UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

JAYA BHASKAR,

Petitioner,

v.

JOHN TSOUKARIS, Field Office Director of Enforcement and Removal Operations, ATLANTA Field Office, Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY;
PAMELA BONDI, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
JASON STREEVAL, Warden of STEWART DETENTION CENTER,
CORECIVIC, Inc., a Nashville, Tennessee Corporation

Respondents.

Case No.

PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR DECLARATORY RELIEF

INTRODUCTION

1. Petitioner JAYA BHASKAR is currently in the physical custody of Respondents at the STEWART DETENTION CENTER in Lumpkin, Georgia. He now faces unlawful detention because the Immigration Court has wrongly determined that Petitioner is held under the mandatory detention provisions of INA § 236(c) for having committed a Crime Involving Moral Turpitude (CIMT) when he violated North Carolina's G.C. § 14-91.
2. Petitioner is charged as deportable under INA § 237(a)(2)(A)(ii) for having been convicted of two crimes involving moral turpitude, and is being wrongfully detained under INA § 236(c), 8 U.S.C. § 1226(c) for having committed a crime involving moral turpitude.
3. Petitioner's detention on this basis constitutes an error of law. The relevant North Carolina crime can be committed by misapplication, which encompasses non-turpitudinous conduct.
4. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a custody determination consistent with this honorable Court's instructions under § 1226(a) within seven days.

JURISDICTION

5. Petitioner is in the physical custody of Respondents and is currently detained at the Stewart Detention Center in Stewart, Georgia. This Court has jurisdiction pursuant to 28 U.S.C. § 2241(c)(3), (5) (habeas corpus); 28 U.S.C. § 1331 (federal question); and U.S. Const. art. I, § 9, cl. 2 (Suspension Clause). This Court may grant relief under the

Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; the All Writs Act, 28 U.S.C. § 1651; and the Administrative Procedure Act, 5 U.S.C. § 704..

6. Federal courts retain habeas jurisdiction to review immigration detentions based on errors of law, including the erroneous application or interpretation of statutes. This includes review of statutory eligibility for relief, the legal standards applied in custody determinations, and the application of law to undisputed facts. Such jurisdiction is preserved under 8 U.S.C. § 1252(a)(2)(D) (2021), which explicitly authorizes judicial review of constitutional claims and questions of law. See, e.g., *Jean-Pierre v. U.S. Att'y Gen.*, 500 F.3d 1315, 1322 (11th Cir. 2007) (holding that application of law to fact is reviewable under § 1252(a)(2)(D)); *Cadet v. Bulger*, 377 F.3d 1173, 1183–85, 1192 (11th Cir. 2004) (confirming that the scope of review includes statutory interpretation and application of law to adjudicated facts); and *Taylor v. United States*, 396 F.3d 1322, 1328 n.5 (11th Cir. 2005) (recognizing that essential findings of fact unsupported by evidence may be reviewed). See also: *Ramadan v. Gonzales*, 479 F.3d 646, 650 (9th Cir. 2007) (per curiam); *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 324–30 (2d Cir. 2006); *Toussaint v. U.S. Att'y Gen.*, 455 F.3d 409, 412 n.3 (3d Cir. 2006); *Jean v. Gonzales*, 435 F.3d 475, 482 (4th Cir. 2006); *Nguyen v. Mukasey*, 522 F.3d 853, 854–55 (8th Cir. 2008) (per curiam); *Singh v. Ashcroft*, 351 F.3d 435, 441–42 (9th Cir. 2003); *Wang v. Ashcroft*, 320 F.3d 130, 142–43 (2d Cir. 2003); *Saint Fort v. Ashcroft*, 329 F.3d 191, 203–04 (1st Cir. 2003); *Nolan v. Holmes*, 334 F.3d 189, 194 (2d Cir. 2003); *Ogbudimkpa v. Ashcroft*, 342 F.3d 207, 222 (3d Cir. 2003); *Auguste v. Ridge*, 395 F.3d 123, 137–38 (3d Cir. 2005);

7. Foundational Supreme Court cases also support habeas jurisdiction over legal errors in immigration detention. See *Gegiow v. Uhl*, 239 U.S. 3 (1915); *Mahler v. Eby*, 264 U.S. 32 (1924); *Kessler v. Strecker*, 307 U.S. 22 (1939); *Delgadillo v. Carmichael*, 332 U.S. 388 (1947); *Fong Haw Tan v. Phelan*, 333 U.S. 6 (1948); *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950); *Carlson v. Landon*, 342 U.S. 524 (1952); *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953).

VENUE

8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the MIDDLE DISTRICT OF GEORGIA, the judicial district in which Petitioner currently is detained.

9. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the MIDDLE DISTRICT OF GEORGIA..

REQUIREMENTS OF 28 U.S.C. § 2243

10. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith" why the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

11. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who

entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

12. Respondent JOHN TSOUKARIS is the Director of the Atlanta Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating their Field Office Director without publishing a schedule of rotation. As such, JOHN TSOUKARIS or his unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.

13. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

14. Respondent (through its agent Secretary Noem) Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

15. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

16. Respondent (through its director Attorney General Bondi) Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and

enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

17. Respondent, Warden JASON STREEVAL, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine certain immigrants at STEWART Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

LEGAL FRAMEWORK

18. Exhaustion is not required where an agency's exercise of authority is clearly at odds with the specific language of the statute. See *McClendon v. Jackson Television Inc.*, 603 F.2d 1174, 1177 (5th Cir. 1979). Petitioner's ongoing detention is unlawful and exceeds the limits of the agency's statutory authority.

19. The BIA is not bound by any statutory or regulatory time frame for resolving detained appeals. As in *Iddir v. INS*, 301 F.3d 492, 498–99 (7th Cir. 2002), and *Schaeuble v. Reno*, 87 F.Supp.2d 383, 389 (D.N.J. 2000), courts have waived exhaustion where agencies are not required to act within a definite period. The indefinite nature of BIA review, especially amid known backlogs in detained cases, renders administrative remedies inadequate.

20. Even if review were meaningfully available to Petitioner, the only avenue for him would be to pay $1,045. That fee was instituted on July 4, 2025 under the "One Big Beautiful Bill Act (OBBBA). In the instant context, should Petitioner prevail, he would be forced to pay the Immigration Court to correct its own legal error.

21. INA § 242(d)(1) applies to removal matters and claims concerning noncitizens. It does not extend to habeas proceedings challenging detention conditions or bond

determinations. See *Ali v. Ashcroft*, 346 F.3d 873, 877–78 (9th Cir. 2003); *Rowe v. INS*, 45 F.Supp.2d 144 (D. Mass. 1999); *Morisath v. Smith*, 988 F.Supp. 1333 (W.D. Wash. 1997). "While, generally, an alien must exhaust administrative remedies before seeking judicial review of a deportation order, exhaustion is not required if an alien seeks relief not inconsistent with an order of deportation." *Cheng Fan Kwok v. INS,* 392 U.S. 206, 88 S.Ct. 1970, 20 L.Ed.2d 1037, *aff'd,* 392 U.S. 642, 88 S.Ct. 2271, 20 L.Ed.2d 1341 (1968). *Morisath* at 1340 (Citations included). Nor is exhaustion required when a petitioner challenges the conditions of bond.. *National Center for Immigrant's Rights v. INS,* 791 F.2d 1351, 1354 (9th Cir.1986), *vacated on other grounds,* 481 U.S. 1009, 107 S.Ct. 1881, 95 L.Ed.2d 489 (1987).

22. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar collateral APA challenges to unlawful arrest and detention. Such claims are reviewable under: (a) 28 U.S.C. § 1331 (federal question jurisdiction); (b) 28 U.S.C. § 2241 (habeas corpus). See also: *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).
23. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A-D), provides that courts shall set aside agency action that is arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or taken without observance of procedure required by law.
24. Agency action that exceeds statutory authority is also ultra vires. Where immigration officers act outside the bounds of their delegated powers—such as by misinterpreting the grounds of mandatory detention vs. discretionary detention—the resulting detention is unauthorized. The Supreme Court has recognized that ultra vires agency action is subject to judicial review and may be enjoined. See *Leedom v. Kyne*, 358 U.S. 184, 188 (1958).

25. The APA provides a cause of action to challenge such agency misconduct, and courts have consistently invalidated immigration enforcement actions that disregard statutory limits or binding agency rules. See *Judulang v. Holder*, 565 U.S. 42, 53 (2011)(holding APA jurisdiction lies when assessing "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"); *Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d 1, 41–43 (D.D.C. 2018).

26. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply to this APA claim. The claim does not challenge a final order of removal, does not arise from removal proceedings, and does not implicate a discretionary decision. It is a collateral legal challenge to the legality of Petitioner's arrest and detention, reviewable under 28 U.S.C. §§ 1331 and 2241. See *INS v. St. Cyr*, 533 U.S. 289, 308–09 (2001); *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Canal A Media Holding v. USCIS*, 964 F.3d 1250, 1257 (11th Cir. 2020).

27. The availability of declaratory relief in this context is well established. In *Nielsen v. Preap*, 139 S. Ct. 954, 962 (2019), the Supreme Court affirmed that district courts retain jurisdiction to entertain requests for declaratory relief even where injunctive relief may be limited under 8 U.S.C. § 1252(f)(1).

28. In *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044–47 (1984), the Court declined to apply the exclusionary rule in civil immigration proceedings, in part, because it reasoned that declaratory relief remains available as an alternative for individuals in custody.

29. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

30. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

31. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

32. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

33. This case concerns the application of 8 U.S.C. 1226(a) and (c); specifically, whether the commission of Embezzlement under North Carolina's G.S. § 14-91, which criminalizes knowing and willful misapplication, is a CIMT, stripping the Immigration Court of its jurisdiction to grant bond under 8 U.S.C. 1226(a).

34. In removal proceedings, whether a conviction constitutes a crime involving moral turpitude ("CIMT") is determined under the categorical approach. The adjudicator must examine the statutory elements and "look to the least culpable conduct criminalized by the statute" to decide whether that conduct is per se morally turpitudinous. See *Nijhawan v. Holder*, 557 U.S. 29, 36 (2009) (categorical approach governs CIMT determinations); *Keungne v. U.S. Att'y Gen.*, 561 F.3d 1281, 1284 (11th Cir. 2009) (categorical approach requires focus on statutory elements and least culpable conduct); *Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1309 (11th Cir. 2011) (modified categorical approach limited to judicially approved documents).

35. If the statute is divisible, the modified categorical approach may be used, but only certain judicially approved documents may be consulted: the indictment, jury instructions, plea agreement, plea colloquy, or comparable judicial records. See *Nijhawan v. Holder*, 557 U.S. 29, 36 (2009); *Shepard v. United States*, 544 U.S. 13, 26 (2005); *Fajardo v. U.S. Att'y Gen.*, 659 F.3d 1303, 1309 (11th Cir. 2011).

36. A conviction is not categorically a CIMT if the least culpable conduct criminalized by the statute does not require a culpable mental state or is not inherently base, vile, or depraved. See *Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465, 466 (BIA 2011) ("Simple assault or battery is generally not considered to involve moral turpitude for purposes of the immigration laws."); *Jean-Louis v. U.S. Att'y Gen.*, 582 F.3d 462, 481–82 (3d Cir. 2009).

37. A CIMT must involve both reprehensible conduct and a culpable mental state—specific intent, deliberateness, willfulness, or recklessness. Mere general intent or negligence is insufficient. See *Matter of Salad*, 27 I&N Dec. 733, 735 (BIA 2020); *Keungne v. U.S. Att'y Gen.*, 561 F.3d 1281 (11th Cir. 2009) (Georgia reckless conduct statute is a CIMT only if it requires conscious disregard of a substantial and unjustifiable risk); *Smith v. U.S. Att'y Gen.*, 983 F.3d 1206 (11th Cir. 2020).

38. Where the statute encompasses both turpitudinous and non-turpitudinous conduct, the government bears the burden of proving by clear and convincing evidence that the conviction was for a CIMT. See *Matter of Tobar-Lobo*, 24 I&N Dec. 143, 144 (BIA 2007).

39. As Petitioner argued through Counsel, however, ""Misapplication covers acts not covered by embezzlement. *Williamson v. United States*, 5 Cir., 332 F.2d 123, 133, n. 15."

United States v. Holmes, 611 F.2d 329, 331 (10th Cir. 1979)(citations included). See Exhibit 9, page 8.

40. If Embezzlement were the only way to violate G.S. § 14-91, the Court would be correct; however, one can violate that statute by misapplying funds without embezzling them. Misapplication reaches conduct beyond embezzlement, and which does not include fraudulent intent.

41. As Justice Alito noted in his concurrence in *Padilla v. Kentucky*, and as Petitioner argued in Exhibit 9 at page 9, "'Determining whether a particular crime is one involving moral turpitude is no easier [than determining whether a particular crime is an aggravated felony].' 559 U.S. 356, 379 (2010). He noted that '[w]riting bad checks may or may not be a CIMT,' and that 'reckless assault coupled with an element of injury, but not serious injury, is probably not a CIMT.' *Id.* He further explained that 'if there is no element of actual injury, the endangerment offense may not be a CIMT,' and that 'child abuse done with criminal negligence probably is not a CIMT.'" *Id.*

42. There is nothing in the record to suggest that misapplication necessarily involves harm to the rightful owner of misapplied property; instead, "[a] fiduciary who applies funds in a manner contrary to the owner's instructions—even if the owner is ultimately economically benefited—may still be convicted under this provision. The statute criminalizes deviation from the directed use of entrusted property, regardless of whether the outcome is financially detrimental." Exhibit 9 at 8. Without the required element of harm, and failing any special considerations like protection of children or those on the highway, conduct unmoored from damage to others may not constitute a CIMT.

FACTS

1. Petitioner JAYA BHASKAR is currently detained by U.S. Immigration and Customs Enforcement (ICE) at Stewart Detention Center in Lumpkin, Georgia. Exhibit 6, Detainee Locator.
2. On September 30, 2025, the Department of Homeland Security (DHS) initiated removal proceedings against Respondent (Petitioner) Jaya Bhaskar by issuing a Notice to Appear (Form I-862). DHS alleged that Bhaskar, a native and citizen of India, was admitted to the United States in 1989 and adjusted to lawful permanent resident status in 2001. DHS charged Bhaskar as removable under INA § 237(a)(2)(A)(ii) for having been convicted of two or more crimes involving moral turpitude not arising out of a single scheme of misconduct, including three counts of embezzlement of state property under N.C. Gen. Stat. § 14-91 and five counts of failure to file/pay income tax under N.C. Gen. Stat. § 105-236(a)(9). See Exhibit 1, Notice to Appear (Form I-862) (Sept. 30, 2025).
3. On October 22, 2025, the Lumpkin Immigration Court held a hearing on Petitioner's Motion to Terminate. The motion argued, inter alia, that the charged offense under N.C. Gen. Stat. § 14-91 does not categorically qualify as a crime involving moral turpitude (CIMT), emphasizing that "misapplication" of state property does not necessarily entail moral turpitude. The Immigration Judge reserved decision, indicating that a ruling would be issued at a later date. See Exhibit 3, Motion to Terminate at 3 (Oct. 20, 2025)(Arguing under II.B. "Misapplication does not require fraudulent or deceptive intent.").
4. Additionally, Petitioner argued through counsel in a brief on the categorical analysis more extensively that the "inclusion of 'misapply' and 'abuse such trust' in the statutory

language expands the scope of criminalized conduct well beyond the federal generic definition of embezzlement." Exhibit 9 at 8.

5. On October 30, 2025, the Immigration Judge issued a written decision denying Respondent's bond request for lack of jurisdiction. The IJ concluded that the charged offense under N.C. Gen. Stat. § 14-91 is categorically a CIMT and therefore supports mandatory detention under INA § 236(c). See Exhibit 5, IJ Decision on Bond Jurisdiction under Matter of Joseph (Oct. 30, 2025).
6. On November 10, 2025, the Immigration Judge issued a written decision relevant to both the Motion to Terminate and the Bond Motions, sustaining the DHS's charges against Petitioner for having committed two or more CIMT's, which included a finding that violation of N.C. Gen. Stat. § 14-91 is a crime involving moral turpitude, and citing to *State v. Howard*, 222 N.C. 291, 22 S.E.2d 917 (N.C. 1942) in support;
7. As a matter of fact, *Howard* regarded the definition of embezzlement, which is only one of the means of violating 14-91. That decision, however, did not provide that all acts committed under 14-90 or 14-91 were by embezzlement by definition; rather, *Howard* defines the term *embezzlement* "within the meaning of the embezzlement statutes" as requiring "fraudulent intent" as a "necessary element." *Howard* at 917.
8. The text of N.C. Gen. Stat. § 14-91 (formerly C.S. 4269) is as follows (emphasis added):

> Embezzlement of State property by public officers and employees: If any officer, agent, or employee of the State, or other person having or holding in trust for the same any bonds issued by the State, or any security, or other property and effects of the same, **shall embezzle or knowingly and willfully misapply or convert the same to his own use,** or otherwise willfully or corruptly abuse such

trust, such offender and all persons knowingly and willfully aiding and abetting or otherwise assisting therein shall be guilty of a felony.

9. The text of N.C. Gen. Stat. § 14-90 (formerly C.S. 4268) is as follows (emphasis added):

Embezzlement of property received by virtue of office or employment:

(a) This section shall apply to any person: (1) Exercising a public trust. (2) Holding a public office. (3) Who is a guardian, administrator, executor, trustee, or any receiver, or any other fiduciary, including, but not limited to, a settlement agent, as defined in G.S. 45A-3. (4) Who is an officer or agent of a corporation, or any agent, consignee, clerk, bailee or servant, except persons under the age of 16 years, of any person. (b) Any person who **shall: (1) Embezzle or fraudulently or knowingly and willfully misapply or convert to his own use, or (2) Take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or convert to his own use**, any money, goods or other chattels, bank note, check or order for the payment of money issued by or drawn on any bank or other corporation, or any treasury warrant, treasury note, bond or obligation for the payment of money issued by the United States or by any state, or any other valuable security whatsoever that (i) belongs to any other person or corporation, unincorporated association or organization or (ii) are closing funds as defined in G.S. 45A-3, which shall have come into his possession or under his care, shall be guilty of a felony.

10. Respondent Jaya Bhaskar remains in ICE custody and is currently confined at the Stewart Detention Center in Lumpkin, Georgia. See Exhibit 6, Detainee Locator Printout (Oct. 30, 2025).

CLAIMS FOR RELIEF

COUNT I
Violation of INA § 236(c), 8 U.S.C. § 1226(c)

11. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

12. Petitioner's ongoing detention under INA § 236(c), 8 U.S.C. § 1226(c), is not authorized by law because the Immigration Judge's determination that Petitioner's conviction under N.C. Gen. Stat. § 14-91 is categorically a crime involving moral turpitude ("CIMT") is contrary to controlling Supreme Court and Eleventh Circuit precedent.

13. The relevant North Carolina statute, N.C. Gen. Stat. § 14-91, criminalizes not only embezzlement but also "misapplication," which may be committed without fraudulent or deceptive intent. As such, the least culpable conduct covered by the statute does not categorically involve moral turpitude. See *Matter of Ahortalejo-Guzman*, 25 I&N Dec. 465, 466 (BIA 2011); *Keungne*, 561 F.3d at 1284.

14. Where, as here, the statute encompasses both turpitudinous and non-turpitudinous conduct, the government bears the burden of proving by clear and convincing evidence that the conviction was for a CIMT. See *Matter of Tobar-Lobo*, 24 I&N Dec. 143, 144 (BIA 2007).

15. It appears from the Immigration Court's reasoning that the Immigration Judge was considering only the definition of embezzlement, and failed to consider the meaning of other conduct liable under that statute like *misapplication*.

16. The Immigration Judge's legal error in categorically treating Petitioner's conviction as a CIMT has resulted in ongoing mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c) depriving Petitioner of liberty.

17. Petitioner is entitled to immediate release unless Respondents provide a legal justification for detaining him within seven days, as ongoing detention under § 236(c) is not authorized by law.

COUNT II
Violation of Due Process

93. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

94. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

95. Petitioner has a fundamental interest in liberty and being free from official restraint without legal justification.

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COUNT III
APA violations

96. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

97. The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A)-(D), requires courts to set aside agency action that is arbitrary, capricious, an abuse of discretion, in excess of statutory authority, or taken without observance of procedure required by law.

98. Respondents, acting through the Immigration Judge and the Department of Homeland Security, have detained Petitioner under INA § 236(c), 8 U.S.C. § 1226(c), based on a legal error: the categorical misclassification of Petitioner's conviction under N.C. Gen. Stat. § 14-91 as a crime involving moral turpitude ("CIMT").

99. Agency action that exceeds statutory authority is ultra vires and subject to judicial review and invalidation. See *Leedom v. Kyne*, 358 U.S. 184, 188 (1958) (ultra vires agency action is reviewable and may be enjoined); *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (APA jurisdiction lies to assess whether agency decision was based on relevant factors and free from clear error of judgment).

100. The Immigration Judge's determination is arbitrary and capricious because it disregards controlling law requiring the categorical approach and the examination of the least culpable conduct criminalized by the statute. See *Nijhawan v. Holder*, 557 U.S. 29, 36 (2009); *Keungne v. U.S. Att'y Gen.*, 561 F.3d 1281, 1284 (11th Cir. 2009).

101. By failing to apply the correct legal standard and by detaining Petitioner under a statutory provision that does not apply to his conviction, Respondents have acted in excess of statutory authority and in violation of the APA. See *Judulang v. Holder*, 565 U.S. at 53; *Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–59 (S.D.N.Y. 2018); *Ramirez v. ICE*, 338 F. Supp. 3d 1, 41–43 (D.D.C. 2018).

102. Petitioner's ongoing detention is not authorized by law and must be set aside under 5 U.S.C. § 706(2)(A)-(C).

103. Petitioner is entitled to declaratory and injunctive relief requiring Respondents to release him or, in the alternative, to remand to Immigration Court for further instructions consistent with any relief this honorable Court grants.

COUNT V (Alternative): Lack of Substantial Evidence Supporting CIMT Finding

104. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

105. In the alternative, Petitioner requests that this Court review the Immigration Judge's legal determination that Petitioner's conviction under N.C. Gen. Stat. § 14-91 constitutes a crime involving moral turpitude ("CIMT") for purposes of mandatory detention under INA § 236(c), 8 U.S.C. § 1226(c).

106. As recognized by the Eleventh Circuit in *Taylor v. United States*, 396 F.3d 1322, 1328 n.5 (11th Cir. 2005), essential findings of fact in deportation proceedings unsupported by evidence may be reviewed by the federal courts in habeas proceedings. Here, the essential facts are undisputed: Petitioner was convicted under N.C. Gen. Stat. § 14-91, and the statutory text is clear; but as distinguished from *Taylor*, the instant action is not a decision regarding Petitioner's right to remain in the United States, but an attack on the denial of his liberty unsupported substantial evidence.

107. The Immigration Judge's finding that Petitioner's conviction under § 14-91 is categorically a CIMT is not supported by substantial evidence. The statute criminalizes not only embezzlement but also "misapplication" and "abuse of trust," which may be committed without fraudulent or deceptive intent. The least culpable conduct covered by the statute does not categorically involve moral turpitude.

108. Because the Immigration Judge's determination is unsupported by substantial evidence in the record, habeas jurisdiction lies to review the law as applied to these undisputed facts with regard to his ongoing detention. See *Taylor v. United States*, 396 F.3d at 1328 n.5 (review of essential findings of fact unsupported by evidence); *Jean-Pierre v. U.S. Att'y Gen.*, 500 F.3d 1315, 1322 (11th Cir. 2007)(application of law to fact is reviewable under § 1252(a)(2)(D)).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the MIDDLE DISTRICT OF GEORGIA while this habeas petition is pending;

c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative,

e. DECLARE that violation of N.C. G.S. 14-91 is not categorically a Crime Involving Moral Turpitude and remand to Immigration Court with appropriate instructions;

f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

g. Any further relief the Court deems proper.

DATED this 12th day of November, 2025.

/s/ Joshua McCall, Esq.

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