | US Law | LII / Legal Information Institute*. https://www.law.cornell.edu/wex/complete_defense

The Supreme Court has made clear that "under the Constitution and our precedents, it is this Court's role to ensure that 'criminal defendants [enjoy] a meaningful opportunity to present a complete defense.'" *Wilson v. Hawaii*, No. 23-7517, S. Ct. (2024). As this Court previously explained, "'Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants `a meaningful opportunity to present a complete defense.''" *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). Shortly before the *Memorandum* below issued, this Court reaffirmed that constitutional "guarantee," reiterating that "the Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Black v. Tennessee*, 145 S.Ct. 2622, 2624 (2025).

This Court has further recognized that eligibility for an immigration benefit can constitute a complete defense to a criminal charge arising from the immigration statutes. As the Court explained, "Whatever the Government shows with respect to a thwarted investigation, qualification for citizenship is a complete defense to a prosecution brought under [18 U.S.C.] § 1425(a)." *Maslenjak v. United States*, 137 S. Ct. 1918, 1930 (2017) (("When the Government can make its two-part showing, the defendant may overcome it by establishing that she was qualified for citizenship (even though the defendant in *Maslenjak* misrepresented facts that suggested the opposite)." *Id*). The Ninth Circuit extended the same defense available under § 1425(a) to Prasad's predicate statute 18 U.S.C. § 1546(a). See *U.S. v. Amintobia*, 57 F. 4th 687, 703 (9th Cir. 2023).

After Prasad's record was complete, the evidence established that his beneficiaries were "highly qualified people." After hearing testimony from twenty-one witnesses, the District Court concluded that "these people are qualified to do the work." App.87. The government agreed, acknowledging: "They were -- I agree with the defense. They're very highly qualified people." App.88. The Ninth Circuit direct panel acknowledged that "They did actual work," [18] confirming that the factual predicate underlying Petitioner's complete defense was not disputed on appeal. Yet when Prasad sought to expand his certificate of appealability so that he could vindicate his "guaranteed" constitutional right to present a complete defense, the *Memorandum* denied that request. App-5.

The *Memorandum* further stated that "Prasad has not 'demonstrate[d] "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further."''" App.5. That conclusion

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[18] See February 9, 2021 Oral Arguments of Case 19-10454 https://www.youtube.com/watch?v=Y25OAFOAAfY : 2 min, 34 seconds

cannot be reconciled with the constitutional claim at stake because the right to present a complete defense is itself a "guaranteed" constitutional right. The *Memorandum* ossifies a constitutional right that the Constitution has guaranteed to every criminal defendant.

Certiorari is warranted because the decision below forecloses a constitutionally guaranteed complete defense despite a trial record establishing eligibility for the immigration benefit at issue. Under this Court's precedent, such eligibility may defeat criminal liability even where the government alleges a misrepresentation in the immigration application.

H. Prasad's Conviction is Constitutionally Insufficient: It Rests on Repeated Violations of the Fifth and Sixth Amendments

Prasad's conviction rests on three due process violations. First, Prasad's Sixth Amendment rights were violated because his conviction lacked proof of every essential element. The jury was ultimately asked to apply the first two elements only, producing a textbook violation of element unanimity.

Second, Prasad's Fifth Amendment right to a fair trial was undermined when the prosecution instructed the jury to "put that aside" with respect to the materiality element. Judge Beth Freeman, reviewing the issue in *Patnaik* at the district court level, confirmed the defect: "The Prasad court therefore did not have an opportunity to rule on the materiality of defendant's representations." App-112. The Ninth Circuit itself has recognized that materiality is an element of 18 U.S.C. § 1546(a) that must be decided by the jury. *United States v. Matsumaru*, 244 F.3d 1092, 1101 (9th Cir. 2001). This Court has "held that the materiality of a false statement must be submitted to the jury rather than decided by the trial judge." *Johnson v. United States*, 520 US 461, 464 (1997). Yet Prasad was convicted, and that conviction was affirmed, without the jury ever deciding that constitutionally required element.

The error was compounded when the *Memorandum* acknowledged that appointed counsel failed to "raise his materiality claim," (App.4) but nevertheless affirmed the conviction. The Supreme Court has specifically stated that "defects bearing on the jury's deliberative function are subject to reversal regardless of whether prejudice can be shown, not only because it is so difficult to measure their effects on a jury's decision, but also because such defects "undermin[e] the structural integrity of the criminal tribunal itself."" *United States v. Olano*, 507 US 725, 743 (1993). Every court reviewing Prasad's case ignored that fundamental defect.

Finally, Prasad's rights under the Sixth Amendment to present a complete defense that would have resulted in his acquittal, were not considered (as covered supra).

Certiorari is warranted because the decision below sustains a conviction obtained through multiple unaddressed constitutional violations that undermined the integrity of the jury's deliberations, eliminated an essential element of the offense, and denied Prasad the Sixth Amendment right to present a complete defense.

I. Structural Errors Governing the Trial Framework Require Reversal of Prasad's Conviction

In *Crawford v. Mississippi*, 607 U.S. ___ (2025) (Oct. 15, 2025) (Sotomayor, J., dissenting) (*Crawford*) that was filed after the *Memorandum*, this Court, while addressing and discussing *McCoy v. Louisiana*, 584 U.S. 414, 138 S. Ct. 1500 (2018) (*McCoy*) clarified the structural nature of errors like those present here: (1) the removal of the materiality and the "immigration laws or regulations" elements and (2) the trial's reliance on a legally prohibited framework.

Crawford held the long-held principle that a structural error "automatically entitles a defendant to a reversal of his conviction." *Crawford*, at 6. *Crawford* invoked *McCoy* that defines structural error as one that "affect[s] the framework within which the trial proceeds." *Id.* 1511. In this case, the framework governing Prasad's trial was not just erroneous but legally prohibited from beginning to end.

1. "One of those key requirements you will learn in this case is the existence of a work project here in the United States." Government's opening statement [19]; and

2. "The Defendant, Abhijit Prasad, realized that if he just lied to the Government about foreign workers having jobs in this country, he could bring those workers here, have them interview and obtain real jobs". Government's closing statement [20] .

The framework governing the entire trial from start to finish contravenes the enacted federal regulation specific to H-1B immigration, 20 C.F.R. § 655.731(c)(6)(i) that permits an H-1B nonimmigrant to "enter into employment", and then seek qualifying assignments post-arrival by "going to an interview or meeting with a customer" (as covered supra). It is a well-established fact that,

> "Jurors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law—whether, for example, the action in question is protected by the Constitution, is time barred, or fails to come within the statutory definition of the crime. When, therefore, jurors have been left the option of relying upon a legally inadequate theory, there is no reason to think that their own intelligence and expertise will save them from that error." *Griffin v. United States*, 502 US 46, 58-59 (1991).

Crawford cited *McCoy* stating that the existing laws that protect Sixth Amendment apply on collateral review, which is the posture of Prasad's appeal (No. 23-1968). *Crawford*, at 1. "[T]he Fifth and Sixth Amendments require conviction by a jury of *all* elements of the crime" *US v. Gaudin*, 515 US 506, 519

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[19] 7/29/2019 Transcript of 3:18-cr-00368-CRB at 16

[20] 8/2/2019 Transcript of 3:18-cr-00368-CRB at 933

(1995). As per *Crawford*, "*McCoy* violations are so antithetical to the Sixth Amendment that they are treated as "structural" errors "not subject to harmless-error review.""

Finally, this case presents multiple structural errors. Twice *Crawford* reaffirmed that a *McCoy* violation is a structural error that automatically entitles a defendant to a reversal of his conviction. *Crawford*, at 1, 6. Crawford did not "concede guilt at trial", and neither did Prasad. As per *Crawford*, at 11, "a defendant has a constitutional right "to decide that the objective of [his] defense is to assert *innocence,*" not just to obtain a technical acquittal." "Crawford was unequivocal in defining the goal of his defense: to maintain his innocence and require the Government to prove each element of its case against him." *Crawford*, at 11. Like Crawford, Prasad has maintained his innocence from the outset [21], required the Government to prove each element of its case against him, and repeatedly rejected a trial framework that was defective both procedurally [22] and substantively. Taken together, *Crawford* and *McCoy* confirm that when the trial proceeds under an unlawful framework, or violates the Sixth Amendment, or if the

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[21] See p.9 of his presentencing report filed under seal in Case No. 23-1968 ("Maintaining his innocence is important to him").

[22] The retroactivity issue that divided the Justices in *Crawford* is not present here. Prasad's conviction became final on December 23, 2019, well after *McCoy* was decided on May 14, 2018. Accordingly, this Court may apply *McCoy* directly.

right at issue is not designed to protect the defendant from erroneous conviction, the resulting error is structural, requiring reversal without further inquiry.

CONCLUSION

This case presents an unjust result that demands correction. Prasad bears the lifetime tag of a "convicted felon," with its enduring consequences, for conduct that is lawful and does not constitute an offense, much less a crime or fraud. It is a miscarriage of justice that only this Court can correct and prevent from recurring. This Court alone can resolve the conflict created by the Ninth Circuit with other federal courts that had addressed the same issue through the Congressional lens, rather than creating a legislative gap where none exists. "Under this Court's precedents, if the intent of Congress is clear and unambiguously expressed by the statutory language at issue, that would be the end of our analysis." *Zuni Public School Dist. v. Dept. of Educ.*, 550 U.S. 81, 93 (2007).

Recently, this Court in *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (2026), held that "executive officials [are required] to identify "'clear'" congressional authorization" if they "deviate from "'routine'" statutory interpretation principles". The Executive Branch in Prasad's case, the United States, has identified no such congressional authorization since charging him in 2016, or at any time, that supports pre-existing work requirement, not required by 20 C.F.R. § 655.731(c)(6)(i) that implemented ACWIA. This need is especially compelling because the H-1B program is a product of Congress and Title 18 of § 1546(a) that incorporates all immigration laws and regulations in its text was itself enacted by Congress as positive law. See Editorial Notes of 1 U.S.C. § 204.

On December 18, 2019, the district court summarized the theory of criminality in Prasad's case as follows: "Had there been the job, had there been this person, then — and that was, in part, his business — then there'd be no criminal act that I could see." App.87. As described in this petition, federal regulations long ago established that an H-1B petition need not be tied to a specific job at the time of filing. It is a settled law that "[i]f Congress intended to reach the issue before the district Court, and if it enacted its intention into law in a manner that abides with the Constitution, that is the end of the matter; "[f]ederal Courts are bound to apply rules enacted by Congress with respect to matters…over which it has legislative power." *Stewart Organization, Inc. v. Ricoh Corp.*, 487 U.S. 22, 27 (1988).

This Court has repeatedly reaffirmed that when the Constitution entrusts Congress with the authority to regulate, the federal statutes and laws of the United States constitute the supreme law of the land, binding on all judges. *McGirt v. Oklahoma*, 591 U.S. 894, 903 (2020); *Pittman v. Home Owners' Loan Corp.*, 308 US 21, 33 (1939). In 2024, this Court admonished federal courts to "ensure that Congress's statutes work in the way Congress intended." *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2300 (2024). On matters, "[w]here Congress has spoken, Congress has spoken; only its judgments matter. And courts alone determine when that has happened: Using all their normal interpretive tools, they decide whether Congress has addressed a given issue." *Id.* 2300. Yet the *Memorandum* in this case, issued after *Loper Bright*, and the decision in *Patnaik*, which it treated as controlling precedent and which was also decided after 2024, did not consider the congressional statutes incorporated within § 1546(a)'s reference to "immigration laws or regulations" and "with respect to a material fact". Those immigration laws and regulations include 8 U.S.C. § 1153(b)(2)(A) and their implementing regulations, reflecting Congress's framework under the INA that H-1B approval turns on qualifications, with employment placement determined prospectively. The requirement of "actual existing work projects," as alleged in Prasad's Indictment, or "specific, bona fide positions," as referenced in *Prasad* at 317, finds no basis in the INA as a condition for employing an H-1B nonimmigrant. Because "Material facts" are determined by reference to the substantive law (see *Anderson* at 248), and because the substantive law enacted by Congress in the Immigration Acts defines which facts are legally relevant to the H-1B framework, the requirements invoked below do not qualify as material facts as a matter of law. This Court has clarified that "the Constitution does not require that Congress should find for itself every fact upon which it bases legislation." *OPP Cotton Mills, Inc. v. Administrator of Wage and Hour Div., Dept. of Labor*, 312 US

126, 145 (1941). If Congress chose not to require "actual existing work projects," "specific, bona fide positions," or terms with similar meaning in the legislation governing the H-1B program, and instead permitted H-1B employment without an existing assignment, that legislative choice controls. No congressional bill or proposal has been introduced in the Senate or is in the hopper that would add those requirements as material facts.

The *Memorandum* further denied Prasad, his constitutional right to present a complete defense that is "guaranteed" by the Supreme Court and the Constitution. Prasad's trial and subsequent findings established a complete defense, once the government, the District Court, and the Direct Appeal panel reached a unanimous determination, based on the extensive testimony of 21 government witnesses that included Prasad's workers, that those workers were "very highly qualified people" and "they did actual work" within the scope of specialty occupation.

This Court recently recognized that federal courts retain an independent institutional interest in preventing outcomes that undermine public confidence in the judiciary and preserving procedures essential to legitimacy. *Hunter v. United States*, No. 24-1063 (2026). Here, the *Memorandum* allowed guilt to be established by instructing the jury to put aside the governing evidentiary standards (as covered supra), including the "materiality" element and compliance with the "immigration laws or regulations" requirement set forth in the statute and the court's jury instructions, and then deprived Prasad of his right to a complete defense, producing a conviction under a legally unavailable theory. See also *Estelle v. Williams*, 425 U.S. 501, 503 (1976) (requiring "that guilt be established by probative evidence and beyond a reasonable doubt").

The error lies in the courts' effective disregard of the statutory text of § 1546(a), despite the Ninth Circuit's acknowledgment that court-appointed counsel failed to raise the materiality claim. On June 10, 2021, this Court made clear that "Courts have no authority to "`strik[e] down'" statutory text." *Borden v. United States*, 141 S.Ct. 1817, 1835 (2021). On July 1, 2021, this Court repeated that warning: "Courts cannot "strike down statutory text"". *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2391 (2021). Yet the *Memorandum*, issued after those warnings, affirmed Prasad's conviction only by striking the statutory text "with respect to a material fact in any application" and "immigration laws or regulations prescribed thereunder" from Prasad's predicate statute § 1546(a).

Under *Geo Group, Inc. v. Menocal*, 146 S. Ct. 774, 791 (2026), courts may not convert congressionally authorized conduct into unlawful conduct ("the possibility that courts might impose liability for conduct that Congress authorized presents some conflict between those two branches of Government.") The *Memorandum* does precisely that. It is an axiom of constitutional law that no part of the legislative power vested in Congress may be delegated to any other department of government, whether executive or judicial. *Field v. Clark*, 143 US 649, 697 (1892). This case presents serious questions concerning evidentiary sufficiency, violation of the Immigration and Nationality Act, the denial of the constitutional right to present a complete defense, structural error, and a direct conflict between the Ninth Circuit and every other federal court of appeals to have addressed the statutory "material fact" requirement under 18 U.S.C. § 1546(a); but it does not stop there, it presents an exceptionally important constitutional question: whether the judiciary may impose criminal liability beyond the limits established by Congress, questions that this Court can definitively resolve.

REQUEST AND PRAYER TO THE COURT

Petitioner respectfully requests that the Court construe this petition liberally in light of his *pro se* status.

For the foregoing reasons, Petitioner respectfully prays that this Court grant the petition for a writ of certiorari, review the questions presented in light of their exceptional importance and far-reaching consequences, reverse the judgment below, and grant such other relief as may be just and proper.

RESPECTFULLY SUBMITTED.

Date: May 5, 2026

ABHIJIT PRASAD