ORIGINAL

No. 26-5438

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SUPREME COURT, U.S.

# 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

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# PETITION FOR WRIT OF CERTIORARI

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*Pro Se Petitioner*

## QUESTIONS PRESENTED

1. Whether a conviction under 18 U.S.C. § 1546(a) may be sustained based on representations regarding pre-existing "specific, bona fide positions," where the Immigration and Nationality Act, as amended by the Immigration Act of 1990 and the American Competitiveness and Workforce Improvement Act of 1998, together with implementing regulation 20 C.F.R. § 655.731(c)(6)(i), specifically permit petitioning employers to employ H-1B nonimmigrants without a specific job assignment or an existing project.

2. Whether a court may impose criminal liability under 18 U.S.C. § 1546(a) by striking the statute's incorporation of "immigration laws or regulations prescribed thereunder," which govern the conduct described in Question 1, and thereby transform conduct regulated by Congress into a federal crime.

## LIST OF PARTIES

Petitioner: Abhijit Prasad

Respondent: United States of America

No party is a publicly traded corporation.

## RELATED PROCEEDINGS

United States Court of Appeals (CA9):

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

## TABLE OF CONTENTS

## INDEX OF APPENDICES

## TABLE OF AUTHORITIES

**Federal Cases**

**Federal Statutes**

**Other Authorities**



**Federal Regulations**



**Congressional Acts**

## OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit denying Petitioner's motion to recall the mandate and directing that no further filings be entertained, entered January 15, 2026, is reproduced at App-1.

The underlying judgment of the Ninth Circuit affirming Petitioner's conviction, entered November 8, 2021 (see App-3), and the order denying rehearing and rehearing en banc, entered January 11, 2022 (see App-2), are reproduced in the Appendix as antecedent proceedings necessary to understand the procedural posture and legal basis of the order presently under review. App-3 is also reported at *United States v. Prasad*, 18 F.4th 313 (9th Cir. 2021) (*Prasad*).

## JURISDICTION

This petition is filed pursuant to 28 U.S.C. § 1254(1).

Petitioner seeks review of the January 15, 2026 order of the United States Court of Appeals for the Ninth Circuit denying recall of the mandate and directing that no further filings be entertained.

The November 8, 2021 judgment affirming conviction and the January 11, 2022 order denying rehearing and rehearing en banc are not identified as independent judgments for which separate certiorari review is sought; rather, they are included as antecedent proceedings and background necessary to evaluate whether the court of appeals properly denied recall of the mandate and foreclosed further review.

## RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS

U.S. Const. amend. V

18 U.S.C. § 1546(a)

8 U.S.C. § 1153(b)(2)(A)

8 U.S.C. § 1182(n)(2)(C)(i)–(ii)

20 C.F.R. § 655.731(c)(6)(i)

## STATEMENT OF THE CASE

This case presents the question whether courts may sustain a conviction under 18 U.S.C. § 1546(a) based on requirements that Congress and the governing immigration regulations do not impose and, instead, permit.

On December 22, 2016, Abhijit Prasad ("Prasad"), a small H-1B employer, was charged with 31 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." See 18 U.S.C. § 1546(a) and indictment. He pleaded "not guilty" to all charges. 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." No plea agreement was entered in this case at any stage of the proceedings, and none has been entered to date.

The trial record showed that some of Prasad's workers had jobs upon arrival, while others found jobs after arriving and attending interviews. [2] The jury found Prasad guilty on all counts on which he was tried. The government summarized Prasad's conduct as follows:

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[1] See Indictment: Case No: 2-16-cr-00244-KJM, Doc 1

[2] 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.
> 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.

"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." [3]

"Prasad's workers went on to gainful employment once they came to the U.S." [4]

Prasad appealed, and the Ninth Circuit affirmed his H-1B visa fraud convictions under 18 U.S.C. § 1546(a). See *Prasad*; App-3-32. The record was complete at that time, and the Ninth Circuit articulated the basis for affirming Prasad's convictions by stating that "**Prasad violated § 1546(a) 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.**" App-4.

While Prasad remained in custody, developments in 2021 significantly 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 [5]," *not material*, and contrary to the congressional

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

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

[5] "[A]n agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider," *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 US 29, 43 (1983).

mandate, thereby confirming Prasad's long-held position. Prasad requested rehearing and rehearing en banc, which were denied on January 11, 2022, and no judge requested a vote on rehearing en banc. See App.2.

In 2024, Prasad's position was further confirmed when the Department of Homeland Security issued a Final Rule clarifying that

> "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.**" [6]

Yet in a subsequent decision in 2025, the Ninth Circuit relied on *Prasad* to assert that "[b]y law, H-1B petitioners must 'establish that the H-1B beneficiary employees would fill specific, bona fide positions that were available at the time [the petitioner] filed the petitions.'" *United States v. Patnaik*, 125 F.4th 1223, 1227 (9th Cir. 2025). The court then invoked *Patnaik* to deny Prasad's collateral appeal, No. 23-1968 [7]. In doing so, the Ninth Circuit went beyond interpretation and effectively converted lawful conduct, permitted by Congress and the governing regulatory framework, into a basis for criminal liability.

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[6] See page 7472 of Federal Register / Vol. 89, No. 23 / Friday, February 2, 2024 / Rules and Regulations

[7] Case: 23-1968, 09/19/2025, DktEntry: 74.1

Prasad filed a motion to recall the mandate on January 12, 2026. The Ninth Circuit summarily denied the motion on January 15, 2026, and ordered that "[n]o further filings will be entertained in this closed case." See App.1. In doing so, the Ninth Circuit established a precedent that is antithetical to congressional command, departs from statutory text, and conflicts with other federal courts and the Department of Homeland Security, thereby undermining the uniform administration of a congressionally created federal program.

Although this petition seeks review of the Ninth Circuit's January 15, 2026 order denying recall of the mandate, that order cannot be understood in isolation. The denial necessarily preserved the legal conclusions adopted in the underlying November 8, 2021 opinion and January 11, 2022 rehearing order. Those earlier decisions are included in the Appendix solely as antecedent proceedings and context necessary to evaluate the order presently under review.

## REASONS FOR GRANTING THE PETITION

This petition presents a question of exceptional national importance concerning the limits of judicial authority in defining federal crimes within the H-1B immigration framework. Recently, the Supreme Court emphasized in *Geo Group, Inc. v. Menocal,* 607 U.S. ___ (2026), that 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."). Yet *Prasad* and the order denying recall did precisely that by sustaining a criminal conviction while disregarding the statutory and regulatory scheme Congress enacted that specifically permitted the conduct in question. This case does not present a dispute unique to Prasad; it raises a structural question of exceptional importance, whether the judiciary may expand criminal liability beyond the framework established by Congress in the Immigration and Nationality Act and its implementing regulations. Where, as here, the court of appeals has foreclosed further review, this Court's intervention is necessary to restore the proper boundary between Congress's authority to define crimes and the judiciary's duty to apply the law as written.

*Prasad* effectively excised the statutory limitation in 18 U.S.C. § 1546(a), striking the text "immigration laws or regulations prescribed thereunder," and thereby enlarged the scope of criminal liability beyond what Congress enacted. In doing so, the decision imposed liability for conduct that the governing statutory and regulatory framework does not criminalize. That result contravenes this Court's settled precedent that due process forbids retroactive expansions of criminal statutes. As this Court explained, "an unforeseeable and retroactive judicial expansion of narrow and precise statutory language" operates "precisely like an ex post facto law." *Bouie v. City of Columbia*, 378 U.S. 347, 353 (1964).

Congress has never required the existence of specific, preexisting work assignments at the time an H-1B petition is filed, and no such requirement has been enacted since. Yet the decision below has become the basis for criminal prosecutions untethered to any statutory command.

This Court has recognized that the presumption of judicial review may be overcome only where congressional intent to preclude review is fairly discernible. *Clarke v. Securities Industry Assn.*, 479 U.S. 388, 399 (1987). Here, far from foreclosing review, Congress's intent, as discussed *infra*, is clear and controlling, and the decision below departs from that framework by expanding criminal liability beyond the limits Congress established. This Court's review is warranted to restore the constitutional limits set by Congress and to avert the ongoing miscarriage of justice arising from the criminalization of conduct that governing law permits.

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

This case presents a direct conflict between the decision below and the statutory scheme Congress enacted to govern H-1B employment. Prasad's conviction rests on what the Ninth Circuit explained, "[a]s the government acknowledges, (App-9)" namely that Prasad violated § 1546(a) by falsely representing that specific, bona fide positions were available for the H-1B beneficiaries when those positions did not exist. *Prasad* at 317; App-4. Prasad respectfully submits that these formal findings of fact and conclusions of law are inconsistent with the Congressional Acts and its implementing statutes and regulations, that make up the governing statutory and regulatory framework of § 1546(a).

In reality, no law prohibits H-1B employers from petitioning for H-1B nonimmigrants before securing specific positions; instead, the INA and its subsequent amendments permit all H-1B employers to recruit and employ qualified foreign workers even when specific assignments have not yet been secured at the time the petitions are filed.

Congress enacted the Immigration and Nationality Act (INA) and the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). 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 [8], which recognizes that an H-1B nonimmigrant may "enter into employment" upon arrival or making

[8] See pages 80110 and 80218 of Federal Register / Vol. 65, No. 245 / December 20, 2000 / Rules and Regulations

him/herself available for work, and may thereafter find an assignment through various avenues, including going to an interview or meeting with customer.

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 rescinded, and remains in force since its introduction in 2000.

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 that protects all the H-1B employers.

The Ninth Circuit erred because 20 C.F.R. § 655.731(c)(6)(i) provides that an H-1B nonimmigrant may "enter into employment" even if the worker does not yet have a specific assignment and may secure one thereafter.

Certiorari is warranted because the decision below sustains a criminal conviction for conduct that the governing 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. § 1546(a) is both a criminal statute and a fraud statute.

### B. 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. 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) that launched the H-1B program, 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) [9].

"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 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. As the Supreme Court has emphasized "Congress' choice of words is presumed to be

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

deliberate" and deserving of judicial respect". *SAS Institute Inc. v. Iancu*, 584 US 357, 1355 (2018).

With respect to H-1B employers, 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"**) [10]. 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 submit applications only when a specific job or assignment exists.

Certiorari is warranted because the statutory scheme reflected in § 1153(b)(2)(A), and 20 C.F.R. § 655.731(c)(6)(i) permit H-1B beneficiaries to seek employment assignments after arrival.

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

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

Contemporaneously with *Prasad*, at least six federal courts had already addressed and resolved Prasad's substantive legal question at the heart of his indictment and H-1B 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. *Thatikonda v. USCIS*, No. 19-685 (RC) (May 5, 2020) (*Thatikonda*)

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

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.

With respect to H-1B immigration, Honorable Amy Totenberg pointed out that "Judge Collyer noted that "Congress devised a definition for an 'occupation', not a 'job''"". *Id.* 1287.

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

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 nonimmigrant] 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. *US Chamber of Commerce v. US Dept. of Homeland Security, et al.*, 504 F.Supp.3d 1077 (December 1, 2020) (*Chamber*)

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. [11] and tried to legislate them. However, on December 1, 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

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

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."

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.".

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* (App-3-32) in one critical respect: those courts grounded their rulings in the substantive law enacted by Congress, whereas *Prasad* accepted the government's theory whole-cloth despite the absence of any support for that requirement in the INA or the governing regulations. The decision below disregards the statutory and regulatory framework that defines the scope of lawful H-1B conduct and instead imposes a requirement that Congress has never adopted.

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.

### D. The Decision Below Authorizes the Dismantling of a Congressionally Created Program Through Standards That Disregard Governing Law

Recently, Fox News and several nationally syndicated political media outlets reported a series of stories depicting the H-1B program as a "three-headed monster" and reporting that the agency had initiated more than 175 investigations nationwide using "a mechanism that the department has never used before." These broadcasts framed the confirmation of long-standing political claims that H-1B employers "failed to accurately describe the job an employee will work" or that "workers were unaware of the jobs they were supposedly assigned to perform." [12] Yet the very practices criticized in these reports, prospective employment and securing assignments after arrival, are authorized by Congress. As a direct result, over 175 H-1B employers were referred for investigation within weeks [13].

[12] See https://www.foxnews.com/politics/trump-admin-reveals-over-100-investigations-into-h-1b-abuses-as-it-pledges-every-resource-to-protect-us-jobs?msockid=27ab571c54af6cee396b44e9552b6de

[13] Prasad does not contend that all H-1B investigations are unwarranted. Fraud liability can properly arise where workers are underpaid or placed in unauthorized roles, that do not match up with the required qualifications.

The consequences have been immediate and substantial. In the Bay Area, where petitioner resides, multiple H-1B employers have faced adverse outcomes based on similar theories. One H-1B employer accused of misrepresenting "specific jobs" or "job offers" in H-1B filings was denied the opportunity for direct appellate review [14]. Two others were denied certificates of appealability on materially indistinguishable claims [15]. Another H-1B employer, whose filings stated that workers would be placed at off-site locations, is scheduled to be sentenced on July 13, 2026 [16]. Yet another employer was pressured into entering a plea agreement based solely on an Information, not even a Grand Jury indictment, premised on allegations that the defendants "represent[ed] that H-1B beneficiaries had actual existing job offers [...] when Defendants knew at the time that the representations were false in violation of Title 18, United States Code, Section 1546(a)." [17] Increasingly, prosecutors are bypassing the Grand Jury process altogether and securing plea agreements that require defendants to waive fundamental rights, including their statutory right to file a direct appeal, their right

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[14] Ninth Circuit Case: 25-2689, 02/26/2026, DktEntry: 33.1

[15] Ninth Circuit Cases: 24-7568, 06/17/2025, DktEntry: 6.1; 22-16052, 12/05/2023, DktEntry: 7

[16] Case 5:22-cr-00139-EJD, Document 178, Filed 5/7/2026

[17] Case 2:26-cr-00027-TLN, Document 11 Filed 03/23/2026

to file pretrial motions challenging the legal sufficiency of the charges, and other core procedural protections ordinarily available in federal criminal proceedings. [18] These developments underscore the real and continuing impact of the decision below.

Prasad need not catalog every consequence, including the lifelong stigma of a felony conviction, the inability to secure employment because background checks repeatedly fail, and the enduring mark of imprisonment for conduct that is not even an offense, much less a crime or fraud. This is not an isolated miscarriage of justice. It reflects a broader and continuing pattern of criminal prosecutions carrying profound personal and professional consequences for conduct that Congress and the governing regulatory framework expressly permitted.

Certiorari is warranted because *Prasad* has inevitably overshadowed contrary decisions of other federal courts and has effectively become the seminal authority that has started dismantling a congressionally created program on the basis of standards that disregard Congress's mandates, the governing immigration statutes and regulations that § 1546(a) relies on.

[18] Case 2:26-cr-00027-TLN, Document 1 Filed 03/02/2026

## CONCLUSION

As explained above, Prasad was convicted under 18 U.S.C. § 1546(a) for allegedly making a "false statement with respect to a material fact," namely, the existence of "actual existing work projects" or "specific, bona fide positions," in H-1B filings "required by the immigration laws and regulations prescribed thereunder." Even assuming arguendo, that such representations constitute material facts, though they are not requirements under the governing statutory and regulatory framework, Congress has expressly addressed such conduct through 8 U.S.C. § 1182(n)(2)(C)(i)–(ii), which is incorporated by reference into § 1546(a) ("required by the immigration laws"). That provision treats misrepresentation of a material fact in an H-1B application, including willful misrepresentation as alleged here, as a violation subject to civil monetary penalties. 8 U.S.C. § 1182(n)(2)(C) is the portion of the Immigration and Nationality Act that governs the H-1B program. See *Kutty v. U.S. Dep't of Labor*, 764 F.3d 540, 547 (6th Cir. 2014).

Recently, the Supreme 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". In Prasad's case, the Executive Branch has identified no such congressional authorization since charging him in 2016 to support imposing a preexisting work requirement not required by 20 C.F.R. § 655.731(c)(6)(i), which 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" in its statutory text was itself enacted by Congress as positive law. See Editorial Notes of 1 U.S.C. § 204.

It is a settled principle 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). By failing to apply the governing statutory and regulatory framework, the district court, and the decision in *Prasad*, permitted a conviction to stand on constitutionally insufficient evidence (see Fifth Amendment), and transformed that error into binding precedent now being invoked against a growing number of H-1B employers.

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). On such 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." *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2300 (2024). Yet *Prasad* and the Orders denying 1) rehearing and rehearing en banc (App.2), and 2) recall of the Prasad mandate (App.1), did not consider Congressional command and the congressional statutes and regulations incorporated within § 1546(a)'s reference to "immigration laws or regulations." INA, ACWIA, 8 U.S.C. §§ 1153(b)(2)(A) and 1182(n)(2)(C)(i)–(ii) are "immigration laws," and 20 C.F.R. § 655.731(c)(6)(i) is a federal regulation that § 1546(a) incorporates by reference, which reflect Congress's framework under the INA: that H-1B approval turns on qualifications, that misrepresentations of material fact are punished by civil monetary penalties, and that jobs and assignments are determined prospectively. "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).

The decision below sustained Prasad's conviction only by effectively striking the statutory text of § 1546(a), specifically "immigration laws or regulations prescribed thereunder." 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 reiterated that warning: "Courts cannot "strike down statutory text" or resolve the legal rights of litigants not before them." *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2391 (2021). Yet *Prasad*, and the orders denying an rehearing and en banc hearing, recall of its mandate, issued after those warnings, affirmed the conviction only by effectively disregarding the statutory command "immigration laws or regulations prescribed thereunder" of 18 U.S.C. § 1546(a) under which Prasad was charged, thereby rewriting the statute and expanding criminal liability beyond Congress's design.

This case does not present a mere dispute with the rest of the federal courts; it raises a structural question of exceptional importance, whether the judiciary may expand criminal liability beyond the framework Congress enacted. As this Court has made clear, "Federal crimes are defined by Congress, not the courts." *United States v. Lanier*, 520 U.S. 259, 267 n.6 (1997). It has likewise emphasized that "[f]ederal Courts are bound to apply rules enacted by Congress." *Stewart* at 27.

As the Supreme Court put it:

> "In a constitutional Republic such as ours, a federal court has the power to order the Executive to follow the law—and it must. It is axiomatic that the Constitution of the United States and the statutes that the People's representatives have enacted govern in our system of government. Thus, everyone, from the President on down, is bound by law. By duty and nature, federal courts say what the law is (if there is a genuine dispute), and require those who are subject to the law to conform their behavior to what the law requires. This is the essence of the rule of law." *Trump v. Casa, Inc.*, 145 S. Ct. 2540, 2597 (2025).

That "rule of law" was not honored here. "Made up of "`free, impartial, and independent'" judges and justices, the Judiciary checks the political branches of Government by explaining what the law is and "securing obedience" with it." *Id.* 2598. However, the district court and the Ninth Circuit departed from that role and instead accepted the Government's theory by effectively reading out of 18 U.S.C. § 1546(a) the very immigration laws and regulations that Congress incorporated into the statute's text. Importantly, 18 U.S.C. § 1546(a) was itself enacted by Congress as positive law. See *supra*. In doing so, the decisions displaced Congress's statutory framework, which permits H-1B employers, including Prasad and similarly situated employers, to employ H-1B nonimmigrants first and secure assignments thereafter, while separately providing civil penalties for misrepresentation of material facts under the governing H-1B statutes, even assuming, arguendo, that representations concerning pre-existing jobs constitute material facts. If the "courts [are] unable or unwilling to command the Government to follow the law—they would "sanctio[n] a tyranny" that has no place in a country committed to "well-regulated liberty and the protection of personal rights."" *Id.* 2599. The consequences here are no longer theoretical: the published decision in *Prasad* has already been cited amid a broader enforcement initiative reportedly involving more than 175 investigations nationwide under what has been described as "a mechanism that the department has never used before."

The obstacle that Prasad faces is structural: "It is settled law that one three-judge panel of this court cannot ordinarily reconsider or over-rule the decision of a prior panel." *Hart v. Massanari*, 266 F.3d 1155, 1172 (9th Cir. 2001). And now that the panel that decided *Prasad* has foreclosed further review, this Court's intervention is necessary to restore the proper boundary between Congress's authority to define crimes and the judiciary's duty to apply the law as written.

## REQUEST AND PRAYER TO THE COURT

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

Petitioner respectfully requests that this Court grant the petition for a writ of certiorari and, upon review, either reverse the judgment below and recall the mandate, or remand the case for further proceedings consistent with this Court's opinion.

RESPECTFULLY SUBMITTED.

Date: March 2, 2026

ABHIJIT PRASAD