

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

ANTON PEREVOZNIKOV,

Petitioner,

v.

MICHAEL NESSINGER, WARDEN,
DONALD W. WYATT DETENTION
FACILITY; KRISTI NOEM,
SECRETARY, DEPARTMENT OF
HOMELAND SECURITY; CALEB
VITELLO, ACTING DIRECTOR OF
US IMMIGRATION AND CUSTOMS
ENFORCEMENT; PAMELA BONDI,
UNITED STATES ATTORNEY
GENERAL; and
SIRCE C. OWEN, ACTING
DIRECTOR, EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW,

Respondents.

Civil Action No. 25-CV-085-JJM-LDA

**OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS
AND MOTION TO DISMISS**

Pursuant to the Court's March 11, 2025, Order, the United States, on behalf of Defendants Kristi Noem, Secretary, Department of Homeland Security; Caleb Vitello, Acting Director of U.S. Immigration and Customs Enforcement; Pamela Bondi, United States Attorney General; and Sirce C. Owen, Acting Director, Executive Office for Immigration Review, respectfully submits its Opposition to Petitioner's Petition

for Writ of Habeas Corpus (“Petition,” ECF 1).¹ A review of Immigration records reveals that Petitioner has not exhausted his administrative remedies, nor does jurisdiction lie with the District Court. Therefore, the writ should be denied. Furthermore, Petitioner is an alien described in section 237(a)(4) of the Immigration and Nationality Act (“INA”) and thus is not entitled to a bond hearing. 8 U.S.C. § 1227(a)(4); 8 C.F.R. § 1003.19. Alternatively, Petitioner is subject to mandatory detention under section 236(c) of the Immigration and Nationality Act (“INA”). 8 U.S.C. § 1226(c).

I. INTRODUCTION

Petitioner Anton Perevoznikov is being held at the Donald W. Wyatt Detention Facility in Central Falls, Rhode Island while he awaits removal proceedings stemming from multiple criminal convictions. On January 23, 2025, the immigration judge found that Petitioner was subject to mandatory detention due to his criminal history and thus ineligible for a bond hearing. Petitioner filed an appeal with the Board of Immigration Appeals (“BIA”) on February 19, 2025. During the pendency of that appeal, Petitioner filed the instant petition for a writ of habeas corpus, requesting that the Court overturn the immigration judge’s orders, grant his release, or in the alternative, order a bond hearing.

¹ The U.S. Attorney’s Office does not represent the Warden of Wyatt Detention Facility.

The law does not entitle Petitioner to release or to a bond hearing. To the contrary, the statute authorizing Petitioner's detention explicitly requires his detention during the pendency of removal proceedings and provides that he may not be released outside of certain limited circumstances that are not present here. Petitioner's request for habeas relief is thus premature. If Petitioner is successful in his pending efforts to persuade the BIA to overturn the immigration judge's decision, the Petition may be moot.

II. GOVERNING LEGAL STANDARDS

A. Standard for a Motion to Dismiss Under Rule 12(b)(6).

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal where the complaint fails to state a claim upon which relief can be granted. To withstand a motion to dismiss under Federal Rule 12(b)(6), "the complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Cunningham v. Nat'l City Bank*, 588 F.3d 49, 52 (1st Cir. 2009) (internal quotation marks omitted) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). The Court, however, need not credit or accept mere conclusory statements or conclusions of law. *See Iqbal*, 556 U.S. at 678.

In deciding a motion to dismiss under Rule 12(b)(6), the court may consider the challenged pleading, together with any documents incorporated by reference in that pleading and matters subject to judicial notice. This category of documents may be considered without converting the motion to one for summary judgment, and includes documents annexed to the complaint, as well as documents referenced in,

or integral to, the pleading. *Trans-Spec Truck Serv. v. Caterpillar Inc.*, 524 F.3d 315, 321 (1st Cir. 2008) (internal citations omitted).

B. Standard for a Motion for Summary Judgment Under Rule 56.

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Mulvihill v. Top-Flite Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003) (quoting Fed. R. Civ. P. 56(c)).²

C. Mandatory Detention Pursuant to the Immigration and Nationality Act.

Section 236(c) of the Immigration and Nationality Act (“INA”) governs the detention of certain noncitizens during their removal proceedings. Under §1226(c), the “Attorney General *shall* take into custody” any noncitizen who falls into one of several enumerated categories involving criminal offenses. 8 U.S.C. § 1226(c)(1) (emphasis added). The criminal offenses include “certain crimes of moral turpitude, controlled substance offenses, aggravated felonies, firearm offenses, or acts associated with terrorism.” *Gordon v. Lynch*, 842 F.3d 66, 67 n.1 (1st Cir. 2016). Thus, § 1226(c) “explicitly requires detention of certain criminal noncitizens during the pendency of removal proceedings who may not be released outside of certain limited

² The government frames this motion under Rule 56 in the alternative, given the submission of extrinsic evidence regarding Petitioner’s status.

circumstances.” *Zavala v. Martin*, No. 21-cv-500 WES, 2022 WL 684147, at *6 (D.R.I. Mar. 8, 2022) (Smith, J.) (cleaned up).

As a result, when the government determines that a noncitizen has committed a predicate criminal offense, § 1226(c) requires ICE to detain the individual pending a decision on whether the noncitizen is to be removed from the United States. See *Jennings v. Rodriguez*, 583 U.S. 281, 303-04 (2018).

In *Reid v. Donelan*, the First Circuit held that the Due Process Clause does not require a bond hearing whenever a noncitizen has been detained under § 1226(c) for more than six months. 17 F.4th 1, 7 (1st Cir. 2021). The First Circuit agreed “that the Due Process Clause imposes some form of ‘reasonableness’ limitation upon the duration of detention under section 1226(c),” but it rejected the notion that a detainee is automatically entitled to a bond hearing after six months. *Id.* (cleaned up). It also acknowledged that the Due Process Clause could require a bond hearing as a remedy for unreasonably prolonged detention, “and that any such relief must be adjudicated on an individual basis.” *Id.* at 9.

III. RELEVANT FACTUAL BACKGROUND

Petitioner Anton Perevoznikov is a citizen of Kazakhstan who entered the United States on a J-1 visa³ in May 2006. Exhibit A. After his marriage to a U.S. citizen, his status shifted to conditional lawful permanent resident on March 8, 2010. Exhibit

³ A J-1 visa is a non-immigrant visa that allows foreign nationals to come to the United States to study, teach, conduct research, receive job training, or demonstrate special skills.

A. He subsequently filed an I-751 application to lift the condition on his permanent residence. Exhibit B.

In August of 2011, Petitioner was arrested in Somerset County, New Jersey for Receiving Stolen Property. On April 20, 2012, he was sentenced by the New Jersey state court to a period of probation and community service. Exhibit A.

Petitioner and his wife divorced in 2015 while the I-751 was pending.⁴ ECF 1, ¶ 20.

Also in 2015, Petitioner was charged in the U.S. District Court for the Eastern District of Pennsylvania with Conspiracy to Export Defense Articles without a License, among other charges (2:15-cr-441). Exhibit C. The conspiracy, exporting military goods without permission to Russia, spanned from early 2011 through late 2013. *Id.* Petitioner pleaded guilty to the conspiracy charge and on August 31, 2021, he was sentenced to 48 months' imprisonment and three years of supervised release. *Id.*

In 2020, Petitioner was charged in the U.S. District Court for the Eastern District of New York with Conspiracy to Fail to File Export Information, among other crimes (1:20-cr-00415-ARR-5). Exhibit D. Petitioner subsequently entered a guilty plea to the conspiracy count charging Petitioner and his co-conspirators with surreptitiously exporting large quantities of electronic devices to Russia. On

⁴ Petitioner's conditional lawful permanent resident status was subsequently terminated when ICE denied his I-751 application on August 22, 2024. Exhibit A.

September 21, 2022, he was sentenced on the conspiracy charge to 24 months' imprisonment and two years of supervised release. *Id.* On February 16, 2023, the judgement was amended to sentence Petitioner to 18 months' incarceration, to run consecutive to the federal sentence in the Pennsylvania case, followed by two years of supervised release. *Id.*

On August 23, 2024, Petitioner was placed in removal proceedings after the DHS issued him a Notice to Appear ("NTA"). Exhibit A. The NTA charged Petitioner with two separate removability grounds. It alleged that Petitioner is removable pursuant to INA § 237(a)(1)(D)(i) because his conditional permanent residence status terminated following his divorce, and also that he is removable pursuant to INA § 237(a)(2)(A)(i) for having been convicted of a crime involving moral turpitude ("CIMT") carrying a one-year sentence or more within five years after his admission to the United States. *Id.* On September 26, 2024, the DHS issued to Petitioner a Notice of Additional Charges of Inadmissibility/Deportability ("I-261"), charging him with two additional grounds of removability. Exhibit D. The DHS alleged that the Petitioner is also removable pursuant to INA § 237(a)(2)(A)(ii) for having been convicted of two separate CIMTs, and that he is removable pursuant to INA § 237(a)(4)(A)(i) for engaging in activity to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information. *Id.* Petitioner appeared at a hearing before the immigration judge on October 28, 2024, where he admitted the allegations, conceding all the charges of removability

contained in the NTA and I-261. Exhibit E. The case was reset for a hearing on February 11, 2025, to address any applications for relief.

Separately, Petitioner sought release from immigration custody. Petitioner first requested a bond hearing on September 23, 2024, which was set for a hearing on October 3, 2024. Exhibit E. However, Petitioner withdrew the bond hearing request to allow his counsel additional time to prepare. Petitioner filed his second request for a bond on October 21, 2024. *Id.* The immigration court scheduled Petitioner for a hearing on November 4, 2024, but Petitioner was not produced. Petitioner's counsel withdrew the bond request, and the immigration judge requested that the Petitioner file a brief addressing the DHS's allegations regarding his bond eligibility. *Id.*

On December 30, 2024, Petitioner filed another request for a bond hearing, arguing that his criminal convictions did not subject him to mandatory detention and that he was eligible for release on bond. *Id.* The immigration court ultimately completed Petitioner's bond hearing on January 23, 2025.⁵ *Id.* That same day, the immigration judge—consistent with agency practice—issued a form order finding that Petitioner was ineligible for release on bond. }

Petitioner appealed the bond determination to the BIA on February 19, 2025. *Id.* After the BIA notified the immigration judge of the appeal, on March 6, 2025, the

⁵ The immigration court initially scheduled Petitioner for a bond hearing on January 9, 2025. For unknown reasons, the immigration court rescheduled that hearing for January 16, 2025. Petitioner had a bond hearing on January 16, 2025; however, the immigration judge continued the hearing to January 23, 2025, because the parties were not able to complete the hearing during the allotted time.

immigration judge issued a detailed bond memorandum explaining her decision. The BIA issued a scheduling order on March 14, 2025, instructing the parties to file all appeal briefs on or before April 4, 2025. Petitioner's appeal remains pending before the BIA. Petitioner has now filed the instant writ for petition of habeas corpus, asking this Court to intervene on his behalf. ECF 1.

IV. ARGUMENT

A. Petitioner has Failed to Exhaust Administrative Remedies

Petitioner has not exhausted his administrative remedies, and thus his Petition should be dismissed. It is well-settled that an incarcerated person must exhaust his or her administrative remedies before filing a petition for habeas corpus under 28 U.S.C. § 2241. *Rogers v. United States*, 180 F.3d 349, 356-58 (1st Cir. 1999) (affirming dismissal of habeas petition where inmate did not exhaust his administrative remedies); *Nygren v. Boncher*, 578 F. Supp. 3d 146, 151-52 (D. Mass. 2021). Moreover, exhaustion must be "proper," which requires "compliance with an agency's deadlines and other critical procedural rules," as well using "all steps that the agency holds out." *Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (internal quotations omitted); see also *Rodriguez-Rosa v. Spaulding*, No. 19-CV-11984, 2020 WL 2543239, at *7-11 (D. Mass. May 19, 2020).

Administrative exhaustion "gives an agency 'an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court,' and it discourages 'disregard of [the agency's] procedures.'" *Woodford*, 548 U.S. at 89. Exhaustion in this context also "improves the quality of those prisoner

suits that are eventually filed because proper exhaustion often results in the creation of an administrative record that is helpful to the court.” *Id.* at 95.

In the present case, Petitioner filed an appeal on the issue of bond to the BIA on February 19, 2025. Exhibit B. That appeal is currently pending. *Id.* In fact, the briefing period closed just over a week ago. Thus, the issue of Petitioner’s eligibility for a bond hearing has not yet been resolved by the agency. Petitioner has not exhausted his administrative remedies, and the agency should be allowed to correct any potential errors before the Court evaluates a petition for habeas corpus. Therefore, the Petition should be dismissed, and the Court need go no further.

B. Petitioner is an Alien Described in 237(a)(4) and the Immigration Judge Lacks Authority to Redetermine Bond.

Though his failure to exhaust administrative remedies is alone sufficient to deny the Petition, should the Court disagree, the Petitioner is also properly detained as he is an alien described in 8 USC § 1227(a)(4). As noted above, Petitioner was convicted in the U.S. District Court for the Eastern District of Pennsylvania for the offense of Conspiracy to Export Defense Articles without a License. He has also been convicted in U.S. District Court for the Eastern District of New York for Conspiracy to Fail to File Export Information, among other crimes. These crimes fall under 8 U.S.C. § 1227(a)(4).

Section § 1227 (a)(4)(A)(i) renders deportable any “alien who has engaged, is engaged, or at any time after admission engages in ... any activity to violate any law of the United States relating to...or to violate or evade any law prohibiting the export

from the United States of goods, technology, or sensitive information[.]” 8 U.S.C. § 1227(a)(4)(A)(i).

Petitioner’s convictions fall squarely under 8 U.S.C § 1227(a)(4)(A)(i) because he engaged in activities which violated or evaded U.S. export laws. As Petitioner is an alien described in 8 U.S.C. § 1227(a)(4), the immigration judge properly lacks authority to redetermine his bond under 8 C.F.R. § 1003.19(h)(2)(i)(C), thus his detention is proper.

C. Petitioner’s Ultra Vires Claim is Based upon a Misunderstanding of the Process.

Even if this Court determines that a review of the merits of Petitioner’s claims may be appropriate, Petitioner’s arguments fail to support his assertions or allow the requested relief. Petitioner spends much of his petition asserting that the federal regulation 8 C.F.R. § 1003.19(h)2(i)(C) is *ultra vires*, as it, he argues, impermissibly expands the category of individuals subject to mandatory detention beyond crimes of terrorism as enumerated in the statute. This argument misses the mark because it relies upon a misunderstanding of the process. This regulation does not govern mandatory detention *per se* and does not outright preclude any chance of obtaining bond for someone like Petitioner, who is deportable by reason of 8 U.S.C. § 1227(a)(4)(A) (assuming no mandatory-detention provision applies).

DHS makes the initial determination about custody and bond under 8 C.F.R. §§ 236.1, 1236.1. A noncitizen may appeal that determination and seek a bond redetermination. *See* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Petitioner had the opportunity

to obtain release on bond from DHS initially, but the agency chose to keep him in custody. The challenged regulation restricted his ability to appeal DHS's determination before an immigration judge. This is why DHS argued before the immigration judge that this regulation precluded the immigration judge's jurisdiction to redetermine the conditions DHS placed on his custody; it did not characterize this as a mandatory bar to obtaining release on bond as it did for the CIMT mandatory detention grounds. *See* Exhibits F, G.

It was not beyond the bounds of the Attorney General's expressly delegated discretionary authority over detention and bond under 8 U.S.C. § 1226(a) to promulgate procedures in which DHS determines whether to detain or release on bond certain aliens who, while not subject to mandatory detention, are removable on national security and related grounds under 8 U.S.C. §1227(a)(4), but that those aliens are precluded from appealing DHS's determination to an Immigration Judge. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394-95 (2024) (explaining that the "best reading" of a statute may very well be that Congress delegated discretionary authority to the agency, and that the court's role in interpreting those statutes is limited to "recognizing constitutional delegations, fixing the boundaries of the delegated authority, and ensuring the agency has engaged in reasoned decisionmaking within those boundaries") (internal quotation marks, alterations, and citations omitted); *Vt. Yankee Nuclear Power Corp. v. Nat'l Res. Def. Council*, 435 U.S. 519, 543 (1978) ("Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of

inquiry capable of permitting them to discharge their multitudinous duties.”) (internal quotation marks and citation omitted); see *Ancient Coin Collectors Guild v. U.S. Customs & Border Prot.*, 698 F.3d 171, 179 (4th Cir. 2012) (“Our review under the ultra vires standard is necessarily narrow. We may not dictate how government goes about its business but only whether a public entity ‘has acted within the bounds of its authority or overstepped them.’”) (quoting *Catholic Health Initiatives v. Sebelius*, 617 F.3d 490, 497 (D.C.Cir.2010) (Brown, J., concurring in the judgment)). Congress provided the Attorney General broad discretion over the detention of aliens under section 1226, see, e.g., 8 U.S.C. § 1226(e) (barring judicial review of the Attorney General’s discretionary judgment regarding the application of section 1226), and the promulgation of the challenged regulation in 8 C.F.R. § 1003.19(h)2(i)(C) fell within that discretionary authority, see *Loper Bright*, 603 U.S. at 394-95; *Ancient Coin Collectors Guild*, 698 F.3d at 179.

Nevertheless, the fact that Petitioner’s detention is subject to 8 C.F.R. § 1003.19(h) does not mean it is set in stone. The regulations permitted Petitioner to request that an Immigration Judge determine whether he is properly subject to removal under Section 1227(a)(4)(A). 8 C.F.R. § 1003.19(h)(2)(ii); see also *In re Joseph*, 22 I. & N. Dec. 799 (1999); *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1033 (E.D. Wis.), *aff’d sub nom. Hussain v. Mukasey*, 510 F.3d 739 (7th Cir. 2007). If Petitioner carried his burden and was not subject to any grounds of mandatory detention under 8 U.S.C. § 1226(c), he would have been entitled to a bond hearing under 8 U.S.C. § 1226(a), at which he must establish to the satisfaction of the Immigration Judge that his “release

would not pose a danger to property of persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).

At that point, the immigration judge has broad discretion in deciding to release someone on bond. *Matter of Guerra*, 24 I. & N. Dec. 37, 39 (B.I.A. 2006). Petitioner, however, did not meet his burden before the Immigration Judge, and the Immigration Judge concluded that "[t]he record contains sufficient information to conclude that [Petitioner] falls under section 237(a)(4)(A)(ii) for violating or evading 'any law prohibiting the export from the United States of goods, technology, or sensitive information.'" Exhibit G at 5. Petitioner is currently appealing that determination to the BIA, and he should exhaust that administrative remedy before bringing a habeas action before this Court.

D. Petitioner is Subject to Mandatory Detention Due to Multiple Prior Convictions for Crimes Involving Moral Turpitude.

Furthermore, Petitioner fails to acknowledge that he is subject to mandatory detention for an independent statutory reason: two or more convictions for CIMTs (8 U.S.C. § 1226(c)(1)(B)). Thus, the Court need not address Petitioner's argument concerning the scope of the federal regulation.

Section 1226(c)(1)(B) directs the Attorney General to take into custody an individual who is "deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title." Section 1227(a)(2)(A)(ii) provides that "any alien who at any time after admission is convicted of two or more crimes involving moral turpitude, not arising out of a single

scheme of criminal misconduct, regardless of whether confirmed therefor and regardless of whether convictions were in a single trial, is deportable." Thus, two convictions for separate CIMTs subject an individual to mandatory detention. 8 U.S.C. § 1227(a)(2)(A)(ii). Petitioner conceded that he is subject to removal for having been convicted of two or more CIMTs at his hearing immigration court hearing on October 28, 2024. It logically follows that the same charge that renders him removable also subjects him to mandatory detention. However, even if Petitioner had not conceded all charges of removability, the record demonstrates that he has committed multiple CIMTs.

The INA does not define CIMT, and the BIA "has observed that the definition of a crime involving moral turpitude is nebulous." *Matter of Ajami*, 22 I. & N. Dec. 949 (B.I.A. 1999); see *Matter of Lopez*, 22 I. & N. Dec. 1188 (B.I.A. 1999). Nevertheless, "the legislative history leaves no doubt that Congress left the term 'crime involving moral turpitude' to future administrative and judicial interpretation." *Neto v. Holder*, 680 F.3d 25, 28-29 (1st Cir. 2012) (internal quotation marks, alterations, and citation omitted).

The First Circuit has adopted the BIA's definition of moral turpitude:

"conduct that shocks the public conscience as being inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general' ... 'an act which is per se morally reprehensible and intrinsically wrong' and is 'accompanied by a vicious motive or a corrupt mind.'"

Rosa Pena v. Sessions, 882 F.3d 284, 287 (1st Cir. 2018) (quoting *Da Silva Neto*, 680 F.3d at 29 (quoting *Maghsoudi v. INS*, 181 F.3d 8, 14 (1st Cir. 1999)); see also *Matter of P-*, 6

I. & N. Dec. 795, 798 (B.I.A. 1955) (defining moral turpitude as an act that is morally reprehensible); *see also Coelho v. Sessions*, 864 F.3d 56, 61 (1st Cir. 2017). “Moral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Id.*, *see also Matter of Silva-Trevino*, 24 I. & N. Dec. 687, 689 n.1 (A.G. 2008); *Ndungu v. Attorney General United States*, 126 F.4th 150, 160 (3d Cir. 2025).

Analysis of whether a particular crime qualifies as a CIMT requires the categorical approach, such that a court looks “to the inherent nature of the crime of conviction, as defined [by the elements] in the criminal statute, to determine whether it fits the CIMT definition.” *Coelho*, 864 F.3d at 61 (internal quotation marks and citations omitted). Categorically, a CIMT requires (1) culpable mental state, and (2) reprehensible conduct. *Matter of Silva-Trevino*, 26 I. & N. Dec. 826, 833-34 (B.I.A. 2016); *Ndungu*, 126 F.4th at 160 (instructing that the crime must involve some intent – specific intent, willfulness, deliberateness, or recklessness); *Rosa Pena*, 882 F.3d at 287 (the determination of whether a particular conviction is one involving moral turpitude is made by analyzing the statute itself and the least culpable activity covered therein); *see also Matter of Short, supra; Matter of Esfandiary*, 16 I. & N. Dec. 659 (B.I.A. 1979).” *In re: Maria De Los Angeles Dominguez-Hernandez*, 2009 WL 523141 (2009); *Gomez-Ruotolo v. Garland*, 96 F.4th 670, 678 (4th Cir. 2024).

Where the noncitizen has been convicted of an inchoate offense, like attempt or conspiracy, the Court must look to the underlying substantive offense to determine whether he or she has been convicted of a crime involving moral

turpitude. See *Matter of Vo*, 25 I. & N. Dec. 426, 429 (B.I.A. 2011). An attempt or conspiracy conviction requires proof of “the specific intent to commit the substantive crime, and if commission of the substantive crime involves moral turpitude, then so does the attempt [or conspiracy], because moral turpitude inheres in the intent.” *Id.* at 428.

Application of this analysis to this case shows that Petitioner’s convictions are crimes of moral turpitude. *Quintero-Salazar v. Keisler*, 506 F.3d 688, 694 (9th Cir. 2007) (sufficiency of evidence under the modified categorical approach to establish that conviction was a crime involving moral turpitude).

1. Petitioner’s Conviction for Receiving Stolen Property is a Crime of Moral Turpitude.

The BIA has long held that receipt of stolen property offenses are CIMTs when the offense requires proof that the defendant had knowledge that the property was stolen. See *Matter of Salvail*, 17 I. & N. Dec. 19, 20 (B.I.A. 1979) (providing receiving stolen property conviction is a CIMT, “as it specifically requires knowledge of the stolen nature of the goods”); *Matter of Patel*, 15 I. & N. Dec. 212, 213 (B.I.A. 1975) (same), *overruled on other grounds by Matter of Castro*, 19 I. & N. Dec. 692 (B.I.A. 1988); *Matter of Z-*, 7 I. & N. Dec. 253, 255-56 (B.I.A. 1956) (same); *Matter of G-*, 2 I. & N. Dec. 235 (B.I.A. 1945); *Matter of K-*, 2 I. & N. Dec. 90 (B.I.A. 1944). The circuit courts have similarly found receipt/possession of stolen property offenses to be CIMTs when knowledge of the stolen nature of the property is required. See, e.g., *De Leon v. Lynch*, 808 F.3d 1224, 1229-29 (10th Cir. 2015) (collecting cases).

New Jersey 2C:20-7, in place at the time of Petitioner's conviction in 2012, stated in pertinent part:

2C:20-7. Receiving Stolen Property.

a. Receiving. A person is guilty of theft if he knowingly receives or brings into this State movable property of another knowing that it has been stolen, or believing that it is probably stolen. NJ ST 2C:20-7 1997.

The language of the New Jersey statute in effect at the time of Petitioner's conviction requires knowledge that the items were stolen or a belief that the items were "probably stolen." This language closely tracks that of the Pennsylvania statute in *De Leon-Reynoso v. Ashcroft*, 293 F.3d 633, 635 (3d Cir. 2002). There, the court held that if an individual "intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen" is guilty of a CIMT. *Id.* at 637; *see also, Mazariegos v. Lynch*, 790 F.3d 280, 285-86 (1st Cir. 2015) (noting that defendant's convictions for receiving stolen property and failure to stop for police were crimes of moral turpitude). Furthermore, the District of New Hampshire, citing the Second Circuit, held the same in *Enayat v. United States*, 2007 WL 3101398 at *3 (D.N.H. 2007) (citing *Saleh v. Gonzales*, 495 F.3d 17, 19 (2nd Cir. 2007)).

Both the Pennsylvania statute and the New Jersey statute at issue here require proof that the defendant received the stolen property "knowing that it has been stolen, or believing that it is probably stolen." N.J. Stat. Ann. § 2C:2-0-7; 18 Pa. Cons. Stat. § 3925(a). The Third Circuit correctly determined that this statutory language sets forth a subjective standard as to what the defendant actually knows or believes,

rather than an objective reasonable person standard (which would be insufficient to constitute a CIMT), and thus that this *mens rea* was sufficient for the offense to be considered a CIMT. *See De Leon-Reynoso*, 293 F.3d at 636-37.

The Third Circuit also rejected an argument substantially similar to Petitioner's argument in his motion for a bond hearing. *See* ECF 1, Exhibit C. The fact that this New Jersey statute contains a "permissible inference" setting forth circumstances under which "knowledge or belief may be inferred" by the jury, N.J. Stat. Ann. § 2C:20-7(b), does not mean that the statute lacks the requisite culpable mental state for a CIMT. This statutory permissible inference is nothing more than an evidentiary inference that the jury may rely upon in determining whether the "knowledge or belief" *mens rea* was proven beyond a reasonable doubt. As the Third Circuit explained, "[i]nferring guilty knowledge does not mean that a reasonable person would have had such knowledge, but rather that the jury could infer from the circumstances that the defendant actually had such knowledge," and "subjective intent is generally inferred from objective facts." *De Leon-Reynoso*, 293 F.3d at 636-37; *see Lewin v. Att'y Gen.*, 885 F.3d 165, 170 (3d Cir. 2018) (holding that New Jersey receiving stolen property is an aggravated felony "theft" offense, and, in doing so, rejecting the petitioner's argument that "a defendant's 'belief' that the property is probably stolen need not be proved beyond a reasonable doubt").

For these reasons, the New Jersey statute requires a sufficiently culpable mental state to meet the first prong of the test. The analysis next turns to the second prong: whether Petitioner's conviction involved morally reprehensible conduct.

The New Jersey statute satisfies this requirement as well. An individual who receives or transports property into the state knowing or believing it is probably stolen has violated a social norm. Possession and receipt of stolen property crimes “speak...to the honesty of a person.” *De Leon-Reynoso*, 293 F.3d 633, 637 (3rd Cir. 2002). As Judge Batzer, a member of the Michigan Court of Appeals, aptly summarized,

[R]eceiving and concealing stolen property knowing it to be stolen comes very close to being a *crimen falsi* [crime of dishonesty, for the purposes of disqualifying a witness under Michigan Rule of Evidence 609(a)(2)(B)]. If the thief, or perhaps ‘fence,’ chooses to keep the property and holds it out as his own, the holding is deceitful. If the thief/fence chooses to sell the property and represents to the buyer that it is his own or is held by the thief/fence on consignment or is anything but stolen, he is deceitful. Finally, if the knowing holder of stolen property chooses to conceal the property from everyone, he is not meeting his obligation to return the property to the true owner, if known, or to authorities with responsibility for stolen property. All of the above possibilities are deceitful, that is, dishonest conduct; only the latter one avoids outright lying. . . . In short, it is plain to me that a conviction for receiving and concealing stolen property, where *scientur* is a requisite (as it is in Michigan), is strongly indicative of veracity in a negative way.

People v. Stewart, No. 182698, 1997 WL 33344058, at *4-5 (Mich. Ct. App. Oct. 21, 1997) (Batzer, J., dissenting), *reversed for reasons stated in the dissent*, *People v. Stewart*, 465 Mich. 945 (1998).

The BIA has embraced this logic, finding that “[i]t is inherently wrong to deprive another person of his property by theft...Therefore, it is also wrong to perpetuate the harm already inflicted by continuing to possess goods which are known or should be known to be stolen.” *Matter of Serna*, 20 I. & N. Dec. 579, 585 n.10

(B.I.A. 1992). Petitioner's 2012 conviction for receiving stolen property is therefore a CIMT, as it meets both prongs on the CIMT analysis.⁶

2. Petitioner's Conviction for Conspiracy to Export Defense Articles Without a License is a Crime of Moral Turpitude.

When assessing whether a conspiracy conviction is a CIMT, we look to the underlying substantive offense. *See Matter of Vo*, 25 I. & N. Dec. at 429. In this matter, the relevant statute for Petitioner's 2021 conviction is 22 U.S.C. § 2778 (exporting defense articles without a license). The criminal penalty provision in section 2778(c) covers "willful" violations of the statute, and thus covers "the (1) willful (2) export or attempted export (3) of articles listed on the United States Munitions List (4) without a license." *Kuhali v. Reno*, 266 F.3d 93, 104 (2d Cir. 2001), as well as "willfully, in a registration or license application or required report, mak[ing] any untrue statement of a material fact or omit[ting] to state a material fact required to be stated therein or necessary to make the statements therein not misleading," 22 U.S.C. § 2778(c).

⁶ Petitioner's other argument about the lack of "an intent to permanently deprive" requirement in the New Jersey statute misses the mark. The BIA's line of precedent setting forth the requirements for when a theft offense is a CIMT does not apply to receiving/possession of stolen property offenses. The unpublished BIA decision attached to DHS's supplemental filing on bond ineligibility (Exhibit F) properly rejects this argument. The Tenth Circuit also has rejected this argument in the *De Leon* decision. *See* 808 F.3d at 1229 ("Those cases involve statutes that punished conduct closer to larceny, and do not shed light on the necessary *scientur* for the receipt or possession of stolen property to be morally turpitudinous.").

The BIA has held that crimes covering inherently fraudulent, deceitful, or dishonest affirmative conduct against the government are morally turpitudinous — crimes that “impair or obstruct an important function of a department of the government by defeating its efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means” are CIMTs. *Matter of Flores*, 17 I. & N. Dec. 225, 229 (B.I.A. 1980).

The conduct criminalized in 22 U.S.C. § 2778(c) amounts to an affirmative act of dishonesty against the government because it has a willfulness *mens rea* requirement. Petitioner’s willful failure to obtain a license frustrates the federal government’s lawful operation of regulating the sale and export of American-made military equipment, ammunition, and the like to foreign purchasers. The “willful” *mens rea* supports this argument because, although the government is not required to prove that Petitioner knew of the specific AECA provision or regulation that he was violating, Petitioner had to know that he was violating a legal duty of not exporting the item in question without obtaining a license from the government. *See United States v. Henry*, 888 F.3d 589, 598-600 (2d Cir. 2018); *United States v. Tsai*, 954 F.2d 155, 157 (3d Cir. 1992).

Henry defines “willfulness” as “[a] person acts willfully if he acts intentionally and purposely with the intent to do something the law forbids, that is, with the bad purpose to disobey or disregard the law.” 888 F.3d at 598-99. The district court then instructed the jury in accordance with this definition in a trial for the same charge being analyzed herein. *Id.* at 599. The court specifically excluded “negligence,

inadvertence, or mistake" from criminal behavior. *Id.* In short, the "willful" *mens rea* satisfies the culpable mental state requirement for a CIMT, and the reprehensible-conduct requirement is satisfied by the affirmative dishonest act of exporting or attempting exporting of the items without a license.

The latter half of the criminal provision in section 2778(c) prohibits willfully making false statements of material fact or omitting material facts towards the government. This conduct falls squarely within the BIA's CIMT category for inherently fraudulent/deceitful conduct against the government. *See, e.g., Cupete v. Garland*, 29 F.4th 53, 57-58 (2d Cir. 2022) (holding that the federal offense of materially false statements towards the federal government under 18 U.S.C. § 1001(a) is a CIMT).

The CIMT analysis, applied to Petitioner's 2021 federal conviction, confirms that this conviction is a CIMT. Thus, Petitioner has been previously convicted of two CIMTs, rendering him subject to mandatory detention.

3. Petitioner's Conviction for Failure to File Export Information is a Crime of Moral Turpitude.

Petitioner's third conviction, conspiracy to fail to file export information, is yet another CIMT, because the conviction covers a conspiracy to *defraud* the United States. Petitioner's indictment shows that he was charged in Count One with both a conspiracy under the offense clause of 18 U.S.C. § 371 for the conspiracy to violate 13 U.S.C. § 305, 15 C.F.R. Part 30, 18 U.S.C. § 554, and a conspiracy under the "defraud the United States" clause of 18 U.S.C. § 371, and his judgment order shows that he

pleaded guilty to Count One for both conspiracies. Exhibit C. To determine “what [the petitioner’s] actual offense of conviction was in the first place[,] . . . courts must examine historical facts.” *Pereida v. Wilkinson*, 592 U.S. 224, 234 (2021). Here, the historical facts from those conviction documents show that this conviction necessarily encompassed his pleading guilty to both conspiracies.

“[T]he object of a conspiracy constitutes an essential element of the conspiracy offense” under 18 U.S.C. § 371. *United States v. Roshko*, 969 F.2d 1, 5 (2d Cir. 1992). Under Second Circuit case law, which covered this conviction in the Eastern District of New York, the government may charge a defendant with a conspiracy under both the offense clause and the “defraud the United States” clause of 18 U.S.C. § 371 in one count, thus meaning a defendant may be charged with more than one object of the conspiracy in a single count. See *United States v. Bilzerian*, 926 F.2d 1285, 1301-02 (2d Cir. 1991) (“Although it is recognized that the government may not obtain two convictions or punish the defendant twice for the same conduct by alleging violations of both the defraud and offense clauses of the conspiracy statute, it may simultaneously prosecute the same conduct under both clauses.”) (internal citations omitted); *United States v. Williams*, 705 F.2d 603, 624 (2d Cir. 1983) (“The allegation in a single count of a conspiracy to commit several crimes is not duplicitous, for the conspiracy is the crime, and that is one, however diverse its objects. This principle has been specifically applied to a single count charging conspiracy to defraud the United States and to commit substantive offenses.”).

The Second Circuit's decision in *United States v. Helmsley*, 941 F.2d 71, 90-91 (2d Cir. 1991), illustrates how this works in practice. See *Matter of Nemis*, 28 I. & N. Dec. 250, 253 (B.I.A. 2021), remanded on other grounds sub nom. *Nemis v. Garland*, No. 21-6151, 2024 WL 1252947 (2d Cir. Mar. 25, 2024) (unpublished). In *Helmsley*, the defendant was convicted for a conspiracy that was charged under both the offense clause and the defraud clause. There were five potential illegal objectives alleged in that count, one of which was to defraud the United States (with the rest being statutory offenses), and the district court judge instructed the jury that it had to be unanimous on which of those objects the defendant conspired to accomplish. *Id.* at 253-54 (citing *Helmsley*, 941 F.2d at 91). Therefore, the object(s) of a federal conspiracy offense under 18 U.S.C. § 371 are elements for purposes of the categorical approach. See *Mathis v. United States*, 579 U.S. 500, 504 (2016) (“‘Elements’ are the constituent parts of a crime’s legal definition—the things the prosecution must prove to sustain a conviction. At a trial, they are what the jury must find beyond a reasonable doubt to convict the defendant, and at a plea hearing, they are what the defendant necessarily admits when he pleads guilty.”) (internal quotation marks and citations omitted).

Because Petitioner pled guilty to all of the objects alleged in Count One of his Indictment, his conspiracy conviction necessarily included a conspiracy to defraud the United States as an element of his offense. See *id.*; *Roshko*, 969 F.2d at 5. “[C]rimes in which fraud was an ingredient have always been regarded as involving moral turpitude.” *Vasquez v. Garland*, 80 F.4th 422, 435 (2d Cir. 2023) (quoting *Jordan v. De George*, 341 U.S. 223, 232 (1951)). A conspiracy to defraud the United States covers

precisely the type of conduct recognized as morally turpitudinous by the BIA in *Matter of Flores* – i.e., conduct that “impair or obstruct an important function of a department of the government by defeating its efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means” are CIMTs. *Matter of Flores*, 17 I. & N. Dec. 225, 229 (B.I.A. 1980). In fact, that language used by the BIA practically mirrors the language courts use for describing what it means to “defraud the United States” for purposes of the federal conspiracy statute. See *United States v. Coplan*, 703 F.3d 46, 59-61 (2d Cir. 2012) (discussing conspiracy to defraud the United States and tracing its roots to early 20th century Supreme Court decisions of *Hammerschmidt v. United States*, 265 U.S. 182 (1924) (Taft, C.J.); *Haas v. Henkel*, 216 U.S. 462 (1910)); see also *United States v. Morosco*, 822 F.3d 1, 6 (1st Cir. 2016) (explaining that 18 U.S.C. § 371 criminalizes conspiracies to “obstruct[] the operation of any government agency by any ‘deceit, craft or trickery, or at least by means that are dishonest’” (quoting *Hammerschmidt*, 265 U.S. at 188)).

Therefore, Petitioner’s 2022 federal conspiracy conviction is a CIMT because it necessarily included a conspiracy to defraud the United States. See *Afamasaga v. Sessions*, 884 F.3d 1286, 1289 (10th Cir. 2018) (“Precedents also establish rules for assessing specific types of conduct. Relevant here is that crimes in which fraud is an ingredient are regarded as involving moral turpitude In particular, the BIA has found an offense implicitly fraudulent—and thus, a CIMT—where it involved impairing or obstructing an important function of the government by defeating its

efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means.") (cleaned up).

For these reasons, Petitioner has been convicted of three CIMTS and more than meets the requirements for mandatory detention pursuant to the INA. Therefore, should the Court reach the merits of the Petition, it should still be denied.

E. Petitioner's Mandatory Detention is Not Unreasonably Prolonged so as to Violate the Due Process Clause.

Even if the Petitioner could successfully argue he is not an alien described in 8 U.S.C. § 1227(a)(4), or the regulation at 8 CFR § 1003.19 is *ultra vires*, the Petitioner would still be ineligible for a bond hearing as his convictions subject him to mandatory detention under 8 U.S.C. § 1226(c) and his detention has not been unreasonably prolonged. A noncitizen's mandatory detention pursuant to § 1226(c) remains subject to the limitation of the Due Process Clause, but the length of Petitioner's detention does not exceed those limits.

The Supreme Court has held that § 1226(c) clearly precludes release on bond prior to the end of removal proceedings (except for witness protection purposes). *Jennings*, 583 U.S. at 303-04. In the First Circuit, courts "adhere to the notion that the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention under section 1226(c)." *Reid*, 17 F.4th at 7 (cleaned up). But, under those limits, six months of detention are presumptively reasonable, and even detention beyond six months does not trigger an automatic constitutional right to a

reasonableness hearing or bond hearing for a person detained pursuant to § 1226(c).

Id. at 8.

Whether any such relief is appropriate after six months of detention must be adjudicated on an individual basis to determine whether the detention has become “unreasonably prolonged in relation to its purpose in ensuring the removal of deportable criminal noncitizens.” *Ibid.* Such a determination “requires a fact-specific analysis that turns on each noncitizen’s individual circumstances.” *Id.* at 6 (cleaned up). Put another way, the significance of a detainee’s length of detention depends largely on the reasons for that length. If removal proceedings have moved along promptly without hindrance from immigration authorities or intervening rulings by the Immigration Court, there is generally no reason to doubt that the individual’s continued detention fully aligns with the statutory purpose of categorical detention. If, however, a detainee’s proceedings languish, this may suggest that his detention—while reasonable at the outset—is more readily attributable to delays or inattention. That is not the case here.

Petitioner has been detained for eight months. A significant portion of this time has been due to Petitioner and his counsel’s requests for additional time. *See* Exhibit E (Petitioner’s motion to continue for a religious holiday, resulting in almost one month’s delay; Petitioner’s request for additional time to retain a country conditions expert prior to the hearing for applications for relief, resulting in a three and a half month pause in proceedings; Petitioner’s motion to continue the hearing for applications for relief, which was denied; counsel for Petitioner’s failure to appear

at the hearing on February 11, 2025, wherein Petitioner requested a continuance prior to testifying despite being warned of the delay it would impose, resulting in a four month delay in proceedings). Thus, over half of the time Petitioner has spent in detention is attributable to his own requests for additional time.

Courts in the First Circuit have repeatedly rejected claims of unreasonably prolonged detention brought by noncitizens who have been detained for much longer than Petitioner. *See, e.g., Silva v. Moniz*, No. 20-cv-12255-DJC (D. Mass. October 28, 2021) (Dkt. No. 26) (denying *Reid* claim brought by petitioner who had been detained for 27 months); *Dos Santos v. Moniz*, No. CV 21-10611-PBS, 2021 WL 3361882, at *4 (D. Mass. May 18, 2021) (finding that “mandatory detention [exceeding 16 months] ... has not been unreasonably prolonged”); *Martinez Lopez v. Moniz*, No. CV 21-11540-FDS, 2021 WL 6066440, at *5 (D. Mass. Dec. 22, 2021) (explaining that detention over thirteen months did not independently warrant a bond hearing as “[h]abeas relief may be denied when the remaining factors favor the government.”); *Alphonse v. Moniz*, No. CV 21-11844-FDS, 2022 WL 279638 at *9 (D. Mass. Jan. 31, 2022) (same); *Lafortune v. Mayorkas*, No. 1:22-cv-11624-DJC (D. Mass. Apr. 20, 2023) (Dkt. No. 16) (habeas relief denied despite detention for over 19 months at time of decision).

Courts in the First Circuit have also compared length of detention to the criminal sentence imposed to assess whether detention has been unreasonably prolonged, noting that the length of detention may become unreasonable when it is “grossly disproportionate to the length of the detainee’s criminal sentence.” *Alphonse*

v. Moniz, 635 F. Supp. 3d 28, 37-38 (D. Mass. 2022) (finding that comparison of petitioner's criminal sentence of seven years to his detention of 22 months did not show gross disproportionality) citing *Lewis v. Souza*, 2020 WL 2543156, at *3 (D. Mass. May 19, 2020) (finding that nine and a half months in detention was not "grossly disproportionate to his six-month term of incarceration, particularly in light of the multiple suspended sentences in his record"); *Campbell v. Moniz*, 2020 WL 2129594, at *5-6 (D. Mass. May 5, 2020) (holding that detentions that exceeded criminal sentences by up to six months were "not so grossly out of proportion as to outweigh the other relevant factors"). Here, Petitioner was sentenced to 66 months of incarceration for his crimes; in contrast, he has served eight months in detention while he awaits removal proceedings. Petitioner therefore is unable to show gross disproportionality between his detention and criminal sentences.

Petitioner's detention has not become "unreasonably prolonged;" to the contrary, it is directly related to the statute's purpose of ensuring the removal of deportable criminal noncitizens. The Petition should be denied in its entirety, and the matter dismissed, as a result.

V. LIMITED RELIEF AVAILABLE

If this Court disagrees and finds that Petitioner merits habeas relief, the Court nonetheless should deny Petitioner's request that he be ordered released immediately. The remedy for unreasonably prolonged detention is for the Court to issue an order directing the Immigration Court to conduct a bond hearing, rather than an order that the detainee be released. See *Zavala*, 2022 WL 684147, at *6 (finding

the remedy for prolonged detention is a bond hearing before an immigration judge); *Alphonse*, 635 F. Supp. 3d at 39 (“To be clear, the Court is not determining that he must be released from custody; rather, it is concluding that he is entitled to a bond hearing . . .”).

Assuming *arguendo* that Petitioner merits habeas relief in the form of a bond hearing, the Court should order that Petitioner, and not the government, bears the burden of establishing that he would not pose a risk of flight or danger to the community because he is detained pursuant to § 1226(c). This burden allocation was recently ordered and explained in *Alphonse*, where the court ordered the petitioner bear the burden of proof to show that he was not a flight risk or a danger to the community, concluding that “placing the burden of proof on the petitioner in a § 1226(c) bond hearing aligns with the First Circuit’s reasoning and the Supreme Court’s findings of congressional intent.” *Id.* at 40; *see also de Zarate v. Choate*, No. 23-CV-00571-PAB, 2023 WL 2574370, at *5 (D. Colo. Mar. 20, 2023) (same). As such, if this Court determines that Petitioner has demonstrated that his continued detention constitutes a due process violation, the remedy should be an order for a bond hearing before an IJ with the burden of proof borne by the Petitioner.

VI. CONCLUSION

For these reasons, Petitioner’s writ should be dismissed. He has failed to exhaust his administrative remedies or make a showing that this Court has jurisdiction over this request. Further, Petitioner is subject to mandatory detention

pursuant to 8 U.S.C. § 1226(c)(1)(B). Thus, the Petition should be dismissed in its entirety.

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CERTIFICATION OF SERVICE

I hereby certify that, on April 15, 2025, I caused the foregoing document to be filed by means of this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Local Rules Gen 304.

/s/ Julie M. White
JULIE M. WHITE