



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

---

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Vincent, Marie, Esq.  
Pangea Legal Services  
350 Sansome Street  
Suite 650  
San Francisco, CA 94104**

**DHS/ICE - Office of Chief Counsel  
10400 Rancho Road  
Adelanto, CA 92301**

**Name: C [REDACTED] -D [REDACTED], J [REDACTED]**

**A [REDACTED] 963**

**Date of this notice: 11/13/2017**

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:  
Malphrus, Garry D.

Language:  
User team: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Falls Church, Virginia 22041

---

File: [REDACTED] 963 – Adelanto, CA

Date: NOV 13 2017

In re: J [REDACTED] C [REDACTED] -D [REDACTED] a.k.a. [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Marie A. Vincent, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of El Salvador, appealed the Immigration Judge's bond decision, dated July 5, 2017, which set a \$20,000 bond for his release from custody. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i) (2017). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge's decision concluded that the respondent's bond, set at \$15,000, was reasonably calculated to ensure his appearance at future immigration proceedings upon his release from detention (IJ Bond Memo at 1, 3). *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). As discussed in the Immigration Judge's bond memorandum, dated August 8, 2017, the respondent does not have significant family ties to the United States, as none of his immediate family members reside here (IJ Bond Memo at 3). The respondent has briefly lived in this country and has remained in custody from the time of his arrival in May of 2017 (IJ Bond Memo at 3). The respondent argued the bond was set too high and requested a reduction in the bond amount.

Subsequent to the Immigration Judge's decision, the United States Court of Appeals for the Ninth Circuit affirmed the United States District Court for the Central District of California's order and preliminary injunction in *Xochitl Hernandez v. Sessions*, No. 16-56829 2017 WL 4341748, at \*17 (9th Cir. Oct. 2, 2017), which requires officials, when making bond determinations, to consider the respondent's "financial ability to obtain bond" and an "alternative conditions of release." Hence, we find a remand warranted in this case to allow the Immigration Judge to conduct further proceedings in light of this recent intervening decision. Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further consideration consistent with the foregoing, and the entry of a new decision.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ADELANTO, CALIFORNIA**

File Number: A [REDACTED] 963

) **DETAINED**  
)  
)

In the Matter of:

C [REDACTED]-D [REDACTED],  
J [REDACTED],

) **IN BOND PROCEEDINGS**  
)  
)  
)

Respondent.

**ON BEHALF OF RESPONDENT:**

*Pro Se* c/o Custodial Officer  
Adelanto Detention Facility  
10250 Rancho Road  
Adelanto, California 92301

**ON BEHALF OF THE DEPARTMENT:**

Nicholas Lucic, Assistant Chief Counsel  
U.S. Department of Homeland Security  
10250 Rancho Road  
Adelanto, California 92301

**BOND MEMORANDUM AND ORDERS OF THE IMMIGRATION JUDGE**

**I. Facts and Procedural History**

J [REDACTED] C [REDACTED]-D [REDACTED] ("Respondent") is a 25-year-old male and a native and citizen of El Salvador. On June 9, 2017, the U.S. Department of Homeland Security ("Department") initiated removal proceedings against Respondent by filing a Notice to Appear ("NTA") with the Immigration Court. *See* 8 C.F.R. § 1003.14(a). The NTA charged Respondent as inadmissible pursuant to INA § 212(a)(7)(A)(i)(I), as an immigrant not in possession of valid entry documents at the time of application for admission. Respondent filed an asylum application, and his case is currently pending before the Court.

On July 5, 2017, the Court conducted a custody redetermination hearing pursuant to INA § 236. 8 C.F.R. § 1236.1(d). During the hearing, the Department submitted Respondent's Form I-213, Record of Deportable/Inadmissible Alien. Exh. B-1. Respondent submitted information concerning his sister-in-law, who is his sponsor, and two other letters of support. Exh. B-2. Respondent also testified during the bond hearing.

After considering all the evidence presented, the Court concluded that Respondent met his burden to establish that he is not a danger to the community or such a significant flight risk that no amount of bond would be appropriate. As such, the Court ordered that Respondent be released from custody upon payment of a bond in the amount of \$15,000.

On July 26, 2017, Respondent appealed the Court's custody redetermination decision to the Board of Immigration Appeals ("Board"). The Court provides this Memorandum to facilitate review of Respondent's appeal. *See* Immigr. Ct. Prac. Man., Chap. 9.3(e)(vii) (June 26, 2017).

## II. Law and Analysis

An alien may request a bond redetermination hearing before the Court at any time before the issuance of an administratively final order of removal. 8 C.F.R. § 1236.1(d). The Court is authorized to detain, release, or set bond for the alien pursuant to INA § 236. *Id.* Generally, the Court is without jurisdiction to set a bond for certain classes of mandatory detainees, enumerated in INA § 236(c)(1). 8 C.F.R. § 1003.19(h)(2)(i)(D). INA § 236(a) governs the detention of those aliens who are not subject to the mandatory detention provisions. Since Respondent is not detained under INA § 236(c), the Court has jurisdiction to consider his request for bond pursuant to INA § 236(a).

An alien requesting release on bond bears the burden of proving by clear and convincing evidence that he does not pose a danger to the community and is not a flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006); 8 C.F.R. § 1236.1(c)(3). In *Guerra*, the Board made clear that the Court "has extremely broad discretion in deciding whether or not to release an alien on bond." 24 I&N Dec. at 39. The Board provided an extensive, but not exhaustive, list of factors that the Court may consider when determining whether an alien should be released on bond. *Id.* at 39-40. These factors include:

(1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States.

*Id.* at 40. The Court "may choose to give greater weight to one factor over others, as long as the decision is reasonable." *Id.* Furthermore, the Court has broad discretion to set the bond amount. *Prieto-Romero v. Clark*, 534 F.3d 1053, 1067 (9th Cir. 2008) (addressing discretion); *Matter of Sugay*, 17 I&N Dec. 637, 638-39 (BIA 1981) (enumerating relevant factors); *Matter of Spiliopoulos*, 16 I&N Dec. 561, 562 (BIA 1978) (granting a request for a reduction in the bond amount).

In assessing Respondent's danger to the community, the Court considered his Form I-213, which indicated that he had no criminal record. *See* Exh B-1. Respondent also testified that he had never been convicted of a crime. As such, the Court found that Respondent did not pose a danger to the community. *See Matter of Urena*, 25 I&N Dec. 140, 140-41 (BIA 2009) ("An Immigration Judge should only set a bond if he first determines that the alien does not present a danger to the community.").

In assessing whether Respondent was a flight risk, the Court considered his lack of significant ties to the United States. None of his immediate family members reside in this country. If released, Respondent would live with his sister-in-law, who is a permanent resident. Even this family tie might be tenuous because his sponsor is divorcing his brother. Respondent has only been present in the United States since May 2017, and he has been in custody after that date. *See* Exh. B-1. Respondent's lack of family ties and short period of time in the United States contribute to a higher risk of flight.

Although Respondent has applied for asylum, it is not clear whether he is eligible for such relief. As such, Respondent may have less incentive to appear for any future immigration proceedings, which also increases the risk of flight. *See Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1988) (stating that an alien with limited potential for relief has a lesser motivation to appear for immigration proceedings).

Nonetheless, the Court found that Respondent satisfied his burden to prove that he was not a flight risk such that no amount of bond was appropriate. Accordingly, the Court determined that a bond in the amount of \$15,000 was reasonable to mitigate any potential flight risk and secure Respondent's appearance at all future proceedings before the Immigration Court. *See Prieto-Romero*, 534 F.3d at 1067.

Accordingly, the Court entered the following orders:

### **ORDERS**

**IT IS HEREBY ORDERED** that Respondent's request for custody redetermination be **GRANTED**.

**IT IS FURTHER ORDERED** that Respondent be released from custody upon payment of a bond in the amount of \$15,000.

**Date: August 8, 2017**



**James M. Left**  
**Immigration Judge**