



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: A [REDACTED] M [REDACTED], M [REDACTED]**

**A [REDACTED]-083**

**Date of this notice: 9/19/2019**

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:  
Rosen, Scott

Userteam: Docket

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RC

Falls Church, Virginia 22041

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File: A [REDACTED]-083 – Los Angeles, CA

Date: SEP 19 2019

In re: M [REDACTED] A [REDACTED] M [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jennifer L. Koh, Esquire

APPLICATION: Redetermination of custody status

The respondent appeals from an Immigration Judge's March 13, 2019,<sup>1</sup> decision denying his request for release on bond from the custody of the Department of Homeland Security ("DHS"). The record will be remanded.

The respondent, a native and citizen of Ethiopia, is the subject of an administratively final order of removal that is currently pending review before the United States Court of Appeals for the Ninth Circuit. In February 2019, the respondent moved the Immigration Court for a custody review hearing pursuant to the permanent injunction issued by the United States District Court for the Central District of California in *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). The Immigration Judge granted the respondent a custody review hearing, but ultimately denied his request for release after finding that he posed a "significant flight risk."

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.<sup>2</sup> As he is unlikely to be allowed to remain in this country lawfully, he has a strong incentive to abscond if released, despite his support from family and friends in the community.<sup>3</sup> We do not agree with

<sup>1</sup> The Immigration Judge's custody decision is supplemented by a bond memorandum dated April 2, 2019.

<sup>2</sup> The respondent argues on appeal that the Immigration Judge should have allowed the admission of new evidence below pertaining to the merits of his claims for relief from removal, including expert testimony from an immigration lawyer. We disagree. When a final removal order is in effect, an Immigration Judge conducting a *Rodriguez* bond hearing is entitled to rely on that order, and is not required to revisit its merits or the factual findings and legal conclusions upon which it rests. *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").

<sup>3</sup> The respondent maintains on appeal that the Government filed a motion to remand before the Ninth Circuit in late July 2019 which, if granted, would vitiate the finality of his removal order.

the respondent's appellate assertion that the Immigration Judge improperly placed the burden on him of proving that he would not pose a flight risk if released.

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. The Immigration Judge's bond memorandum contains no analysis of this question. Further, if payment of a bond is impracticable for some reason, the Immigration Judge should consider other alternatives to detention or explain why they are unavailable. *Rodriguez v. Holder*, 2013 WL 5229795, at \*2 ("Immigration Judges should ... be considering restrictions short of incarceration, including house arrest with electronic monitoring, in determining a detainee's flight risk and dangerousness."). However, we reject the respondent's argument that it is necessary to remand this matter to a different Immigration Judge; a judge is not impermissibly biased simply because the judge issues decisions adverse to a party. *Cf. Liteky v. United States*, 510 U.S. 540, 551-56 (1994).

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.

  
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 FOR THE BOARD

We have received no indication, however, that the Ninth Circuit has acted upon any such motion. The respondent thus remains subject to a final administrative order of removal and has been denied all requested relief. Should these circumstances change, the respondent can request a new bond hearing before the Immigration Judge.