



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: C [REDACTED] C [REDACTED], C [REDACTED]

A [REDACTED]-219

Date of this notice: 3/1/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.

Humadyl
Userteam: Docket

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Falls Church, Virginia 22041

File: A █████ -219 – Omaha, NE

Date: **MAR - 1 2019**

In re: C █████ C █████ C █████ a.k.a. █████

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Marisa-Andrea L. Moore, Esquire

ON BEHALF OF DHS: Debra Robinson
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The Department of Homeland Security (DHS) has appealed the Immigration Judge's September 18, 2017, bond order granting the respondent's request for a change in custody status and setting a bond of \$9,000.¹ The respondent opposes the DHS's appeal. The reasons for the Immigration Judge's custody order are set forth in a bond memorandum, dated October 17, 2017. The DHS's appeal will be dismissed.

We will affirm the Immigration Judge's bond determination. An Immigration Judge has wide latitude in deciding the factors to be considered in determining whether an appropriate bond may be set to ensure an alien's presence at future removal proceedings. *Matter of Guerra*, 24 I&N Dec. 37, 39-40 (BIA 2006). The respondent bears the burden of demonstrating that he merits release from custody. *Id.* To satisfy that burden, he must demonstrate that his release would not pose a danger to property or persons, and that he is not a flight risk.² *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); *Matter of Adeniji*, 22 I&N Dec. 1102, 1111-13 (BIA 1999) (relying in part on 8 C.F.R. § 1236.1(c)(8)). An Immigration Judge has broad discretion to consider any matter he or she deems relevant when determining whether a lawfully detained person's release on bond is permissible or advisable; thus, a custody redetermination that has a "reasonable foundation" will not be disturbed on appeal. *Matter of Guerra*, 24 I&N Dec. at 39-40 (relying in part on *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). The Immigration Judge granted the respondent's request for a change in custody status because he determined that the respondent does not pose a danger to the community (Bond Memo at 3-4).

The Immigration Judge took into consideration the DHS's argument regarding the respondent's dangerousness based on his 2016 convictions for simple assault and driving under

¹ The record reflects that the respondent was released from custody on September 19, 2017, upon posting bond.

² We note that flight risk was not at issue in the respondent's bond hearing.

the influence of alcohol (DUI) (Bond Memo at 3).³ The Immigration Judge noted that no accident was involved at the time of the respondent's DUI arrest and further, the respondent testified that he has not consumed any alcohol since his arrest (Bond Memo at 3). The Immigration Judge also noted that although the respondent's arrest for strangulation was extremely disturbing, the respondent contested the charge, which was ultimately downgraded to simple assault, and he testified that he has had no contact with the victim since the incident occurred in November of 2015 (Bond Memo at 4).

Significantly, the Immigration Judge noted that the respondent testified that he has attended alcoholics' anonymous meetings and anger management classes (Bond Memo at 4). See 8 C.F.R. § 241.4(f) (listing factors that the DHS must weigh in considering whether to recommend further detention or release of a detainee, including, inter alia, the detainee's criminal history, evidence of recidivism or rehabilitation, ties to the United States, and history of absconding or failing to appear for immigration or other proceedings). The Immigration Judge found the respondent's testimony to be credible and the DHS has not established clear error in that finding. 8 C.F.R. § 1003.1(d)(3)(i). Accordingly, we will not disturb the Immigration Judge's finding that the respondent's release will not pose a danger to the community.

We have considered the DHS's contentions on appeal. However, upon consideration of the record before us, we conclude that the Immigration Judge appropriately considered the factors discussed in *Matter of Guerra*, 24 I&N Dec. at 37, in evaluating whether a bond may be set in this case. Thus, we affirm the Immigration Judge's order setting a \$9,000 bond as reasonably calculated to ensure the respondent's presence in removal proceedings.⁴ See *Matter of Guerra*, 24 I&N Dec. at 39-40.

Accordingly, the following order will be entered.

ORDER: The DHS's bond appeal is dismissed.



FOR THE BOARD

³ The respondent's convictions resulted from two separate incidents (Bond Memo at 3). Furthermore, as noted by the Immigration Judge, the respondent was initially charged with strangulation and third degree domestic assault, which was later amended to simple assault (Bond Memo at 3).

⁴ In light of our decision, we find it unnecessary to address any of the remaining issues raised by the parties on appeal. See *Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976)).