



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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Florence Immigrant & Refugee Rights  
Project  
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2601 N. Pinal Parkway  
Florence, AZ 85132**

**DHS/ICE Office of Chief Counsel - EAZ  
Eloy Detention Ctr, 1705 E. Hanna Rd  
Eloy, AZ 85131**

**Name: G [REDACTED]-C [REDACTED], M [REDACTED] R... A [REDACTED] 102**

**Date of this notice: 8/31/2017**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Deputy Chief Clerk

Enclosure

Panel Members:  
Greer, Anne J.  
Kelly, Edward F.  
Neal, David L

Userteam: Docket

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Falls Church, Virginia 22041

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File: [REDACTED] 102 – Eloy, AZ

Date:

AUG 31 2017

In re: M [REDACTED] R [REDACTED] G [REDACTED] -C [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lola Sophia Bovell, Esquire

ON BEHALF OF DHS: Elly Laff  
Assistant Chief Counsel

APPLICATION: Bond redetermination

The respondent, a native and citizen of Guatemala, has appealed the Immigration Judge's February 22, 2017, decision ordering the respondent released with the payment of bond in the amount of \$8500 and the respondent's compliance with certain conditions, such as weekly contact with the Department of Homeland Security. On March 30, 2017, the Immigration Judge issued a bond memorandum setting forth the reasons for his decision. The appeal will be sustained in part and dismissed in part.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review 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).

The respondent was granted a bond hearing pursuant to *Franco-Gonzalez v. Holder*, No. CV-10-02211, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014) ("*Franco* Implementation Order"). The respondent has an assigned qualified representative. The Immigration Judge found that the Department of Homeland Security (DHS) had established that the respondent posed a flight risk. After considering the respondent's family and community ties, mental health concerns, and the release plan proposed by his attorney, the Immigration Judge concluded that an \$8500 bond was necessary to ensure the respondent's appearance for immigration hearings or removal from the United States.

The respondent has appealed, arguing that the Immigration Judge should have granted release on conditions of supervision only, without requiring a monetary bond. The Immigration Judge concluded that conditions alone were insufficient under the circumstances in this case. We have considered the respondent's arguments on appeal and we agree with the Immigration Judge's conclusion that the conditions, while a significant mitigating factor to the respondent's flight risk, were insufficient without a monetary bond (IJ at 3). However, we conclude that a lower bond would be sufficient, in combination with the release plan. We therefore order the respondent released upon payment of bond in the amount of \$3000 and his compliance with the release plan

outlined by his attorney and included in the Immigration Judge's order. Accordingly, the following order will be entered.

ORDER: The appeal will be sustained in part and dismissed in part.

FURTHER ORDER: The respondent is ordered released from custody upon payment of bond in the amount of \$3000 and his continued compliance with the additional conditions set by the Immigration Judge.

  
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FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ELOY, ARIZONA**

**IN THE MATTER OF:**

G [REDACTED] -O [REDACTED], M [REDACTED] R [REDACTED]

**RESPONDENT**

**IN BOND PROCEEDINGS**

**FILE NO.:** [REDACTED] 102

**DATE:** March 30, 2017

**FOR THE RESPONDENT:**

Lola Sophia Bovell, *Esquire*  
Florence Project  
PO Box 654  
Florence, Arizona 85132

**FOR THE DEPARTMENT:**

*Assistant Chief Counsel*  
Department of Homeland Security  
1705 East Hanna Road  
Eloy, Arizona 85131

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**DECISION AND ORDER OF THE IMMIGRATION COURT**

**I. PROCEDURAL HISTORY**

The above-named respondent is a native and citizen of Guatemala. (Form I-213.) He entered the United States unlawfully on August 11, 2016, near Nogales, Arizona. (*Id.*) The Department of Homeland Security ("DHS" or "the Department") encountered the respondent on the same day in the area of Oso Wash, Arizona. (*Id.*) The respondent expressed a fear of return to his home country. (*Id.*) On September 22, 2016, the Department filed a "Notice of *Franco-Gonzalez* Class Membership." (*Franco* Notice.) Accordingly, the Court scheduled the *Franco* hearing for September 30, 2016. (H'g (Sept. 30, 2016).) On that day, the Court conducted a Judicial Competency Inquiry, determined that there was a bona fide doubt about the competence of the respondent to represent himself, and ordered that a qualified representative be assigned to the respondent. (*Id.*)

The respondent was scheduled for a *Franco* bond hearing on February 22, 2017. (Hr'g (Feb. 22, 2017).) For reasons set forth below, the Court grants custody redetermination in the respondent's case.

**II. STATEMENT OF LAW**

**a. *Franco-Gonzalez***

On April 23, 2013, the United States District Court for the Central District of California issued a permanent injunction against the Executive Office for Immigration Review ("EOIR") and the United States Department of Justice requiring an Immigration Judge to hold a detention hearing for aliens who:

(1) are in DHS custody for removal proceedings in California, Arizona, and Washington; (2) who have been identified by or to medical personnel, DHS, or an Immigration Judge, as having a serious mental disorder or defect that may render them incompetent to represent themselves in detention or removal proceedings; (3) who presently lack counsel in their detention or removal proceedings; and (4) who have been detained for more than six months.

*Franco-Gonzalez v. Holder*, Case No. 10cv0221-DMG (DTB), at \*3, 19–25.

Additionally, the Immigration Judge must appoint a qualified representative or an attorney to represent the alien if the Judge determines that the alien has a serious mental disorder or defect that renders the alien incompetent to represent himself or herself in detention or removal proceedings. *Id.* at \*3.

At the bond hearing, the DHS bears the burden of establishing, by clear and convincing evidence, that the respondent should not be released because he or she is a danger or a flight-risk. *See id.* at \*24.

**b. *Rodriguez v. Robbins***

Any alien who has been subject to DHS detention pursuant to §§ 235(b), 236(c) and 236(a) of the Act for more than six months is eligible for a bond hearing pursuant to *Rodriguez III*. *Rodriguez v. Robbins*, 804 F.3d at 1090 (9th Cir. 2015). The Department did not contest the Court's jurisdiction to hold a custody redetermination hearing pursuant to *Rodriguez III* and as the respondent was detained pursuant to §235(b) of the Act, and has been in DHS custody for longer than 180 days, the Court finds it has jurisdiction to hold a *Rodriguez* hearing.

**III. DISCUSSION**

The Department did not argue the respondent's eligibility for a *Franco* or *Rodriguez* custody redetermination hearing. *Franco* and *Rodriguez* bond hearings must comport with the bond hearing requirements as explained in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), thus the DHS bears the burden of establishing, by "clear and convincing evidence," that the respondent should not be released because she is a danger or a flight-risk. In the instant case, the Department argued that the respondent poses both a danger and a significant flight risk.

An alien who presents a danger to persons or property should not be released during the pendency of removal proceedings. *Matter of Guerra*, 24 I&N Dec. at 38 (citing *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994)). Second, if the alien does not pose a danger to the community, a determination must be made as to whether an alien poses a flight risk or is likely to abscond and unlikely to appear for future proceedings. *Matter of Adeniji*, 22 I&N Dec. at 1115; *Matter of Patel*, 15 I&N Dec. at 667. The burden is on the alien to show to the satisfaction of the Immigration Judge that he or she is not a danger or a flight risk and that he or she merits release on bond. *Matter of Guerra*, 24 I&N Dec. at 40. The Court has broad discretion in deciding the factors that it may consider in custody redeterminations and it may choose to give greater weight to one factor over others, as long as the decision is reasonable. *Id.*

The BIA listed nine factors for an Immigration Judge to consider in making a determination of flight risk. *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006). 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 . . . (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. In making this determination, an Immigration Judge may rely "upon any information that is available to [the Immigration Judge] or that is presented to him or her by the alien or the Service." 8 C.F.R. § 1003.19 (2013).

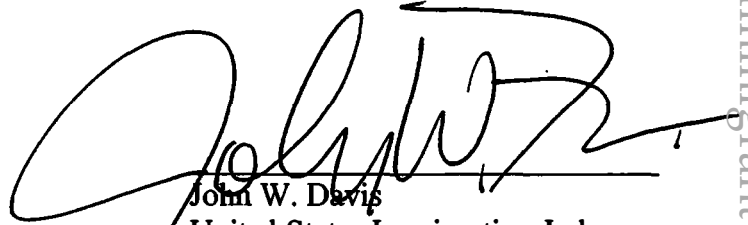
The Department does not contend that the respondent poses a danger to the community, but is concerned about his flight risk. The respondent suffers from mental health conditions including schizophrenia and delusions. (Hr'g (Feb. 22, 2017).) He requests to be released due to his mental illness, and given lack of funds to pay a monetary bond, to be released on conditional parole. The respondent is represented by the Florence Project and submitted a release plan indicating that if released he would live at the Single Adult Shelter of Central Arizona Shelter Services (CASS.) (Bond Exh. 1, Attach. A.) At CASS the respondent would also be able to receive medical and behavioral health services in addition to those provided at therapeutic centers in the area. (*Id.*) Moreover, the respondent will continue to be in constant contact with his Florence Project attorney and his social worker, in person and via cell phone. (*Id.*) The respondent's counsel argues that the psychological stressors of being in detention will cause the respondent's condition to further deteriorate. (Hr'g (Feb. 22, 2017); Bond Exh. 1, Attach. B.) the Department is concerned that without a family member or close friend in the area, the respondent's ties to the community are not sufficiently strong to ensure his appearance at future hearings. (Hr'g (Feb. 22, 2017).)

The Court finds that given the respondent's mental incompetency and the deteriorating effects of detention on his condition a bond is appropriate. However, although the Court finds that the release plan proposed by the Florence Project will significantly help mitigate the respondent's flight risk, it finds that a monetary bond is still appropriate. The respondent has no family or community ties, and his inability to pay a monetary bond is not a factor that the Court considers in determining his flight risk. The Court finds that a low bond is appropriate and grants the respondent's custody redetermination upon posting of a bond of \$8,500 and the additional condition that the respondent check in with DHS weekly.

#### IV. CONCLUSION

Accordingly, the Court will enter the following order:

**ORDER:** IT IS HEREBY ORDERED THAT the respondent's custody redetermination request is **GRANTED** and that the respondent is released upon posting **\$8,500.00** bond and the additional condition that he check-in with DHS weekly.

  
John W. Davis  
United States Immigration Judge

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**CERTIFICATE OF SERVICE**

THIS DOCUMENT SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ( ) ALIEN ( ) ALIEN'S ATTORNEY ( ☒ ) DHS

DATE: 3/30/17 BY COURT STAFF: 

Attachments: ( ) EOIR-33 ( ) EOIR-2 ( ) Legal Services List ( ) Other

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