



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: D [REDACTED], M S [REDACTED]

A [REDACTED]-451

Date of this notice: 1/28/2020

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:
Goodwin, Deborah K.

User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-451 – Los Angeles, CA

Date: **JAN 28 2020**

In re: M S [REDACTED] D [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Colleen Cowgill, Esquire

APPLICATION: Redetermination of custody status

The respondent appeals from an Immigration Judge's June 26, 2019, decision denying his request for release, on bond, from the custody of the Department of Homeland Security ("DHS").¹ The record will be remanded.

The respondent, a native and citizen of Togo, is the subject of an administratively final order of removal that is pending review before the United States Court of Appeals for the Ninth Circuit. Despite this final removal order, the respondent remains subject to the Immigration Judge's custody review authority pursuant to various injunctions issued by the United States District Court for the Central District of California. *See, e.g., Rodriguez v. Holder*, No. CV 07-3239 TJH RNBX, 2013 WL 5229795 (C.D. Cal. Aug. 6, 2013), *aff'd in part sub nom. Rodriguez v. Marin*, 909 F.3d 252 (9th Cir. 2018); *Hernandez v. Lynch*, No. 5:16-cv-00620-JGB-KK, 2016 WL 7116611 (C.D. Cal. Nov. 10, 2016), *aff'd sub nom. Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017). Though the respondent received a custody review hearing below in accordance with those injunctions, the Immigration Judge ultimately denied his request for release after finding that he poses a flight risk (IJ Memo at 3).

We discern no error in the Immigration Judge's determination that the respondent would pose a substantial flight risk if released from DHS custody. The Immigration Judge and this Board have already determined that the respondent is removable and ineligible for all requested relief.² As he is unlikely to be allowed to remain in this country lawfully, he has a strong incentive to abscond if released.

¹ The Immigration Judge's decision is supplemented by a memorandum dated July 26, 2019.

² The respondent argues on appeal that the Immigration Judge should have reconsidered his risk of flight in light of the facts that the Ninth Circuit has scheduled oral argument in his case and appointed pro bono counsel. We disagree. When an administratively final removal order is in effect, an Immigration Judge conducted a custody review determination is entitled to rely on that order, and need not revisit the merits of the underlying claim. *Rodriguez v. Holder*, 2013 WL 5229795, at *2 (explaining that "[s]uch a requirement would require legal and political analyses beyond what would otherwise be considered at a bond hearing, and would place an unreasonable burden on overly burdened Immigration Judges").

Although the Immigration Judge's flight risk determination was not improper, we nonetheless conclude that the record must be remanded for further fact-finding regarding the practicability of alternatives to detention. The fact that the respondent poses a flight risk justifies his continued detention only if there is no amount of bond that would be reasonably calculated to ensure his future appearance, either for removal or for future hearings. In her bond memorandum, the Immigration Judge states in a footnote that the respondent's flight risk "could not be ameliorated by the imposition of reasonable bond" (IJ Memo at 3 n.2), but that statement is not explained or supported by reference to any facts in evidence. Further, if payment of a bond is impracticable, the Immigration Judge should consider other alternatives to detention or explain why they are unavailable. *Rodriguez v. Holder*, 2013 WL 5229795, at *2; *Hernandez v. Lynch*, 2016 WL 7116611, at *25.

The following order will be issued.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for entry of a new decision.


FOR THE BOARD