

No. _____

In The Supreme Court of the United States

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

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 19 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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: HAMILTON, R. NELSON, and BUMATAY, Circuit Judges.*

The motions filed by Sunitha Guntipally (Dkt. No. 87) and Kishore Kumar Kavuru (Dkt. No. 88) for leave to file amicus briefs are GRANTED. The clerk is directed to file the briefs submitted with the motions. *See* Fed. R. App. P. 29 (e).

Judge Nelson and Judge Bumatay voted to deny the petitions for panel rehearing and rehearing en banc, and Judge Hamilton recommended the same. Fed. R. App. P. 40. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. *Id.* The petition for panel rehearing and rehearing en banc (Dkt. No. 86) is DENIED.

* The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, 7th Circuit, sitting by designation.

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NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 19 2025

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted September 17, 2025**
San Francisco, California

Before: HAMILTON, R. NELSON, and BUMATAY, Circuit Judges.***

Defendant Abhijit Prasad appeals the district court's denial of his motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 due to ineffective

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable David F. Hamilton, United States Circuit Judge for the Court of Appeals, 7th Circuit, sitting by designation.

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assistance of counsel. Defendant also requests that this court expand his certificate of appealability (“COA”) so he can raise several other collateral challenges to his conviction. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253. We affirm the district court and deny Defendant’s request for an expansion of his COA.

We review the denial of a 28 U.S.C. § 2255 motion de novo. *United States v. Rodriguez*, 49 F.4th 1205, 1211 (9th Cir. 2022). We review the district court’s factual findings for clear error. *United States v. Avery*, 719 F.3d 1080, 1082 (9th Cir. 2013).

1. Prasad’s claim of ineffective assistance of appellate counsel does not excuse his procedural default. *See Bousley v. United States*, 523 U.S. 614, 621 (1998). To show ineffective assistance of counsel, Prasad “must show that counsel’s advice fell below an objective standard of reasonableness, and that there is a reasonable probability that, but for counsel’s unprofessional errors, [Prasad] would have prevailed on appeal.” *Miller v. Keeney*, 882 F.2d 1428, 1434 (9th Cir. 1989) (simplified). These two prongs often overlap, when, for example, counsel fails to raise an issue “because she foresees little or no likelihood of success on that issue.” *Id.* In those instances, “[a]ppellate counsel will [] frequently remain above an objective standard of competence (prong one) and have caused her client no prejudice (prong two) for the same reason—because she declined to raise a weak issue.” *Id.*

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Prasad's appellate counsel was not ineffective in failing to raise his materiality claim. He asserts that his 18 U.S.C. § 1546(a) convictions must be reversed because the indicted false statements lack materiality. In particular, Prasad contends that the misrepresentations regarding the existence of "actual existing work projects," "specific work positions," "specific, bona fide positions," and "work readily available" in the relevant H-1B forms were not material because they were not required under immigration law.

In *United States v. Patnaik*, we recently addressed the same issue. 125 F.4th 1223, 1227 (9th Cir. 2025). Defendants asserted "that the alleged false statements [with regard to the existence of actual H-1B positions] cannot be material to the government because USCIS can't request information that Congress did not require." *Id.* But, we held, "even assuming that USCIS was not permitted to ask detailed questions about jobsite locations or specific projects, Defendants cannot lie to the government in response." *Id.* Instead, "[t]he proper forum to challenge USCIS's authority to ask detailed questions on I-129 petitions [isn't] through an attack on a criminal fraud indictment." *Id.* at 1229. Thus, we held the false statements were still material regardless of whether the immigration authorities were allowed to ask the questions. *Id.* at 1227.

Patnaik forecloses Prasad's materiality claim. Even though *Patnaik* came after Prasad's direct appeal, it relied on "the longstanding principle that the

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government may punish untruthful responses to unlawful questions.” *Id.* at 1230. Thus, it was not objectively unreasonable for Prasad’s appellate counsel to not raise the materiality argument and pursue alternative legal arguments on direct appeal. *See Moormann v. Ryan*, 628 F.3d 1102, 1109–10 (9th Cir. 2010).

2. We decline to expand Prasad’s COA. “A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). *See also Valerio v. Crawford*, 306 F.3d 742, 767 (9th Cir. 2002). 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.’” *Troiano v. United States*, 918 F.3d 1082, 1088 (9th Cir. 2019) (quoting *Buck v. Davis*, 580 U.S. 100, 115 (2017)).

AFFIRMED.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 26 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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);

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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.

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

**Additional material
from this filing is
available in the
Clerk's Office.**