



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

**RESNICK, JUDY S
JUDY RESNICK, ESQ.
2906 BAILEY COURT
FAR ROCKAWAY, NY 11691**

**DHS/ICE Office of Chief Counsel - ELZ
625 Evans Street, Room 135
Elizabeth, NJ 07201**

Name: O [REDACTED] S [REDACTED], A [REDACTED]... A 044-836-332

Date of this notice: 1/10/2018

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.

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 332 – Elizabeth, NJ

Date:

JAN 10 2018

In re: A [REDACTED] O [REDACTED] S [REDACTED]

IN BOND PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Judy Resnick, Esquire

APPLICATION: Reopening; reconsideration

The Department of Homeland Security (DHS) appealed the Immigration Judge's decision dated March 30, 2017, granting the respondent's request for a redetermination of his custody status and setting bond in the amount of \$3,000.00. The Immigration Judge issued a bond memorandum dated April 24, 2017, setting forth the reasons for her bond decision. In a decision dated July 20, 2017, the Board sustained the appeal, determining that the respondent had not met his burden to demonstrate that he did not pose a danger to the community due to the evidence of record regarding his criminal record, and ordered him held without bond. On July 31, 2017, the respondent filed a timely Motion to Reopen and Reconsider the Board's decision. The DHS has not filed a response to the motion. The respondent's motion to reopen will be granted and the record will be remanded.

With his motion, the respondent submitted a copy of an Adult Presentence Report containing pertinent information regarding the accusations and criminal charges related to his arrest in May 2015 and the resulting conviction in 2016. Based on this new evidence, the Board will vacate its prior decision and remand the record to the Immigration Judge to review the additional evidence submitted on appeal and make additional findings of fact.¹ Both parties may submit additional evidence and argument on remand. Accordingly, the following order will be entered.

ORDER: The Board's July 20, 2017 decision is vacated and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD

¹ Because the Board is vacating its July 20, 2017 decision, we need not address the respondent's arguments that there were errors of fact and law in that decision.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
NEWARK, NEW JERSEY**

File No.: A [REDACTED]-332 :

In the Matter of: :

In BOND Proceedings

A [REDACTED] O [REDACTED] S [REDACTED] :

**ORDER ON REQUEST FOR BOND
REDETERMINATION**

Respondent

ON BEHALF OF RESPONDENT

Lisa J. Kasdan
127 Main Street, 1st Floor
Hackensack, NJ 07105

ON BEHALF OF DHS

Assistant Chief Counsel
Office of the Chief Counsel
625 Evans Stree
Elizabeth,, New Jersey 07201

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Facts and Procedural History

The Respondent is a 35-year-old male native and citizen of Colombia who, at the age of thirteen, was admitted as a lawful permanent resident into the United States on June 4, 1995.

The Respondent's sole criminal conviction in the United States is for the offense of Cruelty and Neglect of Children pursuant to NJSA 9:6-3, which he incurred on September 16, 2016. The Department of Homeland Security (DHS) charged the Respondent with removability under INA 237(a)(2)(E)(i) and set the initial custody condition for release at *No Bond*.

The Department of Homeland Security made an initial custody determination, detaining the Respondent without bond. The Respondent, through counsel, requested that the Court reconsider this custody determination, and, on March 30, 2017, the Immigration Judge proceeded with hearing on the matter.

The Government asked the Court to deny the respondent's request for custody re-determination, and submitted a Notice of Filing, which included a form I-213, the Judgement of

Conviction and the Indictment. Counsel for the Respondent submitted Respondent's motion in support of a custody redetermination which included, *inter alia*, numerous letters from family, friends, and employer as well as income tax returns filed for the years 2008 to 2016.

On March 30, 2017, the Court granted the Respondent's motion and set the bond to \$3,000. DHS reserved appeal.

II. Legal Standard

An alien who has been detained by DHS under the provisions set forth in 8 C.F.R. § 1236 has the right to seek a redetermination of the initial custody decision before an Immigration Judge. 8 C.F.R. §§ 1236.1(d)(1); 1003.19(a). Furthermore a subsequent re-determination of custody can be made upon written request if there is a showing of materially changed circumstances. 8 C.F.R. § 1003.19(e).

III. Analysis

It is the Respondent's burden to establish eligibility for bond by proving that he is neither a flight risk nor a danger to the community. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999); *see also Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). An alien who poses a threat of danger to the community should be held without bond. *See, e.g., Matter of Adeniji, supra*. If an alien can establish that he is not a danger to the community, then, and only then, should the question of whether an alien poses a risk of flight be considered. *Id.*

Mandatory Custody

An alien who is deportable for an offense under INA ' 237(a)(2)(A)(ii) and was subject to non-DHS custody after October 8, 1998, is subject to mandatory detention. INA ' 236(c)(1)(B). The Board of Immigration Appeals (Board) has held that INA ' 236 requires mandatory detention of a criminal alien only if he is released from non-DHS custody after October 8, 1998, and only where there has been a post-October 8, 1998, release that is directly tied to the basis for detention under INA ' 236(c)(1)(A)-(D). *Matter of Garcia Arreola*, 25 I&N Dec. 267 (BIA 2010). The Board has also held that *Areleased@* in this context can also refer to release from physical custody following an arrest. *Matter of West*, 22 I&N Dec. 1405 (BIA 2000). An alien is subject to mandatory detention even if DHS does not immediately take the alien into custody. *Matter of Rojas*, 23 I&N Dec. 124 (BIA 2007).¹ The respondent bears the burden of establishing that he is eligible for a bond.

This Court did not find that the Respondent is deportable for an offense under

¹ The Board specifically refused to recede from its holding in *Matter of Rojas, supra*, in its decision in *Matter of Garcia Arreola, supra* at 271, fn. 4.

INA ' 237(a)(2)(A)(ii) , and consequently the Respondent's release is not directly tied to the basis for detention under INA ' 236(c)(1)(A)-(D). Therefore the Respondent is not subject to the mandatory detention provision of INA ' 236(c)(1)(B).

In the instant case, the Respondent has shown that he poses no threat of danger to the community. He is a young man who has been present in the United States for the past 22 years as a lawful permanent resident. He has extensive family ties and ties to the community. The court notes that no restraining order issued as part of his sole conviction. The Respondent has relief available to him in the form of *Cancellation of Removal for Certain Permanent Residents*. Therefore, the Court finds that there is no flight risk in the instant case.


The Respondent's sole conviction requires that he report to probation for the next three years. The probation officer, through counsel, has expressed satisfaction with the Respondent's reporting and disappointment with his current detention. The court takes the view that reporting to probation is preferable to continued ICE custody, given the circumstances in this case.

ORDER

IT IS ORDERED that Respondent's request for bond redetermination be **GRANTED**, and bond be set in the amount of \$3,000.00.

4-24-17

Date



Shifra Rubin
Immigration Judge