U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Orlando, FL 32803

Name: CORDERO, CARLOS G

A 022-144-735

Date of this notice: 12/8/2017

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:
Mullane, Hugh G.
Malphrus, Garry D.
Adkins-Blanch, Charles K.

Userteam: Docket

U.S. Department of Justice

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5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

CORDERO, CARLOS G
A022-144-735
BAKER COUNTY JAIL
1 SHERIFFS OFFICE DRIVE
MCCLENNY, FL 32063

DHS/ICE Office of Chief Counsel - ORL
3535 Lawton Road,
Suite 100
Orlando, FL 32803

Name: CORDERO, CARLOS G

A 022-144-735

Date of this notice: 12/8/2017

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Mullane, Hugh G.
Malphrus, Garry D.
Adkins-Blanch, Charles K.

Userteam:

File: A022 144 735 – Orlando, FL

Date: DEC - 8 2017

In re: Carlos G. CORDERO

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Usman B. Ahmad, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Ecuador and lawful permanent resident of the United States since 1978, has appealed from the Immigration Judge's decision dated July 31, 2017. The Immigration Judge found that the respondent presented a danger to the community and a flight risk and ordered him held on a "no bond" condition pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). The Department of Homeland Security has not responded to the appeal, which will be sustained, and the record will be remanded to the Immigration Judge.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien in a custody determination under section 236(a) of the Act must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien who presents a danger to persons or property should not be released during the pendency of proceedings to remove him or her from the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

The record establishes that the respondent was convicted in 1978 of unlawful imprisonment and, he was convicted of possession with intent to distribute cocaine, intent to distribute cocaine, assault, and unlawful possession of marijuana in 1991 (IJ at 3-4). While we share the Immigration Judge's concern regarding the respondent's criminal record, we disagree with the Immigration Judge that this record evidences dangerousness at this time. In particular, the respondent's criminal convictions occurred 39 and 26 years ago, respectively, and there is no evidence that the respondent has been arrested or charged with any crime since his 1991 convictions. Given that there is no evidence that the respondent has committed any crime, whether dangerous or not, in 26 years, we cannot agree that the respondent is a danger to the community. Accordingly, we reverse the Immigration Judge's determination that the respondent poses a danger to the community.

The Immigration Judge also determined that the respondent was a flight risk and that no amount of bond was appropriate. In reaching this determination, the Immigration Judge considered the respondent's "limited prospects" for relief. Specifically, the Immigration Judge noted that the respondent claimed that he was eligible for a waiver of inadmissibility under former section 212(c) of the Act; however, at the time of the bond hearing, the respondent had not yet submitted an application for this relief (IJ at 5). The Immigration Judge recognized that the respondent has significant family ties in the United States, including a United States citizen spouse, siblings, in-laws, and niece and nephew (IJ at 5). The Immigration Judge also acknowledged the respondent's payment of taxes, lengthy residence in the United States, and letters of support on his behalf (IJ at 5). However, despite the equities present, the Immigration Judge concluded that the "positive factors do not negate [his] dangerousness and his risk of flight" (IJ at 5).

We note that, in addition to the equities found by the Immigration Judge, the respondent also presented evidence that he owns multiple real estate properties in Florida and he has pursued relief based on a 212(c) application in his removal proceedings.

In sum, we agree that he poses some risk of flight based on the evidence presented. However, we will remand for the Immigration Judge to consider whether some bond amount would assure his presence at future hearings. We will therefore remand the record for future proceedings. *See Matter of Guerra*, 24 I&N Dec 37 (BIA 2006). Accordingly, the following order will be entered.

ORDER: The respondent's bond appeal is sustained, the Immigration Judge's July 31, 2017, decision is vacated and the record is remanded to the Immigration Judge for further proceedings.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals, Office of the Clerk
P.O. Box 8530
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

CORRECTION MEMORANDUM TO THE FILE

Name: CARLOS G. CORDERO Date: December 11, 2017

A#: 022-144-735

PLEASE NOTE:

- ☐ The Immigration Judge's decision in this case is complete; however, it is incorrectly paginated. Explanation: _____.
- ☐ The Immigration Judge's / DD's visa decision in this case is missing page. Explanation: _____
- ☐ The A# number on page (s) of the Immigration Judge's decision is incorrect. The correct A# is _____.
- ☐ The name of the beneficiary reflected in the first paragraph of the DD's Visa Decision dated _____ is incorrect. The correct name is _____.
- ☐ The respondent's name as reflected in the Immigration Judge's decision is incorrect. The correct name is_____.
- ☐ The date on the Immigration Judge's decision should be correctly reflected as_____.
- ☐ The date in the footer of the Immigration Judge's decision is incorrect. The correct date is_____.
- ☐ The undated Immigration Judge's decision was rendered on_____.
- ☒ Other: **The undated Bond Memorandum was rendered on July 31, 2017.**

Pamela D. Atkinson, Supervisory Case Management Specialist
Docket Team

Rev. 2-06-13 pda

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE
ORLANDO IMMIGRATION COURT

IN THE MATTER OF: **CORDERO, Carlos G.** **A 022-144-735** **RESPONDENT**	**IN BOND PROCEEDINGS** **DETAINED**

ON BEHALF OF THE RESPONDENT:
Usman Beshir Ahmad, Esquire
Law Office of Usman B. Ahmad, P.C.
47-40 21st Street, Penthouse A
10 Floor
Long Island City, New York 11101

ON BEHALF OF THE DEPARTMENT:
Stacie Chapman, Assistant Chief Counsel
Office of the Chief Counsel
3535 Lawton Road, Suite 100
Orlando, Florida 32803

BOND MEMORANDUM

I. Factual and Procedural History

Carlos Cordero ("Respondent") is a native and citizen of Ecuador. On July 12, 2017, the Department of Homeland Security ("DHS") served Respondent with a Notice to Appear ("NTA"), charging him with removability under section 237(a)(2)(B)(i) of the INA as an alien convicted of a controlled substance offense. Exh. 1. On July 27, 2017, DHS filed an Amended Charge of Removability ("I-261"), charging Respondent with an additional charge of removability under section 237(a)(2)(A)(iii) of the INA as an alien convicted of an aggravated felony. Exh. 1A.

On July 31, 2017, the Court held a custody redetermination hearing pursuant to section 236 of the INA. 8 C.F.R. § 1236.1(d). At the hearing, DHS presented evidence of Respondent's criminal history including a Record of Deportable/Inadmissible Alien ("I-213") and conviction documents for three separate convictions. *See* DHS Filing, Tabs 1-6 (July 27, 2017). Respondent submitted documents supporting his request for bond including copies of his business tax returns and multiple letters of support from family members and friends. *See* Respondent's Filing, Tabs A-G (July 27, 2017). After considering all of the evidence presented, the Court concluded that Respondent failed to establish that he is not a danger to the community and a flight risk. Accordingly, the Court denied his request for a bond.

On August 25, 2017, Respondent appealed the Court's custody redetermination decision to the Board of Immigration Appeals ("BIA"). The Court provides this Memorandum to facilitate review of Respondent's appeal. *See* Immigr. Ct. Prac. Man., Chap. 9.3(e)(vii) (June 27, 2017).

II. Analysis

A. Detention – Applicable Law

Mandatory detention is governed by section 236(c)(1) of the Act and requires certain aliens be detained for the entirety of removal proceedings. In order to be subject to mandatory detention, an alien must have been convicted of a qualifying crime, as set forth in section 236(c)(1) of the Act; the alien must have been released from criminal custody after the expiration of the transition period custody rules ("TPCR"); and the release must be directly tied to the basis for detention under section 236(c)(1) of the Act. *See Matter of Garcia Arreola*, 25 I&N Dec. 267 (BIA 2010); *Matter of Rojas*, 23 I&N Dec. 117 (BIA 2001). The TPCR were no longer in effect after October 8, 1998. *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 § 303(b)(2), Division C of Pub. L. No. 104-208, 110 Stat. 3009-546, 3009-586 ("IIRIRA); *see also Garcia Arreola*, 25 I&N Dec. at 269. Thus, if an alien was released from non-DHS (or non-INS) custody before October 8, 1998, then the alien is not subject to mandatory detention under section 236(c) of the Act. 8 C.F.R. § 1003.19(h); *Garcia Arreola*, 25 I&N Dec. at 269.

For an alien released from non-DHS custody prior to the expiration of the TPCR, section 236(a) of the Act governs the custody determination. 8 C.F.R. § 236.1(c)(8) (2000). *See Matter of Adeniji*, 22 I&N Dec. 1102, 1116 (BIA 1999) (stating the general bond provisions of section 236(a) governed bond for that case because the alien had been released prior to the expiration of the TPCR); *Matter of West*, 22 I&N Dec. 1405, 1407 (BIA 2000) (affirming the IJ's use of section 236(a) of the Act where alien was released from criminal custody before expiration of the TPCR). Section 236(a) of the Act gives the Attorney General the authority to grant bond if he concludes, in the exercise of discretion, that the alien's release on bond is warranted. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006).

Despite Respondent's three criminal convictions, both parties agreed that Respondent was not subject to mandatory detention under section 236(c) of the INA because he was released from criminal custody several years before the expiration of the TPCR in October 1998. Moreover, Respondent was not arrested by DHS until July 12, 2017, which was decades after his release from criminal custody. Thus, the Court finds that Respondent is not subject to mandatory detention under section 236(c)(1) because he was released from non-DHS custody before October 8, 1998. *See* 8 C.F.R. § 236.1(c)(8) (2000); *Adeniji*, 22 I&N Dec. at 1116. Accordingly, the Court concludes that section 236(a) governs Respondent's custody redetermination hearing.

B. Custody Redetermination Under Section 236(a)

An alien may request a custody 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 section 236. *Id.* Generally, the Court is without jurisdiction to set a bond for certain classes of mandatory detainees, enumerated in section 236(c)(1) of the INA. 8 C.F.R. § 1003.19(h)(2)(i)(D). Section 236(a) of the INA governs the detention of those aliens who are not subject to the mandatory detention provisions. As aforementioned, since Respondent is not detained under section 236(c) of the INA, the Court has jurisdiction to consider his request for bond pursuant to section 236(a) of the INA.

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. 8 C.F.R. § 1236.1(c)(3); 8 C.F.R. § 1003.19(h)(3); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). 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, "any evidence in the record that is probative and specific can be considered." *Guerra*, 24 I&N Dec. at 40-41 (holding that an Immigration Judge properly considered evidence in the record of serious criminal activity, even though it did not result in a conviction).

In the present matter, the Court considered both the positive and negative equities in Respondent's case and determined that he did not meet his burden of proving by clear and convincing evidence that he does not pose a danger to the community or a flight risk.

In assessing danger to the community, the Court considered Respondent's multiple arrests and criminal convictions for offenses including unlawful imprisonment, kidnap adult to sexually assault, disorderly conduct, unlawful possession of marijuana, assault, possession with intent to distribute cocaine, and intent to distribute cocaine. *See* DHS Filing, Tabs 3-6.

On December 7, 1978, Respondent was convicted of Unlawful Imprisonment in violation of section 135.05 of the New York Penal Law ("NYPL"). DHS Filing, Tab 4. He was sentenced to sixty (60) days in jail or to pay a $500 fine. *Id.* When asked about the circumstances leading to his arrest, Respondent testified to the following events. He stated that he met a woman, they exchanged phone numbers, and they decided to go dancing in Long Island, New York one night. Respondent explained that he did not own a car so he asked his friend to drive them. He further explained that his friend began touching the woman aggressively while they were on the way to Long Island. Respondent claims he told his friend to stop and the woman asked the friend to pull over so she could get out of the vehicle. Respondent testified that he and the woman exited the vehicle and his friend drove off. However, Respondent further testified that his friend returned and asked him whether he was going to get in the car or stay with the woman. Respondent stated that he got back into the car with his friend and left the woman on the side of the road. He denied

ever touching the woman. He also denied ever detaining the woman but indicated that he pled guilty at the advice of his criminal attorney. The Court was deeply troubled by the events described by Respondent. He admitted to observing his friend touching an innocent victim and then leaving her on the side of the road by herself with no regard for her wellbeing or safety. While the Court acknowledged that the criminal incident and the conviction occurred several decades ago, the Court emphasized the serious nature of unlawful imprisonment and sexual assault regardless of the year in which the crimes were committed.

Respondent's second and third convictions occurred over a decade later. On March 12, 1991, Respondent was convicted of Possession with Intent to Distribute Cocaine and Intent to Distribute Cocaine in violation of sections 812, 841(a)(1), and 841(b)(1)(B) of title 21 of the United States Code. *Id.*, Tab 6. For these offenses, he was sentenced to two months of imprisonment and three years of special parole with supervision. On July 24, 1991, Respondent was convicted of Assault in violation of section 120.00 of the NYPL and of Unlawful Possession of Marijuana in violation of section 221.05 of the NYPL. *Id.*, Tab 5. Respondent testified regarding the circumstances leading to his convictions. He stated that he went out to Long Island to meet his girlfriend at approximately 4 AM. He indicated that he and his girlfriend were in his car when she suddenly grabbed a check out of his pocket and took it from him. He testified that he told her to give it back, the police showed up, and he was escorted to the precinct. On cross-examination, Respondent clarified that he had grabbed his girlfriend by the wrists and was holding her arms back in an attempt to take back his check. He also indicated that his girlfriend smoked marijuana and the police found marijuana in his car. He claimed that he did not smoke marijuana. He testified that he was arrested for disorderly conduct, assault, and unlawful possession of marijuana. He further testified that, once at the police precinct, the police discovered there was a 1986 warrant for his arrest for intent to distribute cocaine and possession with intent to distribute cocaine. He indicated that he was accused of selling three grams of cocaine. He claimed that he pled guilty to selling one gram of cocaine at the advice of his criminal attorney. When asked whether he sold cocaine to someone, he initially responded that he did not remember. When asked a second time, he stated that he never sold cocaine to anyone but that he bought one gram of cocaine for his personal use. Respondent explained that the majority of younger women at the discotheque wanted to use the substance. He admitted giving cocaine to younger women at the discotheque. He claimed that he only purchased cocaine once and only gave it to women at the discotheque once. Respondent testified that he had never dealt in controlled substances and no longer consumed controlled substances. Despite Respondent's attempts to minimize his conduct, the Court stressed the criminality and dangerousness of his actions. Providing cocaine to young women at nightclubs is not only illegal, but it puts the health and safety of the women at risk. The Court determined that Respondent's conduct of buying cocaine and providing cocaine to young women was further evidence that he poses a danger to the community. Moreover, the Court was greatly disturbed that Respondent grabbed his girlfriend by the wrists and held her arms back. Domestic violence offenses are very serious and also demonstrate that he is a danger to the community. Again, the Court acknowledged that the convictions occurred decades ago, yet concluded that time did not diminish the severity of Respondent's criminal convictions.

In sum, the Court found that the nature and severity of Respondent's criminal record render him a danger to the community. As a result, the Court found that Respondent did not meet his burden of showing he 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 addition, the Court found Respondent to be a flight risk due to his limited prospects for relief. Respondent contended that he was eligible for a waiver of inadmissibility under former INA section 212(c); however, he had not submitted an application at the time of the custody hearing. The Court noted that Respondent was ineligible for many other forms of relief because he has been convicted of an aggravated felony. In light of the foregoing, the Court found that his incentive to appear for future proceedings if released from custody is greatly diminished. *See Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1988) ("A respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief."). Therefore, the Court concluded that Respondent's continued detention is justified because he presents a flight risk such that no amount of bond is appropriate.

In assessing both danger and flight risk, the Court acknowledged the positive equities in Respondent's case such as his family ties in the United States, including his U.S. citizen wife, his four U.S. citizen siblings, his U.S. citizen in-laws, and his U.S. citizen niece and nephew. The Court also noted evidence of his payment of taxes for several years (2013-2016). *See* Respondent's Filing, Tab G. Further, the Court recognized Respondent's lengthy residence in the United States and the sincerity of the letter of support submitted on his behalf. *Id.*, Tabs A-F. However, the Court found that these positive factors do not negate Respondent's dangerousness and his risk of flight. Thus, the Court concluded that Respondent did not establish by clear and convincing evidence that he was not a danger to the community and a flight risk.

Accordingly, the Court entered the following order:

ORDER

IT IS HEREBY ORDERED that Respondent's request for change in custody status pursuant to INA § 236(a) be **DENIED**.

DATED this _____ of September 2017.

The Honorable Philip J. Montante, Jr.
Immigration Judge

cc: Usman B. Ahmad, Esquire, Counsel for Respondent
Stacie Chapman, Assistant Chief Counsel

Certificate of Service

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DATE:_____ BY: COURT STAFF_____
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