

d. Defendant SHIKHA MOHTA was a resident of Jersey City, New Jersey and was the Head of Finance for Defendant SCM.

e. S.D., a co-conspirator not named as a defendant herein, a resident of Virginia, was admitted to practice law in New Jersey and was employed as an immigration attorney for Defendants SCM/MMC.

f. H.P., a co-conspirator not named as a defendant herein, was a resident of New Jersey and was the Human Resources Manager for Defendants SCM/MMC.

g. H.K., a co-conspirator not named as a defendant herein, was a resident of India and was employed by Defendants SCM/MMC as the U.S. Immigration Manager.

h. Individual 1 was a foreign national who resided in New Jersey and Maryland.

i. The United States Department of Homeland Security, United States Citizenship and Immigration Services (“USCIS”) was an agency of the executive branch of the United States that was charged with, among other duties, the oversight of immigration into the United States, and was empowered to approve and process applications for residency within the United States.

j. The United States Department of Labor (“USDOL”) was an agency of the executive branch of the United States that was charged with, among other duties, enforcement of the requirements of labor regulations, including immigration-related employment standards and worker protections.

The H-1B Visa Program

2. The H-1B visa program allowed businesses in the United States, such as Defendants SCM/MMC, to temporarily employ foreign workers with specialized or technical expertise in a particular field such as accounting, engineering, or computer science.

3. Before hiring a foreign worker under the H-1B visa program, the employer was required to first obtain approval from the USDOL by filing a Labor Condition Application (“LCA”). In the LCA, the employer represented that it intended to employ a specified number of foreign workers for specific positions for a particular period of time. The employer was also required to make truthful representations regarding the foreign worker’s rate of pay, work location, and whether the position was full-time. In addition, the employer agreed to pay the foreign worker for non-productive time—that is, an employer who sponsored a foreign worker was required to pay wages to the foreign worker, even if he or she was not actively working for certain periods of time.

4. The employer was required to further attest that the representations were true and accurate, and the LCA provided a warning that false representations could lead to criminal prosecution. Except in limited circumstances, the LCA

was required to be filed electronically. Upon filing, the employer was required by regulation to print and sign a copy. The employer was further required to maintain the signed copy in its files.

5. After the USDOL approved the LCA, which approvals were primarily based on the employer's representations in the LCA, the employer was required to then obtain permission from USCIS to hire a specific individual. This approval was obtained by filing a Petition for a Nonimmigrant Worker, Form I-129, and paying certain fees. In this petition, the employer was required to truthfully provide biographical information regarding the specific foreign worker to be employed. The employer also provided much of the same information that was on the LCA, including job title, the specific type of position for which the worker was hired, work location, pay rate, dates of intended employment, and whether the position was full-time. The petition was signed under penalty of perjury, and the employer was required to certify that the information submitted was true and correct.

6. Once USCIS approved this petition, the foreign worker could apply for a visa at a United States embassy or consulate overseas. If the foreign worker was already lawfully in the United States, then the foreign worker's immigration status could be adjusted without the worker having to leave the country.

7. Once a visa was issued or an adjustment of status occurred, the foreign worker possessed lawful non-immigrant status and could reside in the United

States and work for the employer until the visa expired or his or her government-approved employment with the company ended, whichever occurred first. The foreign worker could not immigrate, or permanently reside, in the United States under this type of visa.

8. For a foreign worker entering the United States from abroad, the employer was required to start paying the foreign worker once he or she entered into employment or within 30 days of admission to the United States, whichever was sooner. For a foreign worker already in the United States, the employer was required to begin paying the foreign worker at the start of employment or within 60 days of approval of the H-1B visa petition, whichever was sooner.

9. If the foreign worker was dismissed before the H-1B visa expired, the employer was required to send notice to USCIS and pay for the foreign worker to return to his or her native country.

The Conspiracy

10. From at least as early as in or about 2010 through in or about April 2015, in Hudson County, in the District of New Jersey, and elsewhere, defendants

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knowingly and intentionally conspired and agreed with co-conspirator S.D., co-conspirator H.P., co-conspirator H.K., and others, to:

- (1) present applications and other documents required by immigration laws and regulations prescribed thereunder which contained materially false statements and which failed to contain any reasonable basis in law and fact, contrary to Title 18, United States Code, Section 1546(a); and
- (2) alter, conceal, cover up, falsify, and make false entries in records, documents, and tangible objects with the intent to impede, obstruct, and influence an investigation and the proper administration of any matter within the jurisdiction of an agency and department of the United States, namely, the United States Department of Homeland Security, United States Citizenship and Immigration Services, and the United States Department of Labor, contrary to Title 18, United States Code, Section 1519.

Objects of the Conspiracy

11. The objects of the conspiracy were to: (a) fraudulently obtain H-1B visas for foreign workers; and (b) obstruct a government investigation into such fraud.

Overview of the Scheme

12. As part of their scheme to fraudulently obtain H-1B visas for foreign workers, Defendants SCM/MMC, SHARMA and MOHTA, and their co-conspirators, falsely represented, in Defendant SCM/MMC's petitions and accompanying documents submitted to USCIS, that foreign workers had full-time "in-house" positions, and would be paid an annual salary. Contrary to these representations and in violation of the H-1B visa program, Defendants SCM/MMC paid the foreign workers only when the foreign workers were placed at a third-party client, or a company that entered into a contract for services with Defendants SCM/MMC.

13. In some instances, Defendants SCM/MMC, SHARMA and MOHTA, and their co-conspirators, generated false payroll records to create the appearance, and lull the United States Government into believing, that the foreign workers were being paid full-time wages and to unlawfully maintain their status. In fact, some of those foreign workers were advised to pay Defendants SCM/MMC, SHARMA, MOHTA and their co-conspirators, cash for the approximate amount they were supposed to be paid by Defendants SCM/MMC in order to generate the false payroll records. Defendants

SCM/MMC, SHARMA, MOHTA and their co-conspirators, told foreign workers that these payments to create the false payroll records would be the only way for them to maintain their H-1B visas.

14. “Benching” is defined by USDOL as “workers who are in nonproductive status due to a decision by the employer, such as lack of work.” Defendants SCM/MMC and SHARMA were actively violating USDOL regulations in not paying their benched workers.

15. When USCIS conducted an inquiry regarding Individual 1’s immigration status, in or about January 2015, Defendant MOHTA and her co-conspirators engaged in a scheme to obstruct that inquiry by collecting cash from Individual 1, and providing a fictitious payroll stub to Individual 1 so that he/she could present the payroll stub to an individual believed to be a USCIS employee for the purpose of deceiving USCIS and obstructing its inquiry.

16. When USDOL conducted an audit of Defendants SCM/MMC beginning in or about 2014, Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, engaged in a scheme to obstruct that audit by making it appear that the benched workers were on leave through the generation of fictitious leave slips.

Manner and Means of the Conspiracy

17. It was part of the conspiracy that Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, submitted or caused to be submitted LCAs to the USDOL, falsely representing that Defendants SCM/MMC had a

temporary need for full-time workers and that it would pay the foreign workers for all hours worked and for any non-productive time.

18. It was further part of the conspiracy that Defendants SCM/MMC, SHARMA, and their co-conspirators, submitted or caused to be submitted one or more filings to USCIS, falsely representing that Defendants SCM/MMC would employ foreign workers in full-time positions.

19. It was further part of the conspiracy that Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, did not employ these foreign workers on a full-time basis, but rather they “benched,” without pay, multiple foreign workers following approval of H-1B visas by USCIS.

20. It was further part of the conspiracy that Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, unlawfully failed to pay multiple foreign workers, contrary to their representations to USCIS.

21. It was further part of the conspiracy that Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, encouraged foreign workers to remain in the United States after the invalidation of their H-1B visas through the benching process by requiring them to find work for themselves and/or requiring the foreign workers to pay cash for the creation of false payrolls to maintain their H-1B visa statuses.

22. It was further part of the conspiracy that Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, obstructed federal investigations to cover up their H-1B visa scheme, to avoid detection, and to allow their

scheme to continue. Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators also submitted fictitious leave slips of foreign workers to USDOL for the time periods that they were benched to conceal the benching scheme.

Overt Acts

23. In furtherance of the conspiracy and in order to effect the objects thereof, Defendants SCM/MMC, SHARMA, MOHTA, and their co-conspirators, committed and caused to be committed, the following acts in the District of New Jersey and elsewhere:

a. On or about January 3, 2012, Defendant SHARMA sent an e-mail to “info @scmdata.com” with the subject heading: “Cash to Collec[sic].” Attached to the e-mail was a spreadsheet that listed names of benched workers along with dollar amounts next to the names that ranged from \$1,500 to \$3,000, representing the amount of money the individuals were required to pay Defendants SCM/MMC and SHARMA to perpetuate the payroll scheme.

b. On or about October 16, 2014, Defendant MMC, through co-conspirator S.D., and at the overall direction of Defendant SHARMA, submitted an I-129 Petition (“Petition”) to USCIS to extend the H-1B visa status of Individual 1 that falsely set forth in the Petition and in the supporting LCA that Individual 1 would be working as a business analyst for Defendant MMC, with a salary of \$67,700 per year for a period of three years, when, in fact,

Defendant MMC did not employ Individual 1 in any capacity and no such position existed.

c. In or before January 2015, Defendant MMC stopped paying Individual 1.

d. On or about January 30, 2015, co-conspirator S.D. told Individual 1 to lie to an individual (whom co-conspirator S.D. believed to be a USCIS employee, but who was actually a law enforcement agent) by falsely stating that Individual 1 had been living with a friend in Virginia or at a guesthouse controlled by Defendant MMC.

e. On or about February 2, 2015, co-conspirator S.D. sent an e-mail to Individual 1 containing false information to be given to an individual (whom co-conspirator S.D. believed to be a USCIS employee, but who was actually a law enforcement agent), as fictitious proof that Individual 1 resided at Defendant MMC's guesthouse in January 2015.

f. On or about February 2, 2015, co-conspirator H.K. instructed Individual 1 to pay Defendant MMC in cash so that Defendant MMC could issue a check to Individual 1 and falsely claim that Defendant MMC paid Individual 1 wages in January 2015.

g. On or about February 20, 2015, co-conspirator H.K. explained to Individual 1 the importance of having paystubs and employment status because USCIS would inquire about both.

h. On or about February 20, 2015, Defendant MOHTA gave Individual 1 a paycheck drawn on the account of Defendant MMC in the net amount of \$2,339.42, and Individual 1 gave Defendant MOHTA \$3,673.00 in cash.

i. In or about February 2015 and March 2015, in response to a USDOL audit, Defendants SCM/MMC and SHARMA provided fabricated leave slips of foreign workers to the USDOL for the time periods that the foreign workers were benched to conceal the benching scheme and to conceal the fact that the foreign workers were not paid during those time periods as required by federal law. Defendant MOHTA prepared and forwarded lists of benched employees to facilitate the fabrication of the leave slips.

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(Conspiracy to Harbor Illegal Aliens)

1. Paragraphs 1 through 9 and Paragraphs 11 through 23 of Count 1 of this Indictment are re-alleged as if set forth herein.

2. From at least as early as in or about 2010 through in or about April 2015, in Hudson County, in the District of New Jersey, and elsewhere, defendants

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knowingly and in reckless disregard of the fact that aliens had come to, entered, and remained in the United States, conspired and agreed with co-conspirator S.D., co-conspirator H.P., co-conspirator H.K., and others, to conceal, harbor, and shield from detection such aliens for the purpose of commercial advantage and private financial gain, contrary to Title 8, United States Code, Section 1324(a)(1)(A)(iii).

In violation of Title 8, United States Code, Section
1324(a)(1)(A)(v)(I).

FIRST FORFEITURE ALLEGATION

1. As a result of violating 18 U.S.C. § 371, a conspiracy to commit visa fraud, contrary to 18 U.S.C. § 1546(a), alleged in Count 1 of this Indictment, Defendants SCM DATA, INC., MMC SYSTEMS, INC., SOWRABH SHARMA, and SHIKHA MOHTA, shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(6), any conveyance, including any vessel, vehicle, or aircraft, used in the commission of the said offense; any property, real or personal, that constitutes or is derived from proceeds obtained directly or indirectly from the commission of the said offense; and any property, real or personal, used to facilitate or intended to be used to facilitate the commission of the said offense.

Substitute Assets Provision

2. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:
- a. cannot be located upon the exercise of due diligence;
 - b. has been transferred or sold to, or deposited with, a third person;
 - c. has been placed beyond the jurisdiction of the Court;
 - d. has been substantially diminished in value; or
 - e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

SECOND FORFEITURE ALLEGATION

1. As a result of violating 8 U.S.C. § 1324 alleged in Count 2 of this Indictment, Defendants SCM DATA, INC., MMC SYSTEMS, INC., SOWRABH SHARMA, and SHIKHA MOHTA, shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(6), any conveyance, including any vessel, vehicle, or aircraft, used in the commission of the said offense; any property, real or personal, that constitutes or is derived from proceeds obtained directly or indirectly from the commission of the said offense; and any property, real or personal, used to facilitate or intended to be used to facilitate the commission of the said offense.

Substitute Assets Provision

2. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

A TRUE BILL

FOREPERSON



PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: 16-CR-428-KM

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

SCM DATA, INC.,
MMC DATA, INC.,
SOWRABH SHARMA, and
SHIKHA MOHTA

INDICTMENT FOR

18 U.S.C. § 371
8 U.S.C. § 1324(a)(1)(A)(v)(I)

A True Bill,

foreperson

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