IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

JAYA BHASKAR,	:	
	:	
Petitioner,	:	
	:	**Case No. 4:25-CV-376-CDL-AGH**
v.	:	**28 U.S.C. § 2241**
	:	
WARDEN, STEWART DETENTION CENTER,[1]	:	
	:	
	:	
Respondent.	:	

MOTION TO DISMISS

On November 12, 2025, Petitioner filed a petition for a writ of habeas corpus ("Petition") asserting that the Immigration Judge ("IJ") improperly found that Petitioner is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c). ECF No. 1. On November 13, 2025, the Court ordered Respondent to file a response to the Petition within twenty-one (21) days. ECF No. 3. Respondent now files this Motion to Dismiss the Petition showing that the Court lacks jurisdiction to review the determination of the IJ.

BACKGROUND

Petitioner is a native and citizen of India who was admitted to the United States on September 10, 1989, as a B2 Visitor for Pleasure. Declaration of Carlos J. Santiago ("Santiago Decl.") ¶ 4. On Jule 13, 2001, Petitioner was accorded Lawful Permanent Resident (LPR) Status.

[1] In addition to the Warden of Stewart Detention Center, Petitioner names officials with the Department of Justice, Department of Homeland Security, and Immigration and Customs Enforcement as Respondents. "[T]he default rule [28 U.S.C. § 2241 petitions] is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official." *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004) (citations omitted). Thus, Respondent has substituted the Warden of Stewart Detention Center as the sole appropriately named respondent in this action.

Id. ¶ 4 & Ex. A. On or about On September 25, 2024, Petitioner was convicted in the Superior Court of North Carolina at Wake County on three (3) counts of embezzlement of state property, in violation of G.S.14-91 and on five (5) counts of failure to file/pay income tax, in violation of G.S.105-236(a)(9). *Id.* ¶ 5 & Ex. B. For these offenses, Petitioner was sentenced to 16-29 months' confinement. *Id.* ¶ 5 & Ex. B.

On September 30, 2025, Immigrations and Customs Enforcement ("ICE")/Enforcement and Removal Operations ("ERO") took Petitioner into custody and served Petitioner with a Notice to Appear charging him with removability pursuant to Immigration and Nationality Act ("INA") § 237(a)(2)(A)(ii) based upon his having been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct after his admission to the United States. *Id.* ¶ 6 & Ex. C.

On October 20, 2025, Petitioner, through counsel, filed a Motion to Terminate Proceedings with the immigration court and denied the charge of removability. *Id.* ¶ 7. On November 10, 2025, the IJ denied the motion to terminate and sustained the charge of removability. Santiago Decl. ¶ 7 & Ex. D. Petitioner did not file any application for relief from removal. *Id.* ¶ 7. On November 17, 2025, the IJ ordered Petitioner removed to India, and Petitioner reserved appeal. *Id.* ¶ 8 & Ex. E.

Petitioner is currently detained at Stewart Detention Center pursuant to INA § 236(c) (8 U.S.C. § 1226(c)). *Id.* ¶ 9. If Petitioner becomes subject to a final order of removal to India, there is a significant likelihood of Petitioner's removal in the reasonably foreseeable future. *Id.* ¶ 10. India is open for international travel, and ICE/ERO is currently removing non-citizens to India. *Id.*

LEGAL FRAMEWORK

In the immigration context, "[f]ollowing enactment of the REAL ID Act of 2005, district courts lack habeas jurisdiction to entertain challenges to final orders of removal." *Themeus v. U.S. Dep't of Justice*, 643 F. App'x 830, 832 (11th Cir. 2016) (per curiam) (citing 8 U.S.C. § 1252(a)(5),

(b)(9)). "Instead, 'a petition for review filed with the appropriate court is now an alien's exclusive means of review of a removal order.'" *Id.* (quoting *Alexandre v. U.S. Att'y Gen.*, 452 F.3d 1204, 1206 (11th Cir. 2006)). Section 1252(b)(9) provides in full:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under [subchapter II of chapter 12 (8 U.S.C. §§ 1151-1378)] shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

8 U.S.C. § 1252(b)(9).

The Supreme Court has described § 1252(b)(9) as an "unmistakable zipper clause" that streamlines litigation by consolidating and channeling claims first to the agency and then to the circuit courts through petitions for review. *Reno v. American-Arab Anti-Discrimination Comm.* ("*AADC*"), 525 U.S. 471, 483 (1999). In *AADC*, the Court elaborated on the breadth of section 1252(b)(9), explaining that it serves as a "general jurisdictional limitation" on challenges to actions arising from removal operations and proceedings. *Id.* at 482. District courts are barred from reviewing removal proceedings regardless of how the non-citizen characterizes her claim. *Mata v. Sec'y of Dep't of Homeland Sec.*, 426 F. App'x 698, 700 (11th Cir. 2011) (per curiam) (affirming district court's dismissal of challenge to removal order brought pursuant to the federal question and mandamus statutes, Administrative Procedure Act, and the Declaratory Judgment Act).

Additionally, 8 U.S.C. § 1252(g) provides that

> [e]xcept as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). "When asking if a claim is barred by § 1252(g), courts must focus on the action

being challenged." *Canal A Media Holding, LLC v. U.S. Citizenship & Imm. Servs.*, 964 F.3d 1250, 1257-58 (11th Cir. 2020). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *AADC*, 525 U.S. at 482 (emphasis in original). Section 1252(g) operates as "a 'discretion-protecting provision' designed to prevent the 'deconstruction, fragmentation, and hence prolongation of removal proceedings.'" *Camarena v. Director, Imm. & Customs Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021) (quoting *AADC*, 525 U.S. at 487).

ARGUMENT

Petitioner's claims should be dismissed pursuant to 8 U.S.C. § 1252(a)(5), (b)(9), and (g), as well as this Court's own precedent. Petitioner brings multiple claims requesting that this Court judicially review the IJ's decision that Petitioner's convictions constitute crimes of moral turpitude for purposes of both adjudicating the charge of removability and Petitioner's complaint that he should not be held without bond under 8 U.S.C. § 1226(c). Thus, Petitioner expressly asks the Court to review a "question[] of law and fact, including interpretation and application of [a] . . . statutory provision[], arising from . . . [a] proceeding brought to remove an alien from the United States[.]" 8 U.S.C. § 1252(b)(9). Pursuant to that "unmistakable zipper clause" the Court is without jurisdiction to abide the Petitioner's request, regardless of how the claim is couched. *AADC*, 525 U.S. at 483. Petitioner's claims should be brought through the Board of Immigration Appeals ("BIA") appeal process and, if necessary, through a petition for review to the proper Circuit Court of Appeals. *See* 8 U.S.C. § 1252(a)(5).

As this Court recently held in *M.O.G.R. v. Warden, Stewart Detention Center*, "Courts have consistently read section 1252(b)(9) in conjunction with section 1252(a)(5) and concluded that district courts lack jurisdiction to review '*any* issue—whether legal or factual—arising from *any* removal-related activity.'" 2025 WL 3460936 at *2 (M.D. Ga. Dec. 2, 2025) (*quoting J.E.F.M. v.*

Lynch, 837 F.3d 1026, 1031 (9th Cir. 2016)); *see also A.A.D.C.*, 525 U.S. at 482-83 (holding that 1252(b)(9) functions as a "'zipper' clause that says 'no judicial review in deportation cases unless this section provides judicial review'"). The Court also recognized that "[i]n enacting section 1252(b)(9), Congress plainly intended to put an end to the scattershot and piecemeal nature of the review process that previously had held sway in regard to removal proceedings." *M.O.G.R.*, 2025 WL 3460936 at *2 (*quoting Aguilar v. U.S. Immigration & Customs Enf't*, 510 F.3d 1, 9 (1st Cir. 2007)).

Petitioner's position rests on a fundamental misreading of section 1252. *See* Pet ¶¶ 5-7. Petitioner claims that 8 U.S.C. § 1252(a)(2)(D) allows this Court to consider this Petition, but it does not. Section 1252(a)(2)(D) states,

> Nothing in subparagraph (B) or (C), or in any other provision of this chapter (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law **raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.**

8 U.S.C. § 1252(a)(2)(D) (emphasis added). Petitioner has conflated the petition for review process with this Court's habeas jurisdiction. The cases cited in the Petition refer to the jurisdiction through the petition for review process, not the habeas jurisdiction of a district court. *See, e.g.*, *Jean-Pierre v. U.S. Att'y Gen.*, 500 F.3d 1315 (11th Cir. 2007) (considering petition for review from BIA decision). Petitioner has simply filed his challenge to the IJ's ruling in the wrong court. Petitioner acknowledges that an appeal to the BIA is available, but it appears he does not want to wait for what he terms the "indefinite nature of BIA review," nor to pay the filing fee. *See* Pet. ¶¶ 19-20. These complaints do not, however, overcome the jurisdiction stripping provision of section 1252(b)(9).

Lastly, Petitioner's claim that section 1252 does not bar "collateral APA challenges to unlawful arrest and detention," is likewise incorrect. As the Court recognized in *M.O.G.R.*, section 1252 "expressly provides that courts lack jurisdiction 'notwithstanding any provision of law

(statutory or nonstatutory), including . . . sections 1361 and 1651' of Title 28." 2025 WL 3460936 at *3, n.2 (*quoting* 8 U.S.C. § 1252(a)(5)). Regardless of how Petitioner frames his challenge to the IJ's ruling, this Court lacks jurisdiction to review it.[2] For all these reasons, the Court should not reach Petitioner's substantive arguments regarding whether his convictions for embezzlement of state property constitute crimes of moral turpitude. Petitioner's challenge should be brought to the BIA.[3]

CONCLUSION

For the reasons stated above, Respondent respectfully requests that the Court dismiss the Petition.

Respectfully submitted this 4th day of December, 2025.

WILLIAM R. KEYES
UNITED STATES ATTORNEY

BY: */s/ Michael P. Morrill*
MICHAEL P. MORRILL
Assistant United States Attorney
Georgia Bar No. 545410
United States Attorney's Office
Middle District of Georgia
P.O. Box 2568
Columbus, Georgia 31902
Phone: (706) 649-7728
michael.morrill@usdoj.gov

[2] Furthermore, APA claims are not cognizable in a habeas action. *See Villafuerte v. Warden, Stewart Det. Ctr.*, No. 4:18-cv-116-CDL-MSH, 2018 WL 6626640 at *2 (M.D. Ga. Nov. 27, 2018), *recommendation adopted*, 2018 WL 6620890 (M.D. Ga. Dec. 18, 2018) (finding the petitioner's APA claim was "not cognizable" for two reasons. First, the non-citizen sought a form of "collateral administrative relief," which is not properly within the purview of habeas corpus. Second, it was "inappropriate" to permit the non-citizen to raise a civil claim because the non-citizen filed a habeas petition with a far lower filing fee.)

[3] In the event the Court disagrees with Respondent's jurisdictional argument, Respondent respectfully requests an opportunity to respond to Petitioner's substantive argument regarding the determination that his convictions under N.C. Gen Stat. § 14-91 constitutes a crime involving moral turpitude.