No. 13-_____

In The Supreme Court of the United States

MINTRA RAGOONATH,

Petitioner,

–v–

ERIC HOLDER, JR., U.S. Attorney General and MARC J. MOORE, Field Office Director, Department of Homeland Security Enforcement and Removal Operations, Miami Field Office,

Respondents.

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

MARY E. KRAMER
ILARIA CACOPARDO
MARY E. KRAMER, P.A.
168 S.E. FIRST STREET
SUITE 802
MIAMI, FL 33131

MATTHEW B. WEBER
COUNSEL OF RECORD
HERMANNI LAW GROUP
2655 LEJEUNE ROAD
SUITE 800
CORAL GABLES, FL 33134
(305) 677-9648
MATEO502@HOTMAIL.COM

MARCH 5, 2014 *COUNSEL FOR PETITIONER*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether 18 U.S.C. § 656 is a crime "involving fraud or deceit" for purposes of the Immigration and Nationality Act's definition of aggravated felony where the criminal statute does not contain either of these terms, but instead describes categorically a pure theft offense.

2. Assuming, for purposes of argument, that the elements of an intent to defraud or to injure may be read into the statute, whether these are distinct mental states that render the statute divisible, such that 18 U.S.C. § 656 cannot categorically be classified as a fraud or deceit crime.

PARTIES TO THE PROCEEDING

All of the parties to the proceedings below are identified in the caption.

The judgments sought to be reviewed are *Mintra Ragoonath v. Attorney General*, 533 Fed. Appx. 954 (11th Cir. 2013), and *Mintra Ragoonath v. Attorney General* (Appeal no. 13-10510-EE, December 6, 2013).

This case involves an administrative, expedited removal order entered by officers of the Department of Homeland Security, Enforcement and Removal Operations, pursuant to 8 U.S.C. § 1228(b). Although the administrative order carries the weight of a traditional removal order, this case did not go before an immigration judge, or the Board of Immigration Appeals. Although by statute at 8 U.S.C. § 1252(b)(3), a petition for review shall be served on the Attorney General as "respondent", this case was not decided by an agency within the Department of Justice. It is a misnomer—nevertheless one required by statute—to name the Attorney General as the Respondent, because the order was entered by Enforcement and Removal Operations.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgments of the Eleventh Circuit Court of Appeals.

OPINIONS AND ORDERS BELOW

The judgment of the Eleventh Circuit Court of Appeals denying the petition for review is reported at 533 Fed. Appx. 954 (11th Cir. 2013) and is dated August 22, 2013. The final order of the Eleventh Circuit Court of Appeals denying the petition for rehearing *en banc* is unreported (Appeal No. 13-10510-EE) and is dated December 6, 2013.

JURISDICTION

The Court of Appeals for the Eleventh Circuit had jurisdiction over the administrative removal order pursuant to 8 U.S.C. § 1228(b)(3), which refers to 8 U.S.C. § 1252. The jurisdiction of this Court is invoked under 28 U.S.C. § 1252(a)(2)(D).

STATUTORY PROVISIONS INVOLVED

Regarding the criminal statute at issue in this petition:

- Eighteen U.S.C. § 656 is entitled, "Theft, embezzlement, or misapplication by bank officer or employee" and states:

> Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities entrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not

> exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

Regarding removability for an aggravated felony:

- Eight U.S.C. § 1227(a)(2)(A)(iii) provides for the removal of any alien who is convicted of an aggravated felony at any time after admission.
- Eight U.S.C. § 1101(a)(43)(M)(i) defines aggravated felony, in pertinent part, as an offense that involves fraud or deceit in which the loss to the victim or victims exceeds $10,000.

Regarding expedited administrative removal orders:

- Eight U.S.C. § 1228(b) states that the Attorney General may, in the case of an alien described in paragraph (2) [related to an alien who is not lawfully admitted for permanent residence], determine the deportability of such alien under section 237(a)(2)(A)(iii) (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection of section 240.

STATEMENT OF THE CASE

A. Introduction

This petition asks the Court to resolve a glaring split in the circuit courts of appeal in their interpretation of 18 U.S.C. § 656. Although an

immigration law case, this matter has overlapping import in both immigration and criminal law contexts. Three circuit courts of appeal have found § 656 to be divisible in that it contains two distinct *mentes reae*: the intent to injure and the intent to defraud. However, the Court of Appeals in Ragoonath's case found that both of these mental states collapse into the concept of deceit, effectively eliminating divisibility and transforming the statute into a categorical "fraud and deceit" crime.

A corollary issue is whether 18 U.S.C. § 656 can categorically be a crime involving fraud or deceit where neither mental state (injure or defraud) appears in the text. In the wake of this Court's important decisions regarding the categorical approach last year, *Ragoonath* presents a timely opportunity to apply the categorical methodology to an unusual, hybrid statute whose *mens rea* elements are inserted via case law because the terms are, missing from the actual text. Neither an intent to injure, defraud, or deceive appear in the language of § 656. On a previous occasion, the Supreme Court declined to either endorse or reject the lower courts' approach of reading unexpressed elements back into a statute. *See United States v. Bates,* 522 U.S. 23, 29 (1997).

Assuming, *arguendo*, they can be read back into the statute, these mental states are properly viewed as distinct alternative elements. The Supreme Court's intervention is required so that persons in the Eleventh Circuit convicted under the same criminal statute as individuals in the Second, Third, and Ninth are not made to suffer inequitable and

unfair treatment in the form of permanent banishment, exile and potential harsh criminal penalties.

B. Factual background

Mintra Ragoonath is a citizen of Trinidad, age 54, who was lawfully admitted to the United States in 1986 and remained to raise a family, including a lawful permanent resident son and two American citizen grandchildren. In 1994, she was convicted by plea in the Southern District of Florida for violation of 18 U.S.C. § 656. According to the judgment, she was sentenced to time served (one day), five years of supervised release, and restitution in the amount of $15,111. She has no other criminal convictions. Ms. Ragoonath was arrested and detained by Immigration and Customs Officers in 2012. Because she is not a permanent resident, she was subject to administrative removal, which means that an officer determined her conviction was an aggravated felony fraud offense without sending her to an immigration judge for a hearing. Following entry of the administrative order, Ms. Ragoonath—by statute—went directly to the Court of Appeals for the Eleventh Circuit, arguing that a conviction under 18 U.S.C. § 656 is not categorically a fraud or deceit crime, as required by 8 U.S.C. § 1101(a)(43)(M). She asked for a hearing in front of an immigration judge.

Relying on a slim body of arguably inapplicable criminal law cases, the Eleventh Circuit dismissed Ragoonath's petition for review. In so doing, the Court of Appeals noted that jury instructions for the Eleventh Circuit dictate that the distinct elements of fraud and injure are both met by a jury finding of

deceit. Ms. Ragoonath asked for rehearing *en banc*. Rehearing was denied. This petition follows.

REASONS FOR GRANTING THE WRIT

The instant petition presents the opportunity to apply the categorical approach to a criminal statute to correct significant inequity in the immigration law and criminal law contexts. To be clear: if Ms. Ragoonath were arrested by immigration authorities in New York or New Jersey, she would not face the predicament of an automatic, expedited removal order without the benefit of a hearing because her 1994 conviction could not by law be classified as an aggravated felony without the benefit of a hearing. Because she had the misfortune to be arrested by authorities in Florida, the same immigration laws are applied differently.

Eighteen U.S.C. § 656 is an interesting statute. Located in the Theft chapter of the United States Criminal Code, the section prohibits different acts, some of whose definition does not easily come to mind: embezzle, abstract, purloin, or willfully misapply. These are not means of committing a fraud. These are types of conversion, or theft.

In addition to placement within the Theft chapter of the Federal Criminal Code, the Sentencing Guidelines and Model Penal Code include embezzlement within the classification of stealing, or theft, offenses—in a section separate from fraud crimes. *See Valansi v. Ashcroft,* 278 F.3d 203, 213

(3d Cir. 2002); *citing* Model Penal Code § 223 and 224; and U.S.S.G. § 2B1.1.

Yet Ms. Ragoonath was not ordered deported for a theft offense. ICE ordered her deported for committing a crime involving fraud or deceit, with a loss to a victim exceeding $10,000. 8 U.S.C. § 1101(a)(43)(M)(i). Yet nowhere does section 656 include as an essential element either fraud or deceit.

Still, many circuit courts of appeal have found that the 18 U.S.C. § 656 contains an implicit mental state of either the intent to defraud or to injure, or to deceive. Nowhere do these terms appear in section 656. Some courts have called the missing terms a scrivener's error. In 1948, 18 U.S.C. § 656 was created by merging two previous sections of law. Specially, § 656 was created through combining the former provisions for embezzlement and misapplication of bank funds at 12 U.S.C. § 592 with 12 U.S.C. § 597. *See United States v. Bates,* 522 U.S. 23, 29 (1997). The revised section was intended, at least according to the reviser, to clarify, condense and combine related provisions. *See United States v. Docherty,* 468 F.2d 989, 994 (2d Cir. 1972); *United States v. Bates,* 852 F.2d 212, 215 (7th Cir. 1988). Most courts have continued to read in the intent to injure or defraud as essential elements. *United States v. Docherty, supra*, at 994.

The courts of appeal have generally interpreted the essential mental states of intent to injure or to defraud as distinct concepts. *See, e.g. United States v. Angelos,* 763 F.2d 859, 861 (7th Cir. 1985) ("it is important to distinguish between intent to injure and

intent to defraud; either will do, and they are not the same.") Furthermore, intent to deceive is an alternative element to defraud or injure. *See United States v. Docherty,* 468 F.2d, at 985.

In *Bates,* the Supreme Court was unwilling to unequivocally state that essential elements of mental state could be read into a statute via case law. *Bates* involved a distinct criminal statute; petitioner raised section 656 as an analogy only. The Court was noncommittal on the fact that section 656 is missing what the courts have called an essential element: the mental state.

If the Supreme Court is now unwilling to "read in" discarded language, then 18 U.S.C. § 656 is undeniably, and categorically, a theft crime. Nothing else. If the Court is willing to read in (presume) the unexpressed elements, as apparently courts have been willing to do since 1948, this petition asks the Court to resolve a split in the circuits and determine that an intent to defraud is distinct from the intent to injure and any attempt to collapse the two concepts into one is impermissible.

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE THE CIRCUIT SPLIT OVER WHETHER 18 U.S.C. § 656 IS CATEGORICALLY AN AGGRAVATED FELONY

The circuits are split on whether a conviction under 18 U.S.C. § 656 necessarily "involves fraud or deceit" which renders it an aggravated felony (if the $10,000 loss threshold is also present). In the present case, the Eleventh Circuit relied upon its previous holding in *Moore v. Ashcroft*, 251 F.3d 919 (11th Cir.

2001) which concluded that a conviction under 18 U.S.C. § 656 "necessarily involves fraud or deceit" and thus is a categorical match with that part of the aggravated felony provision. *Id at* 923.

In contrast the Third Circuit in *Valansi v. Ashcroft*, 278 F.3d 203 (3d Cir. 2002) relied on the rather obvious use of the disjunctive in the statute and held that the statute was divisible:

> Some but not all convictions under 18 U.S.C. § 656 qualify as an aggravated felony under that definition: a conviction for embezzlement with specific intent to defraud qualifies as an offense involving fraud or deceit, and thus an aggravated felony; a conviction with only the specific intent to injure does not.

Id. at 217.

The Ninth Circuit in *Carlos-Blaza v. Holder,* 611 F.3d 583 (9th Cir. 2010) also determined that § 656 was divisible but it found two reasons: "Section 656 is divisible into several crimes, some of which could include pure theft offenses ("abstract[ing]" and "purloin[ing]"). Section 656's imputed "intent to injure or defraud" element also is divisible into the "intent to injure" or the "intent to defraud." *Id. at* 588-589.

Finally, the Second Circuit in *Akinsade v. Holder*, 678 F.3d 138 (2d Cir. 2012) simply assumed that § 656 is divisible because in that case the BIA decision down below had actually found that it was and the government attorney conceded as much at

oral argument. (Thus the government has taken different litigation positions in different circuits.)

II. THERE IS A NEED TO RECONCILE THE SPLIT

Reconciling the circuit split on this issue is of profound importance since the determination of whether a conviction under this statute constitutes an aggravated felony is determinative in at least three distinct circumstances.

First, it determines whether a non-permanent resident alien is entitled to a formal removal hearing and the attendant due process rights and statutory procedures established by Congress and established by regulation. These include the right to apply for discretionary relief from removal, the right to seek administrative review of the decision by the Board of Immigration Appeals, and importantly, the right to present witnesses at a hearing in front of an independent immigration judge. (*See* 8 U.S.C. § 1229(a) detailing the elaborate procedural protections afforded the alien). A non-resident alien deemed to have been convicted of an aggravated felony however, can be placed in expedited removal denied the bulk of the procedural safeguards present at a formal removal hearing including the right to apply for discretionary relief from removal and the right to seek administrative review of the decision with the Board of Immigration Appeals. Indeed these persons do not even get a hearing, much less one by

an immigration judge. *See* 8 U.S.C. §§ 1228(b)[1], 1228(b)(5).

Second, whether a § 656 conviction is an aggravated felony or is merely a crime involving moral turpitude determines whether an alien placed in removal proceedings is subject to mandatory detention pursuant to 8 U.S.C. § 1226(c) or is eligible for release.

Third, whether a conviction is an "aggravated felony" or just a plain old felony has a profound effect upon sentencing for persons convicted of criminal reentry after having been previously removed after a criminal conviction. If the defendant was removed after a simple felony conviction, the maximum sentence is 10 years upon conviction for reentry. 18 U.S.C. § 1326(b)(1). However, if the prior conviction is deemed by the law of the circuit to be an aggravated felony, the schema becomes extremely harsh since the maximum sentence doubles to 20 years. 8 U.S.C. § 1326(b)(2). Rarely do circuit splits pose such disparate impact that the potential sentence for the same conviction is double the sentence in another circuit.

But beyond the disparate impact between different persons in different jurisdiction is the potential *for the same person* to receive two mutually exclusive holdings that the same conviction both is and isn't an aggravated felony. It is difficult enough for immigration attorney to advise clients how to

---

[1] Compare the formal procedures for a removal hearing at 8 U.S.C § 1229(a) with the summary procedures at 8 U.S.C. § 1228(b).

navigate the byzantine immigration laws when they are consistently applied across the nation. But potential for a Kafkaesque nightmare to unfold in this situation is truly breathtaking. To pose an example: an immigration judge located in the Third Circuit might hold that an alien who has been out of status for more than a year and convicted under § 656 is deportable for a conviction for a crime involving moral turpitude but not of an aggravated felony. *See* 8 U.S.C. § 1227(a)(2)(A)(i)(I). Five years after being removed, the alien can seek to be admitted with a family petition in conjunction with waivers of inadmissibility for the crime (8 U.S.C. § 1182(h)), and for the unlawful presence (8 U.S.C. § 1182(a)(9)(B)(v)).

If the waivers are granted, the alien may board a plane believing he is ready to rejoin his family in Philadelphia. However, if the first stop on the flight is in Atlanta, immigration officials may determine that because he is attempting entry into the Eleventh Circuit, he was removed after having been convicted of an aggravated felony and is actually permanently inadmissible and can never come back to his family. 8 U.S.C. § 1182(a)(9)(A)(ii). He then will be placed in removal proceedings and removed again.

Now, if he tries to come back by flying into, say, Philadelphia, which is in the Third Circuit, even if not deemed inadmissible for the rest of his life, he is now inadmissible for another 20 years because regardless of the reason, he has been removed twice. *Id.*

But what is more unconscionable is that before he is removed a second time, he is subject to criminal charges for attempted reentry and is subject to 20 years in prison.

Succinctly, the need to resolve the circuit split here goes well beyond that of almost any other area of law since whether or not 18 U.S.C. § 656 is an aggravated felony or not affects the decisions of five different federal agencies; the federal criminal courts and federal prosecutors not to mention the more than 11,000 immigration lawyers nationwide and uncountable criminal lawyers who have to advise their clients.[2]

[2] These include the Department of State (which issues visas); Citizenship and Immigration Service (which adjudicates applications for citizenship for which an aggravated felony is a permanent bar); Customs and Border Patrol (which determines inadmissibility at the border); Immigration and Customs Enforcement (which determines which charges of removability to file and determines whether a person in removal proceedings is subject to mandatory detention); and the Department of Justice which oversees the immigration judges and the Board of Immigration Appeals).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

MATTHEW B. WEBER
COUNSEL OF RECORD
HERMANNI LAW GROUP
2655 LEJEUNE ROAD, SUITE 800
CORAL GABLES, FL 33134
(305) 677-9648
MATEO502@HOTMAIL.COM

MARY E. KRAMER
ILARIA CACOPARDO
MARY E. KRAMER, P.A.
168 S.E. FIRST STREET, SUITE 802
MIAMI, FL 33131
(305) 374-2300
MARY@MARYKRAMERLAW.COM

COUNSEL FOR THE PETITIONER

March 5, 2014

BLANK PAGE

APPENDIX TABLE OF CONTENTS

APPENDIX A

OPINION OF THE ELEVENTH CIRCUIT COURT OF APPEALS

---

533 Fed. Appx. 954 (unpublished)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MINTRA RAGOONATH

Petitioner,

v.

U.S. ATTORNEY GENERAL,

Respondent.

No. 13-10510

Petition for Review of a Decision of the Board of Immigration Appeals. Agency No. A091–152–345

Before DUBINA, MARCUS and MARTIN, Circuit Judges.

August 22, 2013

PER CURIAM:

Mintra Ragoonath petitions for review of her final administrative order of removal from the Department of Homeland Security. On appeal, she argues that we should remand her case for a full removal hearing before an immigration judge

because: (1) her conviction for bank embezzlement, 18 U.S.C. § 656, is not categorically an aggravated felony when the loss exceeds $10,000; and (2) even if it is, the government failed to demonstrate a loss in excess of $10,000 by clear, convincing, and unequivocal evidence. After thorough review, we affirm.

We review *de novo* whether a prior conviction qualifies as an aggravated felony. *Accardo v. U.S. Att'y Gen.,* 634 F.3d 1333, 1335 (11th Cir. 2011). The Supreme Court has instructed appellate courts, when reviewing full immigration hearings, to remand a case for additional investigation or explanation if the record does not contain appropriate fact findings. *See INS v. Ventura,* 537 U.S. 12, 16–17, 123 S.Ct. 353, 154 L.Ed.2d 272 (2002). Consistent with this, we will remand if the record contains inadequate findings. *Tan v. U.S. Att'y Gen.,* 446 F.3d 1369, 1375–77 (11th Cir. 2006).

Our jurisdiction to review orders of removal is limited by the Immigration and Nationality Act ("INA"), which provides that "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in [8 U.S.C. § 1227(a)(2)(A)(iii)]." 8 U.S.C. § 1252(a)(2)(C). We retain jurisdiction, however, over "constitutional claims or questions of law raised upon a petition for review." 8 U.S.C. § 1252(a)(2)(D). The question of whether a petitioner's conviction constitutes an "aggravated felony" within the meaning of the INA is a question of law that falls within our jurisdiction.

See Balogun v. U.S. Att'y Gen., 425 F.3d 1356, 1360 (11th Cir. 2005).

An alien is normally placed into removal proceedings pursuant to 8 U.S.C. § 1229a. However, an alien convicted of an aggravated felony may be removed in an expedited administrative proceeding. 8 U.S.C. § 1228(b). An expedited administrative removal proceeding will be used if the officer is satisfied that an individual: (1) is an alien; (2) who has not been admitted for lawful permanent residence; (3) who has been finally convicted of an aggravated felony; and (4) who is deportable under § 1227(a)(2)(A)(iii) because of that conviction. *See* 8 C.F.R. § 238.1(b)(1). If the individual submits a response, the service officer must find that deportability is established by clear, convincing, and unequivocal evidence in the record of the proceeding. 8 C.F.R. § 238.1(d)(2). An alien may rebut the charges by specifically challenging certain findings in writing and supporting the challenge with "affidavit(s), documentary information, or other specific evidence supporting the challenge." 8 C.F.R. § 238.1(c)(2)(i).

An alien convicted of an aggravated felony is removable. 8 U.S.C. § 1227(a)(2)(A)(iii). An offense involving fraud or deceit that results in a loss to a victim of over $10,000 is an aggravated felony. *See* 8 U.S.C. § 1101(a)(43)(M). While a crime of fraud or deceit required a greater loss to a victim prior to 1996, Congress amended the definition of an aggravated felony in 1996, lowered the threshold amount to qualify to losses in excess of $10,000, and explicitly made the amendments retroactive. *Id.;*

Maldonado v. U.S. Att'y Gen., 664 F.3d 1369, 1378–79 (11th Cir. 2011). We have held that a conviction under 18 U.S.C. § 656 involves fraud and deceit and is therefore categorically an aggravated felony if the loss exceeds $10,000. *Moore v. Ashcroft,* 251 F.3d 919, 923 (11th Cir. 2001).

The Supreme Court addressed the issue of establishing loss amount for immigration purposes in *Nijhawan v. Holder,* 557 U.S. 29, 129 S.Ct. 2294, 174 L.Ed.2d 22 (2009). First, it held that loss amount is a factual circumstance surrounding the fraud and not an element of the fraud itself. *Id.* at 36–40, 129 S.Ct. 2294. However, the loss must be tied to the specific counts covered by the conviction involving fraud and deceit, and, "since the Government must show the amount of loss by clear and convincing evidence, uncertainties caused by the passage of time are likely to count in the alien's favor." *Id.* at 42, 129 S.Ct. 2294. Ultimately, the Court held that the immigration judge properly "relied upon earlier sentencing-related material," including a factual stipulation at sentencing and a restitution order—both showing the loss was greater than $10,000—especially given the lack of conflicting evidence from the petitioner, when finding the loss amount was clear and convincing. *Id.* at 42–43, 129 S.Ct. 2294. Similarly, the Third Circuit has said that a restitution order "may be helpful" to the inquiry, but is not controlling in the face of conflicting evidence. *Munroe v. Ashcroft,* 353 F.3d 225, 227 (2003).

We've said that an immigration judge is not entitled to rely solely on a restitution order to establish the loss amount for an aggravated felony if

the restitution order includes additional conduct not included in the plea, as raised and demonstrated by the petitioner. *Obasohan v. U.S. Att'y Gen.,* 479 F.3d 785, 789–91 (11th Cir. 2007), *overruled on other grounds by Nijhawan,* 557 U.S. 29, 129 S.Ct. 2294. In that case, we held that "the restitution order was insufficient as a matter of law" at the immigration hearing, both because it referenced conduct not charged, proven, or admitted prior to sentencing and because the standard at sentencing was a lower "preponderance of the evidence" standard. *Id.* at 791. The government, however, admitted to the fact that the restitution order was based on acts other than the offense of conviction. *Id.* at 789–90.

Here, Ragoonath initially challenges the characterization of her conviction as categorically an aggravated felony and the retroactive application of the necessary loss amount for a fraud and deceit conviction to qualify as an aggravated felony. We have already addressed both issues, and the claims are without merit. *Moore,* 251 F.3d at 923; *Maldonado,* 664 F.3d at 1378–79; *see also Chambers v. Thompson,* 150 F.3d 1324, 1326 (11th Cir. 1998) (holding that we are bound by prior panel opinions until they are overruled or abrogated by the Supreme Court or this Court sitting en banc).

Ragoonath also argues that DHS failed to establish the amended loss amount of $10,000 necessary for an aggravated felony by clear, convincing, and unequivocal evidence. *See* 8 C.F.R. § 238.1(b)(1), (d)(2). She also says that the findings are insufficient for appellate review because there was no specific loss amount in the final

administrative removal order. However, she was specifically charged with committing an aggravated felony under 8 U.S.C. § 1101(a)(43)(M) in her notice and found to have committed such a felony in her final administrative removal order. Accordingly, DHS implicitly found a loss in excess of $10,000, which is sufficient if the record properly supports that finding.

In support of the loss amount, the government provided a restitution order from a one-count indictment with a loss in excess of $10,000. Once Ragoonath received the notice of intent to issue a final administrative removal order, she could rebut the charges by presenting evidence, including affidavits, supporting her challenges to those charges. However, she presented no additional evidence showing the loss amount was less, or that she was not otherwise convicted of an aggravated felony. This restitution amount is controlling in the absence of any evidence to the contrary, and there is none. *See Nijhawan,* 557 U.S. at 42–43, 129 S.Ct. 2294. Accordingly, we deny her petition.

PETITION DENIED.

APPENDIX B

FINAL ADMINISTRATIVE REMOVAL ORDER

Event No:	MIA1301001019
FIN #	114331393
File Number	A091152345
Date	January 28, 2013

To: Mintra Raganooth (sic)

Address: 1322 sw 101 Ave. Pembroke Pines, Broward, FL, United States 33029

Telephone: (954) 232-8294

Based upon the allegations set forth in the Notice of Intent To Issue a Final Administrative Removal Order and evidence contained in the administrative record, I, the undersigned Deciding Officer of the Department of Homeland Security, make the following findings of fact and conclusions of law. I find that you are not a citizen or national of the United States and that you are not lawfully admitted for permanent residence. I further find that you have a final conviction for an aggravated felony as defined in Section 101(a)(43)(M) of the Immigration and Nationality Act (Act) as amended, 8 U.S.C. 1101(a)(43)(M), and are in eligible for any relief from removal that the Secretary of Homeland Security may grant in an exercise of discretion. I further find that the administrative record established by clear, convincing, and unequivocal evidence that you are deportable as an alien convicted of an aggravated felony pursuant to section

237(a)(2)(A)(III) of the Act, 8 U.S.C. 1227(a)(2)(A)(III). By the power and authority vested in the Secretary of Homeland security, and in me as the Secretary's delegate under the laws of the United States, I find you deportable as charged and order that you be removed from the United States to: Trinidad and Tobago or to any alternate country prescribed in section 241 of the Act.

/s/ Mark J. Moore
Field Office Director
January 28, 2013
Miramar, Florida

APPENDIX C

DENIAL OF PETITION FOR REHEARING PETITION FOR REHEARING EN BANC

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

MINTRA RAGOONATH

Petitioner,

v.

U.S. ATTORNEY GENERAL,

Respondent.

No. 13-10510-EE

Petition for Review of a Decision of the Board of Immigration Appeals.

Before DUBINA, MARCUS and MARTIN, Circuit Judges.

February 6, 2014

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Bane are DENIED.

Entered For The Court:

/s/ Stanley Marcus
United States Circuit Judge

APPENDIX D

RELEVANT STATUTORY TEXT

A. 18 U.S.C. § 656 with Legislative History

Whoever, being an officer, director, agent or employee of, or connected in any capacity with any Federal Reserve bank, member bank, depository institution holding company, national bank, insured bank, branch or agency of a foreign bank, or organization operating under section 25 or section 25(a) of the Federal Reserve Act, or a receiver of a national bank, insured bank, branch, agency, or organization or any agent or employee of the receiver, or a Federal Reserve Agent, or an agent or employee of a Federal Reserve Agent or of the Board of Governors of the Federal Reserve System, embezzles, abstracts, purloins or willfully misapplies any of the moneys, funds or credits of such bank, branch, agency, or organization or holding company or any moneys, funds, assets or securities intrusted to the custody or care of such bank, branch, agency, or organization, or holding company or to the custody or care of any such agent, officer, director, employee or receiver, shall be fined not more than $1,000,000 or imprisoned not more than 30 years, or both; but if the amount embezzled, abstracted, purloined or misapplied does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank and trust company which

has become a member of one of the Federal Reserve banks; "insured bank" includes any bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation; and the term "branch or agency of a foreign bank" means a branch or agency described in section 20(9) of this title. For purposes of this section, the term "depository institution holding company" has the meaning given such term in section 3 of the Federal Deposit Insurance Act

History:

(June 25, 1948, ch 645, § 1, 62 Stat. 729; Aug. 9, 1989, P.L. 101-73, Title IX, Subtitle F, § 961(h), 103 Stat. 499; Nov. 29, 1990, P.L. 101-647, Title XXV, Subtitle A, § 2504(b), Subtitle I, §§ 2595(a)(1), 2597(f), 104 Stat. 4861, 4906, 4949; Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330016(1)(H), 108 Stat. 2147.)

(As amended Oct. 11, 1996, P.L. 104-294, Title VI, §§ 601(f)(1), 606(a), 110 Stat. 3499, 3511.)

Prior law and revision:

This section is based on R. S. 5209; Act Dec. 23, 1913, ch 6, § 22(i), as added June 19, 1934, ch 653, § 3, 48 Stat. 1107; Sept. 26, 1918, ch 177, § 7, 40 Stat. 972; Aug. 23, 1935, ch 614, § 316, 49 Stat. 712 (former 12 USCS §§ 592 and 597).

B. 12 U.S.C. § 592 (repealed on June 25, 1948)– Embezzlement

12 U.S.C. § 592

Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in sections 221-225 of this title, or of any national banking association, or of any insured bank as defined in subsection (c) of section 264 of this title, who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or credits of such Federal reserve bank or member bank, or such national banking association or insured bank, or who, without authority from the directors of such Federal reserve bank or member bank, or such national banking association or insured bank, issues or puts in circulation any of the notes of such Federal reserve bank or member bank, or such national banking association or insured bank, or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, or such national banking association, or insured bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or such national banking association or insured bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or such national banking association or insured bank, or the Comptroller of the Currency, or the

Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or such national banking association or insured bank, or the Board of Governors of the Federal Reserve

System; and every receiver of a national banking association who, with like intent to defraud or injure, embezzles, abstracts, purloins, or willfully misapplies any of the moneys, funds, or assets of his trust, and every person who, with like intent, aids or abets any officer, director, agent, employee, or receiver in any violation of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court,

Any Federal reserve agent, or any agent or employee of such Federal reserve agent, or of the Board of Governors of the Federal Reserve System, who embezzles, abstracts, or willfully misapplies any moneys, funds, or securities intrusted to his care, or without complying with or in violation of the provisions of chapter 3 of this title, issues or puts In circulation any Federal reserve notes, shall be guilty of a misdemeanor and upon conviction in any district court of the United States shall be fined not more than $5,000 or imprisoned for not more than five years, or both, in the discretion of the court.

C. 12 U.S.C. § 597 (repealed on June 25, 1948)

12 U.S.C. § 597

Whoever, being connected in any capacity with a Federal Reserve bank, (1) embezzles, abstracts,

purloins, or wilfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud any Federal Reserve bank, or any other body politic or corporate, or any Individual, or to deceive any officer, auditor, or examiner, makes any false entry in any book, report, or statement of or to a Federal Reserve bank, or, Without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, mortgage, judgment, or decree shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

D. 8 U.S.C. § 1101(a)(43)(M)(i)

8 U.S.C. § 1101(a)

[. . .]

(43) The term "aggravated felony" means

[. . .]

(M) an offense that

[. . .]

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000;

E. 8 U.S.C. § 1227(a)(2)(A)(iii)

8 U.S.C. § 1227

(a) Classes of deportable aliens

Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

[. . .]

(2) Criminal offenses

(A) General crimes

[. . .]

(iii) Aggravated felony.

Any alien who is convicted of an aggravated felony at any time after admission is deportable.

F. 8 U.S.C. § 1228(b)

8 U.S.C. § 1228

(b) Removal of aliens who are not permanent residents

(1) The Attorney General may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 1227(a)(2)(A)(iii) of this title (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection or section 1229(a) of this title.

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; or

(B) had permanent resident status on a conditional basis (as described in section 1186(a) of this title) at the time that proceedings under this section commenced.