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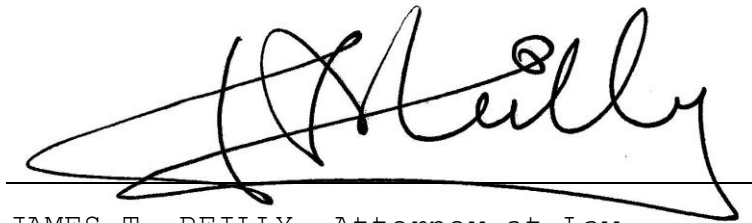
8 Attorneys for Defendant BALAKRISHNAN PATWARDHAN

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

12 UNITED STATES OF AMERICA, : Case No. CR 13-00200 EJD
13 Plaintiff, :
14 vs. : DEFENDANT'S
15 BALAKRISHNAN PATWARDHAN, : SENTENCING
16 Defendant. : MEMORANDUM
: Hearing Time/Date:
: 1:30 pm Monday
: August 18, 2014

17
18 Defendant BALAKRISHNAN PATWARDHAN hereby submits the following
19 Defendant's Sentencing Memorandum.
20

21 Date: August 17, 2014 Respectfully submitted,

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25 JAMES T. REILLY, Attorney at Law
26 California State Bar No. 67254
27 Counsel for Defendant BALAKRISHNAN PATWARDHAN
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1 The sentencing recommendation includes various terms and
2 conditions of probation, including performance of 100 hours of
3 community service, with each of which Mr. Patwardhan is prepared to
4 comply.

5 Furthermore, he has already complied with the first required
6 payment toward the agreed upon forfeiture of \$100,000, and in fact
7 exceeded the \$50,000 obligation by making a payment of \$55,000.

8 The United States, on the other hand, has submitted a sentencing
9 recommendation that Mr. Patwardhan be imprisoned for 12 months.

10 Mr. Patwardhan submits that the sentencing recommendation by the
11 probation officer is appropriate for the reasons set forth below and
12 respectfully requests that the court follow that recommendation.

13 It is apparent from the probation officer's home inspection, as
14 described on pages 8-9 of the presentence report, that Mr. Patwardhan
15 did not derive any unusual or substantial financial benefit from the
16 submission of the false visa petitions. He and his family live in
17 what can best be described as modest, if not impoverished,
18 circumstances. Neither he nor his family derived luxurious benefits
19 from the conviction offenses. Rather, the income derived from these
20 services, all of which Mr. Patwardhan has now agreed to forfeit, went
21 toward maintenance of their modest lifestyle.

22 Mr. Patwardhan is both diabetic and a cancer survivor. His bout
23 with colon cancer resulted in removal of 80% of his colon, with
24 consequent difficulties described on page 9 of the presentence
25 report.

26 Mr. Patwardhan's primary motivation for committing the
27 conviction offenses was to help others, rather than for his own
28 financial gain.

1 He has been and remains the primary financial support for his
2 three children and two adult dependents, including his wife's
3 bedridden aunt.

4 As noted in the presentence report, there are no aggravating
5 factors in this case. Nor are there any specifically identifiable
6 victims. On page 3 of its sentencing memorandum, the United States
7 has suggested, without any factual or evidentiary support, that
8 placement of individuals pursuant to these false visa applications
9 may have "displaced" qualified American workers and created "downward
10 pressure on wages for all workers in that economic sector". In fact,
11 of course, H1-B visas are available only for employees with expertise
12 in specialty occupations and limited fields of employment. Such
13 visas are permitted in the first place primarily because there is a
14 dearth of American workers who have the requisite expertise. It is
15 extraordinarily unlikely that these 19 fraudulent visas denied any
16 qualified American of employment and is less likely that there was
17 any "downward pressure" on wages in the high-tech sector which could
18 be attributed to these visas.

19 The implication of the presentence report is that the
20 recommended sentence accomplishes the factors set forth in 18 U.S.C.
21 § 3553(a); that is, that the recommended sentence properly reflects
22 the seriousness of the offenses, that the recommended punishment
23 affords adequate deterrence to criminal conduct; and that it
24 adequately protects the public from future criminal conduct on the
25 part of Mr. Patwardhan. It would also enable Mr. Patwardhan to
26 continue to receive, in the most effective manner, medical care and
27 treatment for both his diabetic condition and his recovery from colon
28 cancer.

1 The United States cited several cases in support of its
2 conclusion that a sentence of 12 months imprisonment would be
3 consistent with sentences in other high-tech H1-B visa fraud cases.

4 Review of the cited cases, however, shows that the circumstances
5 of those cases are dissimilar to this case and that they provide no
6 basis of comparison for sentencing in this case.

7 In U.S. v. Chennupati, the United States and the defendant
8 entered into a plea agreement which specifically provided for a 6
9 month prison sentence and neither a fine nor forfeiture. In our
10 case, of course, Mr. Patwardhan has agreed to forfeiture of \$100,000,
11 which differentiates it from the Chennupati case.

12 The defendant in U.S. v. Raju operated a visa fraud and money
13 laundering scheme for six years (from 2006 to 2012) and filed
14 hundreds of false visa applications, for which his company received
15 \$13.2 million in payment from staffing companies across the United
16 States.

17 The two defendants in U.S. v. Mehmood, et al., not only filed
18 more than 300 false H1-B visa applications, they also charged workers
19 illegal fees & expenses and abandoned them after they arrived in the
20 U.S. Over a 13 year period from 1996 to 2009, the defendants engaged
21 in a \$41 million scam.

22 In U.S. v. Allala, the defendant submitted at least 147 false
23 H1-B visa applications over the four year period 2006 to 2010. He
24 also created and submitted to immigration authorities a false lease
25 in an effort to try to hide his fraudulent activities.

26 The defendant in U.S. v. Doppalapudi operated five computer
27 consulting companies, for which he filed H1-B visa applications. One
28 of the five companies filed 335 applications, 33 of which were

1 fraudulent. He also defrauded the prospective employees, underpaying
2 or leaving them completely unemployed once they arrived in the U.S.
3 While operating these businesses, Doppalapudi transferred more than
4 \$1 million from his business bank accounts to accounts in India.

5 Finally, in the case of U.S. v. Dasondi, the defendant submitted
6 false H1-B visa applications for individuals who did not have the
7 requisite technical expertise, had them work at unrelated jobs and
8 operated a "running the payroll" scheme by which the employees were
9 put on his company's payroll while working at other, non-technical
10 jobs, and making monthly payments to the defendant's company.

11 A review of these cases demonstrates that the level of
12 culpability on the part of each of the defendants, other than in the
13 Chennupati case, was considerably higher than Mr. Patwardhan's
14 culpability in this case. None is comparable for sentencing
15 purposes.

16 As noted above, in Chennupati, the defendant agreed to the 6
17 month sentence as part of the plea agreement and paid neither a fine
18 nor a forfeiture. To the extent that these two cases are similar,
19 Mr. Patwardhan's agreement to forfeit \$100,000 more than offsets the
20 six month sentence to which Mr. Chennupati agreed.

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23 **III**

24 **CONCLUSION**

25
26 Based on the foregoing considerations, Mr. Patwardhan
27 respectfully submits that the sentencing recommendation of the
28 probation officer is appropriate to the facts and circumstances of

1 this case, accomplishes the statutory sentencing objectives and,
2 perhaps most significantly, is a fair and equitable sentence for the
3 conduct involved in this case.

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5 Dated: August 17, 2014
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8 Respectfully submitted,

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10 A handwritten signature in black ink, appearing to read "J. Reilly", written over a horizontal line.

11
12 JAMES T. REILLY, Attorney at Law
13 California State Bar No. 67254
14 Counsel for Defendant BALAKRISHNAN PATWARDHAN
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