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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,) CASE NO. CR 18-515 EJD
14 Plaintiff,)
15 v.) UNITED STATES' SENTENCING
MEMORANDUM
16 KISHORE KUMAR KAVURU,)
17 Defendant.)
18

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20 The United States of America, through Stephanie M. Hinds, Acting United States Attorney for
21 the Northern District of California, and Maia T. Perez, Assistant United States Attorney, hereby submits
22 the following sentencing memorandum for the Court's consideration.

23 **I. INTRODUCTION**

24 Over the course of several years, defendant Kishore Kumar Kavuru ran a widespread visa fraud
25 scheme to exploit foreign workers and deceive the U.S. government for profit. Without remorse of
26 hesitation, Kavuru utilized his four staffing companies, seven purported end-client companies, and
27 scores of foreign workers, to orchestrate the submission of over 100 fraudulent H-1B visa applications
28

1 that earned him over \$1.5 million in fraudulently-obtained proceeds. Facts discovered in the course of
2 the government's investigation show that Kavuru's crime was no mere accident or temporary lapse in
3 judgment. Kavuru's criminal conduct spanned at least eight years and continued even after his
4 companies were cited for similar violations in civil investigations by the Department of Labor (DOL).

5 As set forth below, the government respectfully recommends that the Court impose a term of
6 imprisonment of 24 months, at the low end of the applicable guideline range, followed by three years
7 supervised release. This recommended sentence is sufficient to deter Kavuru and others like
8 him from future criminal conduct, but not a greater punishment than necessary to achieve the goals of 18
9 U.S.C. § 3553(a).

10 **II. BACKGROUND**

11 **A. 2009-2017: The Offense Conduct**

12 Defendant Kavuru was the owner, Chief Executive Officer, and person with ultimate authority
13 over his four staffing companies: Scopus Consulting Group, Inc., ITECH Analyst Corp, Infinity
14 Methods Corp, and Orian Engineers Incorporated (together, the "Consulting Companies"). Over the
15 course of eight years, from at least 2009 through 2017, Kavuru used the Consulting Companies to
16 submit more than 100 false H-1B visa applications for skilled foreign workers in order to reap more than
17 \$1.5 million in fraudulent proceeds and gain an unfair advantage over competitors.

18 Kavuru's fraud was widespread within his business. Of the 196 petitions reviewed during the
19 investigation, 101 of those petitions – 52 percent – were determined to be fraudulent. As Kavuru
20 submitted more than 600 petitions during the relevant period, his number of fraudulent applications is
21 likely much higher than the 101 petitions identified.

22 Kavuru submitted the petitions falsely stating, under penalty of perjury, that the applicants would
23 work at a variety of end-client companies, including those owned and controlled by his wife. The listed
24 end-client companies either did not exist or never intended to hire the H-1B workers. Nevertheless,
25 Kavuru submitted the fraudulent visa petitions with this end-client information and supporting
26 documentation which he knew to be false. Kavuru created this scheme in order to obtain H-1B visas for
27 workers, and then kept the workers waiting, unpaid, until a legitimate end-client opportunity became
28 available. Evidence shows that some of the workers waited months to begin legitimate work and that

1 Kavuru ordered them to take unpaid leave during the interim. This failure to pay H-1B workers while
2 they are “benched” is against DOL policy.

3 In a further breach of DOL policy, workers reported that Kavuru required them to pay him for
4 the costs of their visa applications. Nearly all of the interviewed workers stated that they were forced to
5 pay Kavuru or his employees \$3,000 to 4,000 in cash before he would process their visa applications.
6 This was not some mistake or misunderstanding by Kavuru. As explained below, the DOL had
7 explicitly warned Kavuru that he could not charge workers for their own visa fees during a prior
8 investigation. Knowing that his actions were illegal, Kavuru opted to have the workers pay in cash and
9 instructed them to tell government officials the payments were for “training courses.”

10 **B. Prior DOL Investigations of Kavuru**

11 The instant offenses are not Kavuru’s first violations: the DOL’s Wage and Hour Division
12 (WHD) previously conducted civil investigations into two of Kavuru’s companies and found violations
13 similar to those in the current case. In 2008, the WHD investigated Scopus Consulting Group and found
14 that, similar to the instant case, Kavuru may have violated the law by failing to pay the correct
15 prevailing wage while some H-1B workers were benched.

16 In a second investigation conducted from 2011 to 2013, the WHD concluded that Orian
17 Engineers willfully misrepresented the prevailing wage level on the Labor Certification Applications
18 submitted to the government to initiate the H-1B petitioning process. Kavuru, the investigation found,
19 would attest that the H-1B jobs were entry level, known as Level 1, resulting in a lower salary for the
20 worker when, in fact, the workers’ jobs were not entry-level positions. The investigation also concluded
21 that the complaining worker was not paid while he was benched, as required by the DOL. Finally, the
22 investigation concluded that Kavuru illegally required that workers pay for the cost of the H-1B petition
23 fees. These payments ranged from \$2,050 to \$3,500.

24 The 2011-2013 investigation also looked at Scopus Consulting Group again and concluded that
25 the company failed to pay the required wage rate for workers’ time while benched. The investigation
26 further found that Scopus Consulting Group, just like Orian Engineers, required workers to pay illegal
27 H-1B fees in cash before Kavuru filed their H-1B paperwork.

1 On December 6, 2013, a WHD Investigator explained to Kavuru that it is illegal to deduct money
2 from workers' wages for:

- 3 • Penalty for the worker's failure to complete the full employment period;
- 4 • Fees associated with H-1B imposed by USCIS;
- 5 • Any part of the \$500 fraud protection and detection fee imposed by USCIS;
- 6 • Any deduction for the employer's business expense that would reduce an H-1B worker's
7 pay below the required wage/prevailing wage such as attorney's fees that are related to
8 the H-1B's filing, tools, equipment for travel expenses while on business.

9 The investigator also told Kavuru that all fees associated with the Labor Certification
10 Application are an employer expense and that Kavuru cannot collect the fees on the back or front end of
11 the H-1B visa time period. Records indicate that Kavuru acknowledged that he understood these
12 policies.

13 **III. SENTENCING GUIDELINES**

14 **A. Offense Level Computation**

15 The plea agreement and PSR agree that the base offense level is 17, with a nine-level increase
16 because Kavuru's offense involved 100 or more documents. PSR ¶ 3. The government concurs with the
17 Probation Office that the adjusted offense level is 20 and the total offense level is 17. PSR ¶¶ 27-36.

18 **B. Applicable Sentencing Guideline Range**

19 The Probation Office has determined that Kavuru does not have any criminal history points, and
20 is thus categorized as Criminal History Category I. PSR ¶ 40. This results in a Sentencing Guidelines
21 range of 24 to 30 months. The government concurs with the Probation Office's calculation of the
22 advisory guideline range in this case.

23 **IV. SENTENCING RECOMMENDATION**

24 The government respectfully recommends a sentence of 24 months' imprisonment, at the low
25 end of the applicable guideline range. The sentencing objectives set forth by Congress in § 3553(a) are
26 best accomplished through a moderate prison sentence. Although other factors may apply, the most
27 significant with regard to Kavuru are the nature and circumstances of the offense, the need to promote
28 respect for the law and provide just punishment for the offense, and the need to afford adequate

1 deterrence to similar professionals who find themselves in a position to exploit others for their own gain.

2 **A. Nature and Circumstances of the Offense**

3 The 3353(a) factors support the 24-month sentence recommended by the United States. The
4 nature and circumstances of the offense are serious, and Kavuru's history and characteristics support
5 this recommendation.

6 The criminal investigation revealed that Kavuru committed his crimes over the course of at least
7 *eight years*, during which time he falsified at least *101 petitions* and earned at least *\$1.5 million* in
8 fraudulently obtained proceeds. This was not an isolated criminal act that can be attributed to temporary
9 pressures that overcame his better judgment. Rather, Kavuru executed a careful, multi-year scheme
10 involving multiple companies and contracts in order to deceive the government and exploit foreign
11 workers for maximum profit.

12 Most notably, Kavuru continued to force workers to pay their own application fees in cash and
13 benched them without pay even *after* the DOL cited him for these violations. More than two years after
14 Kavuru assured the DOL investigator that he understood he was responsible for all petition fees, Kavuru
15 was still demanding that foreign workers pay him thousands in cash to submit their visa petitions. These
16 foreign workers paid Kavuru in good faith for the chance to come to the United States on a valid H-1B
17 visa and earn a good income working at a legitimate end-client. Because of Kavuru's fraud, many
18 workers who succeeded in getting a visa found there was no end-client to employ them and were forced
19 to take unpaid leave while they were benched for months waiting for a job. Some workers were even
20 told to go out and find their own end-clients. Records show that some of these workers never made it
21 onto Kavuru's payroll at all.

22 Kavuru's fraud scheme harmed scores of other workers and competitor staffing agencies by
23 depriving them of valid H-1B visas. Because USCIS receives far more H-1B visa petitions than the
24 statutory cap of 65,000, those visas that Kavuru obtained through fraudulent representations meant
25 fewer visas were available for other foreign workers and competitors who sought visas through
26 legitimate means. Those workers, their staffing agencies, and the legitimate end-clients who intended to
27 employ them, all lost out on H-1B visas that sat unused by Kavuru for months on end while he waited
28 for end-clients and benched workers without pay. Kavuru's scheme also harmed the government by

1 interfering with and obstructing its ability to regulate labor and foreign visas, and it harmed the local
2 communities whose economies were deprived of these workers and their salaries. .

3 Ultimately, Kavuru's greed and deceit prevented him from providing meaningful assistance to
4 the foreign workers who paid him thousands for visas that went unused. He took advantage of their trust
5 to grow his business and unjustly enrich himself, even though he knew that his conduct imperiled
6 workers' incomes as well as their immigration status. Even now, Kavuru is still either oblivious to or
7 deliberately ignorant of the impact his conduct has had on others. In his written statement accepting
8 responsibility, he does not express any remorse or sympathy for the workers, competitors, end-clients,
9 and communities he has harmed.

10 **B. The Need to Promote Deterrence**

11 A term of 24 months' imprisonment would further the public's interest by making clear to others
12 in Kavuru's position that they face serious consequences if they commit the type of conduct at issue in
13 this case. General deterrence occupies an especially important role in sentencing for H-1B visa fraud
14 prosecutions because they are relatively rare.

15 A meaningful term of imprisonment will further the public's interest by deterring similar acts of
16 misconduct. The government has committed significant resources to this prosecution; and the DOL's
17 work on this case required numerous hours and dozens of worker interviews. A moderate 24-month
18 sentence is necessary to deter other individuals who may be tempted to commit similar visa fraud
19 schemes, and also to specifically deter others similarly situated to Kavuru.

20 **C. PSR Recommendation**

21 The PSR's recommendation of a 50 percent downward variance from the bottom of the guideline
22 range is curious. In essence, the PSR concludes that a lenient sentence is appropriate because of
23 Kavuru's "family support, positive adjustment on U.S. Pretrial Services, [and] employment and
24 education history." PSR at Sentencing Recommendation p. 2. The PSR also notes Kavuru's lack of
25 criminal history and his mother's death (which occurred after his eight-year fraud was completed).

26 The PSR's recommendation for a 50 percent downward variance should not be applied. First,
27 Kavuru's prior criminal history is already accounted for in the guidelines: his 24 to 30 month
28 guideline is specifically calculated for defendants with zero or one criminal history point.

1 Second, the PSR recommendation largely relies on Kavuru's employment and education history.
2 This is a privilege enjoyed by white collar defendants, whose legitimate careers and educational
3 achievements are sometimes factored into sentencing to counterbalance their criminal conduct. These
4 factors are not mitigating, but only show how egregious and unnecessary Kavuru's conduct really was.
5 Kavuru was financially comfortable, well-educated, from a supportive family, and owned his own
6 businesses. He used his extensive education and the appearance of professionalism to deceive foreign
7 worker applicants and the government and continued his fraud scheme for almost a decade. Kavuru was
8 motivated by greed, not necessity, and his crimes paid handsomely: Kavuru's assets include luxury
9 vehicles, his own home, a \$2M rental property in Sunnyvale, hundreds of thousands of dollars in
10 checking accounts and thousands more in jewelry. Kavuru's choice to abandon his comfortable and
11 legitimate career for criminal gain should not be rewarded.

12 The government acknowledges Kavuru's good conduct on pretrial release. However, his
13 offense is aggravated by the sheer breadth of his fraud which spanned eight years and impacted
14 numerous people, and which he knowingly continued after multiple DOL civil investigations. Kavuru's
15 criminal conduct is far too egregious, and went on for far too long, to merit any downward departure or
16 variance.

17 **V. FORFEITURE MONEY JUDGMENT**

18 As part of his plea agreement, Kavuru agreed to pay a \$533,350.03 forfeiture money judgment.
19 Plea Agreement ¶ 11. The Court entered an Order of Forfeiture in the amount of \$533,350.03 on
20 October 21, 2021. ECF 60. At the time of this filing, the government does not know of any payments
21 Kavuru has made toward this judgment.

22 **VI. CONCLUSION**

23 With full consideration of all the sentencing factors set forth in 18 U.S.C. § 3553(a), the
24 government respectfully requests that the Court impose a Guideline sentence of 24 months in prison.
25 This sentence at the bottom of the Guidelines range is sufficient, but not greater than necessary, to
26 reflect the seriousness of the offense, promote respect for the law, provide just punishment, and afford
27 adequate deterrence. Anything less would be insufficient to reflect the scale of the fraud perpetuated by
28 Kavuru for so many years. For all these reasons, the government believes that a low end sentence is

1 reasonable in light of the sentencing factors and the circumstances of this offense.

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Respectfully submitted,

STEPHANIE M. HINDS
Acting United States Attorney

Dated: November 15, 2021

_____/s/_____
MAIA T. PEREZ
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