

Hearing on “The Economic Imperative for Enacting Immigration Reform”

Statement of Jack (Jay) B. Palmer Jr.

Lowndes County, Alabama

To the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security

July 26, 2011

Members of the Committee, I am Jay B. Palmer Jr. of Lowndes County Alabama. I am currently employed by Infosys as a Principal Consultant in the Enterprise Solutions Practice and have been so employed since August, 2008. In this capacity, I witnessed and received emails, screen-shots and other documents proving that Infosys intentionally violated our visa and tax laws for the purpose of increasing revenues. I filed an internal Whistleblower Complaint that was ignored. In January 2011, with the help of my attorney, Kenny Mendelsohn, I reported these violations and have been cooperating with the State Department, Department of Homeland Security, the Internal Revenue Service, and other agencies in a criminal investigation against Infosys and some of its employees. I am considered a Federal Witness and am afforded protection under this recognition. My cooperation has led to a Grand Jury investigation of Infosys. Due to an ongoing criminal investigation I will purposely not divulge certain facts for obvious reasons.

I sincerely thank Senator Grassley and his staff for allowing me to provide testimony in regards to my experiences. I hope the information I provide to this Subcommittee will help you better understand the ways that Infosys and other companies are intentionally violating our visa laws and avoiding paying Federal and state income taxes.

Infosys Technologies Limited (INFY NASDAQ) provides information technology (IT) and consulting services worldwide. The company was founded in 1981 and is headquartered in Bangalore, India. Currently there are over 130,000 employees worldwide. Of the employees, 98% are Asian, 1% other, and less than 1% American. Infosys has over 15,000 foreign nationals working in the U.S. Financially, Infosys has a market cap of 40 billion dollars. Currently the company

has approximately \$4 billion (USD) cash in the bank with no debt. Annual sales are over 6 billion per year with a quarterly growth rate of 14.9%. Stock prices have risen from \$21 a share in March 2009 to a market close of \$71 per share January 20th, 2011. Currently over 3.5 billion dollars a year is derived from the U.S.

I joined the company because Infosys was founded on hard work, determination, and entrepreneurship. However, somewhere along the journey this path and ideology became jaded. I am still loyal to the core company ethics, but I could not be a part of its illegal activities. This is the reason I “blew the whistle” which led to a federal criminal investigation and Senator Grassley contacting me to hear my story.

From August 2008 until March 2010 my employment at Infosys had been a good experience and I enjoyed much success with my colleagues and customers. Factually speaking, I had been recognized by customers and Infosys Management for exceptional work. In March of 2010, as a result of hard work and delivering success at Baker Hughes Oil, an Infosys client, I was invited to India. The work at Baker Hughes Oil implemented technology to assist in preventive measures which could avoid future oils spills such as that in the Gulf of Mexico. Hence the invitation to Infosys Headquarters in Bangalore, India for an enterprise solutions “Actionize” planning meeting. As a Principal in the company, this was an honor for me and I was the only American invited from my practice. During the meeting one of the topics was the H1-B visa “crisis”. This visa category applies to people who should have special training and work in a specialty occupation such as IT. According to USCIS, “The job must meet one of the following criteria to qualify as a specialty occupation:

- Bachelor’s or higher degree or its equivalent is normally the minimum entry requirement for the position
- The degree requirement for the job is common to the industry or the job is so complex or unique that it can be performed only by an individual with a degree
- The employer normally requires a degree or its equivalent for the position
- The nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s or higher degree.”

Infosys is an “H-1B Dependent Employer” and is the biggest “user” of the H-1B program. Infosys’ H-1B visa eligibility was reduced from over 4500 to around 400 in 2009/2010. Also, application fees were increased and more restrictions were placed on the application and approval processes.

During these meetings in India, it was discussed that there was the need to and that there were ways to “creatively” get around these H-1B limitations and processes and to work the system in order to increase profits and the value of Infosys’ stock. Much of this was very new to me and I did not fully understand the implications of these decisions at the time.

There were many “side/off record” conversations between management/Indian delivery managers and US based Engagement Managers during these meetings. It was made very clear that Infosys was going to continue and increase the use of the B1 visa program to get around the tough restrictions the U. S. had placed on the H-1B program by sending lower level and unskilled Infosys Indians to the U.S. to fulfill the high demand for its customers at a lower cost to Infosys. (Please note that at a time of economic volatility and crisis in the U.S., Infosys stock tripled). There was no monitoring of the B1 system and it was understood that “no one would ever know”. Infosys also decided to flood the consulate with applications in order to get as many approved as possible no matter the level of an individual’s skill. This was totally about profit and not hiring Americans for jobs in the U.S. due to higher salary requirements. This was confirmed to me by several current and former HR staff members. Their names have been turned over to federal investigators. It was my understanding that Infosys submitted upwards of over 7,000 applications thinking that if some were approved it would be a win for increased profit margins.

As you know, B1 visas are designated as Temporary Business Visas. According to U.S. CIS, B1 visitors can only come to the U.S. for such things as a scientific, educational, and professional or business conventions, or a conference on specific dates, settling an estate, negotiating a contract or participating in short-term training. B1 visitors are not allowed to “work” at a job. However, Infosys sent B1 employees to the U.S. for the specific purpose of working full time jobs at client sites. Infosys saw this as a win-win; under current H-1B laws, a foreign national in the U.S. must make a minimum of 65k a year and pay U.S. taxes. However, when Infosys employees come to the U.S. on B-1 visas, Infosys pays them their Indian salaries. Infosys calls it a “stipend” to avoid Indian and U.S. laws

and taxes, but in actuality, these B-1 employees are being paid a salary for their work in the U.S. and Infosys did not withhold Federal or state taxes. Infosys, however, charged its U.S. clients/companies U.S. rates for the employees thus getting full reimbursement from their American clients for Infosys' labor costs.

During the meetings in India it was strategically talked about ways for the B-1 employees to go "undetected" while coming through the port of entry. Infosys even created an internal website of "do's and don'ts" such as "Do not mention activities like implementation, design & testing, consulting etc., which sound like work. Also do not use words like, work, activity, etc., in the invitation letter. Please do not mention anything about the contract rates as you're on a B-1 Visa."

In May of 2010, the consulate started denying Infosys B1 visa applications due to the large number of applications Infosys were submitting. The consulate told Infosys they needed "Americans" or American Companies to issue "welcome letters" in order to avoid the suspension. The way I suddenly became involved is that my Indian managers in the U.S. and India started asking me to write these "welcome letters" and were very insistent. They would state if I did not do this it would drastically affect the company's profit because we did not have people in the U.S. to complete the work. Also, they threatened it would affect my salary and standing in the company. Basically, what these letters do is falsely claim that the foreign employee is coming for a "visit" rather than to "work." I was very concerned about these letters and contacted Infosys HR because the content of the template of the letter was false. HR told me these people could not come to the U.S. to work on B1 visas. Past events in my mind started to click. Since I knew the letter was a lie and because HR confirmed that B1s were not allowed to work at client sites, I refused to write the letters. At the time, I did know that I had several illegal people working for me in Houston. This came to light when I was informed Infosys was not paying one of my employees enough in his "stipend" to survive in the US. This person emailed me asking for me to approve the "reloading" of his Indian cash card. At that time, he explained to me the process and how many of the Indians rebelled over having to come over to work and continue to receive the low Indian salaries instead of what the H-1B visa employees were making. The Indians knew Infosys was charging American companies American Salaries for illegal B1 workers and that H-1B visa people received \$60,000 + a year when they received less than \$15,000. Hence, Infosys increased their "stipends". Once the "cash cards" were reloaded with the "stipends" the employees could then make cash

withdrawals and charge/debit what they needed to support themselves in the U.S. Again, no taxes were withheld although the B1 workers were gainfully employed in the United States and Infosys was charging its customers fulltime wages.

On July 1 2010, I was asked to join a conference call in regards to me not cooperating with writing the letters. During this call I was chastised for not being a team player. At that time I was sent to another project and different division so I could do no harm to my current delivery manager. The problem was the new project with a new delivery manager had the same problem and had illegal people there too. The problem with this was the contract was not “Fixed Price” (FP) but was “Time and Material” (T&M). In order for Infosys’ scheme to work, the U.S. contracts had to be written as FP contracts and not as T&M contracts. The reasoning is that on a FP contract, a customer is charged a lump sum for labor. The people who are actually doing the “work” do not have to be named to the customer but they are named on internal labor spreadsheets in order to come up with a cost and price. There were some customers such as Baker Hughes that wanted to see the names of the staff and Infosys did furnish these names and some of the people named were illegal. On a T&M contract, the people doing the actual work must be named along with their hourly rate. This is when the proverbial cat came out of the bag. It became increasingly evident of the wide spread and intentional illegal activities. There were emails and requests for me to rewrite T & M contracts to FP contracts and I would not do it. This was in August 2010. At this time I called our company attorney, Jeff Friedel. Over the next month I spoke with several people in HR and they were all scared of losing their jobs and said they could do nothing as this problem was bigger than they were.

In September of 2010, apparently I was causing problems with the Infosys Engagement Directors in the U.S. and India because I would not go along with this illegal activity. I blatantly told them how illegal it was to send people over on B1 visas and I constantly complained that Infosys was sending me “freshers” on H-1B Visas. A “fresher” is a common Indian term for a person with no experience or specialized talent, usually just out of college.

Infosys then sent an Indian Delivery Manager over from India to talk to me about how important it was to keep this quiet. She then explained to me Infosys’ entire system of fraud that the U.S. Engagement Managers would need to staff the project.

- (1) They would contact the Indian offshore managers.

(2) They would go into the system and create a fraudulent work letter in the system (This is an open system and anyone can access and execute this).

(3) They then go into the pay system and gather the bank information to ensure they have a debit card; all Indian employees are required to use 1 of 3 banks which are designated by Infosys.

(4) At this point there is the need for a letter from someone from the U.S. to write which falsely sets out the reason for the visit.

(5) Then you have to ensure the contract is a fixed price.

(6) At this time the person comes over for the designated time period.

Infosys had learned the “cooling off” period for B1 Visas so not to raise concern. It is important to note that this equates to thousands of people coming over and not paying taxes even though they are “gainfully employed”.

On October 11th 2010, I called Infosys’ in-house corporate counsel, Jeff Friedel, and informed him again of the violations. He told me to file a whistleblower complaint and said he would handle the situation. Before doing this, I read and re-read the Infosys Whistleblower Policy along with the Sarbanes-Oxley law. I expected Infosys to follow policy and bring an outside SOX counsel in and investigate the charges. They never did and to this date have not hired an unbiased independent counsel to investigate this unlawful conduct. I spoke to Mr. Friedel in order to make sure I was doing everything by the letter of the policy and law. He stated I was and he “promised that he would protect me”. Therefore, I filed an Internal Whistleblower Complaint in regards to the illegal activities including B1 Visa Fraud and illegal I-9 activity. He stated it would come to him via the email system.

Over the next few days, I provided Jeff with additional information and provided names and spreadsheets which showed Jeff where illegal Infosys employees were working. Additionally, an HR Manager and I provided Jeff with thousands of people who had never filed LCA (Labor Condition) paperwork to work in different states. I also gave him cases in which Infosys Managers were intentionally committing fraud to avoid paying state and local taxes. Infosys did not enforce these changes because there are fees associated with them and the work behind the documentation. An HR manager stated that “it has been a long known problem and we can’t do anything, it’s just the way we do business and we can’t control what they do in India.”

During the last week of October 2010, I became worried because of harassing and threatening phone calls I was receiving due to the Internal Whistleblower Complaint I filed. At that time I called Kenny Mendelsohn, Attorney, and told him a little about what was happening and asked him to help me. While talking to Mr. Mendelsohn I was actually on a flight to Dallas, TX to meet with Infosys HR in regards to whistleblower evidence and threats I had received. During this meeting I gave HR copies of illegal workers visas and other information.

At the end of October I was transferred to the Axis Capital project in Alpharetta, Ga. At that site there were 2 B1 visa people on site performing paid work. They left within weeks of me being there.

Over the next three months, I repeatedly asked Jeff for updates and continued to provide him with evidence that showed that these illegal activities were still happening. I also researched and validated that I had illegal people on projects since August 2008 when I joined Infosys. Additionally, other inside Infosys employees provided me with information of illegal B1 workers at Wal-Mart, Johnson Control, Goldman Sachs, American Express and other customers. Again, during this time period I was receiving threatening and harassing emails and calls and was called names such as “stupid American”. This was reported with no intervention from Infosys. I begged Infosys management and the whistleblower team to remove me from this environment which they did not. Of course all of this is heavily documented.

In November 2010, I authored an outline of how Infosys could monitor and control the illegal activities and sent it to Jeff Friedel. Infosys Management did not respond or take appropriate actions. I was only alienated more.

As December 2010 came, I was approached by an Infosys employee that sent me an alarming spreadsheet which had a list of illegal B1 workers at Johnson Control. These people were working full time testing software code and writing scripts but were paid their salaries by Infosys depositing money into the cash card accounts without withhold or paying any income tax. This spreadsheet also had people in India with their B1 status and their availability to come to the Johnson Control Project for work. Let me again say, not meetings, but gainful employment and not paying taxes. I turned this information over to Jeff Friedel and others. This resulted in more threats and harassment for me.

Infosys has withheld a large portion of my bonus because I filed the whistleblower complaint. This was admitted to me by the Indian Delivery Manager. After 8 months of trying to help solve the problem and seeing that Infosys was not going to stop the illegal activity and being subjected to retaliations including loss of bonuses, I retained attorney Mendelsohn. Infosys left me no choice. During the first week of January 2011, Mr. Mendelsohn and I decided it was imperative to report this information to the appropriate authorities. On February 23th, 2011, Mr. Mendelsohn filed a civil suit against Infosys in Lowndes County Alabama on my behalf. News spread fast of the civil action.

On the following Monday, February 28th, I reported to work at Axis Capital in Alpharetta, GA only to find a death threat on my desk. I reported this threat to Infosys, but all they did was deny that the threat came from an Infosys employee.

I think it is important for this Committee to understand the lengths that Infosys has taken to cover up these crimes and to retaliate against me. I am not asking for help from the Committee; that will come through the judicial system. This is important because based on the communications my attorney and I have received there are numerous people with more information of wrongful conduct not just by Infosys but many other companies as well. However, these people have expressed their fears of retaliation if they come forward. Based on the way I have been threatened, harassed and retaliated against, it is easy to understand their concerns.

As mentioned above, Infosys never hired an Independent SOX whistleblower counsel to review the allegations. Instead, it hired criminal defense lawyers who represented to my attorney and the attorney for the other Whistleblower that they were "Independent Infosys Whistleblower Counsel." At this time the federal authorities were in full investigative mode and I had talked to them on many occasions. When Infosys got wind of my cooperation with the authorities, their criminal defense lawyer wanted to confiscate my laptop which contains all of the documentation of the illegal activities. When I refused to give it to him because the federal government told me not to, Infosys threatened to fire me. I filed another Whistleblower Complaint against Infosys because internal Whistleblower Policy clearly tells employees to cooperate with federal authorities. Infosys did nothing towards the violation of its own policy and by their defense counsel. The Department of Homeland Security served a warrant for my laptop. They now have it in their possession.

I have received death threats from Infosys employees and Infosys has done nothing to protect me. I have suffered financial losses. Infosys has “put me on the bench” which means I draw my salary but sit at home and am not assigned to any project. I know there are openings at Infosys for my skill set, but Infosys will not assign me a project which will result in a big loss of my bonus for this year. Also, Infosys has totally alienated me from the company. They will not let me work on a project at a client site, will not let me into an Infosys office, and I cannot participate in company pursuits of business. I sit at home. No one calls me or emails me or will have anything to do with me. This is after they told me I have done nothing wrong and they would protect me. This is the most blatant disregard of a Whistleblowers rights. Infosys has maliciously violated the spirit of the Whistleblower policy and the law.

On July 18, 2011, I filed yet another whistleblower complaint in regards to the continued harassment. I even copied senior management including the CEO and CFO, and have received no response.

I do not regret blowing the whistle and refusing to be a part of this illegal conduct. However, there are many other witnesses who are scared to go through what I have been through and therefore remain silent. In fact, my attorney and I have received over 40 correspondences from individuals at other Indian companies stating that the same type of H-1B and B1 fraud is being committed.

The abuse of the B1 and H1 visa laws as well as the income tax laws is wide spread in this country. Americans are being displaced and foreigners are working full time jobs in the U.S. without paying income taxes. It is somewhat ironic that as this Subcommittee meets and considers my testimony, our President and Congress are facing very difficult financial debt ceiling decisions. In these difficult times, it is inconceivable that Infosys and other foreign companies are avoiding paying income taxes and abusing visa laws and then laughing and calling those who stand up for what is right “stupid Americans.” My real life experiences have educated me to the point that if Congress decides that an increase of Green Cards or legal work visas in the U.S. is a must, then there should be limitations or ratios. For example, for every H-1B visa issued to foreign national company they should have to hire an American worker.

What I have come to learn is that H-1B’s are supposed to be specialized talent. Factually, I have had customers reject H-1B workers because they did not have the experience or talent. There has not been a position that an American

citizen could not perform. I have read statements from NASSCOM stating that not increasing Green Card numbers and with the current visa restrictions, the Indian economy would suffer. Let me ask the committee, what about our economy? What about the years and years of ignoring the laws. These companies maliciously do not hire Americans and look at ways to circumvent policy and law instead of working with it. Look at the stock and growth of these large foreign companies in a down environment -- they are not suffering. However, they are still asking for more "handouts" to increase their margin. Every company is out to make a profit, but when you knowingly defraud the system it is concerning. I have witnessed outsourcing companies bring over H-1B talent that have been trained by American workers and then they replaced the American workers. Does this not violate the spirit of the H-1B laws? The only specialized talent these workers have is they work for a said company and then transfer the work to offshore teams. These are tasks that an existing worker could perform.

In closing, with the unemployment rate at over 9% and the state of the U.S. Governments debt crisis, increasing Green Cards and lessening visa restrictions will only put more Americans out of work. Thank you for your time.