

DETAINED

PRO BONO COUNSEL FOR RESPONDENT

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
AURORA, COLORADO

In the Matter of

In Removal Proceedings

File No.: A

**RESPONDENT'S RENEWED MOTION FOR CUSTODY REDETERMINATION
HEARING**

Immigration Judge: MCGRAIL

Next Hearing Date: 2017 (Master Calendar)

Respondent, [REDACTED], by and through undersigned counsel, respectfully requests a subsequent bond hearing pursuant to 8 C.F.R. Section 1003.19(e) before the Immigration Court due to a material change in circumstances.

STATEMENT OF FACTS

On [REDACTED] 2017, Immigration Judge McGrail conducted a custody redetermination hearing for [REDACTED]. [REDACTED] appeared *pro se*. The immigration judge found that [REDACTED] presented a flight risk and set bond at \$7,000. Judge McGrail denied [REDACTED] previous Motion for Subsequent Bond Hearing on October 12, 2017. [REDACTED] is currently detained at the GEO/ICE facility in Aurora.

[REDACTED] is able to testify to the following facts:

[REDACTED] is a [REDACTED] year old male, native of Mexico who came to the United States in 2014. [REDACTED] common-law wife and two children reside in Mexico. [REDACTED] stopped attending school in the first grade when his parents died, and he cannot read or write in any language. He came to the United States to make money to support his family in Mexico.

[REDACTED] is in custody after being arrested at his place of work in July 2017. He has had no encounters with law enforcement in the United States, nor has he been charged with or convicted of a crime.

[REDACTED] was employed at the [REDACTED] restaurant in [REDACTED] Colorado from approximately March 2014 to December 2016. [REDACTED] employer required him to work thirteen hours a day, seven days a week. His employer refused to give him breaks, and he often was not allowed to eat. When [REDACTED] tried to object to and refuse to

complete the increased work and long hours, his supervisor yelled at him and was physically abusive. His supervisor threatened to call immigration if [REDACTED] did not do as he was told.

While working at the [REDACTED] restaurant [REDACTED] lived in his employer's house along with several other workers. He was paid approximately \$2,000/month, and was not paid overtime. Sometimes his pay was deducted for bills and other expenses. His employers charged him money each time they transported him to send money to his family. [REDACTED] tried to quit, but wasn't allowed to. He was isolated in [REDACTED] with no resources or transportation. His employer would not allow him to call his family.

In December 2016, [REDACTED] was fired. His employer locked him in their house for three to four days as punishment and given no food or water. His employer finally let him out and told him to go look for food.

[REDACTED] then worked in a different restaurant in [REDACTED] Colorado until July 2017, where he was arrested by ICE while at work.

[REDACTED] has an attorney who is assisting him with recovering his lost wages from the [REDACTED] restaurant, and was pursuing a wage theft case against said employer when he was arrested by ICE in July 2017.

MATERIALLY CHANGED CIRCUMSTANCES

[REDACTED] is able to testify to the following facts, which establish materially changed circumstances since his last Motion:

- [REDACTED] filed a T-Visa application dated [REDACTED] 2017 and is awaiting a receipt from U.S. Citizenship and Immigration Services ("USCIS").

Exhibit A.

- [REDACTED] was interviewed by the Department of Labor on [REDACTED] 2017, and he has filed a Fair Labor Standards Act complaint against the [REDACTED] restaurant in [REDACTED] Colorado with the United States Department of Labor – Wage and Hour Division. *See* Exhibit B.
- [REDACTED] wife sold her home in Mexico and transferred \$7,000 via Western Union to the daughter of a fellow detainee in Wyoming, who promised to be a guarantor for [REDACTED] and use those funds for his bond. The acquaintance has not used the funds to bond out [REDACTED] and it appears the funds have been stolen. The Department of Labor has referred the reported theft to local law enforcement. This was all the money that [REDACTED] family has, and he has no additional method to come up with funds for his bond.
- [REDACTED] a social worker with [REDACTED] [REDACTED] has agreed to put together a post-release plan for [REDACTED] should he be released to assist him with finding living accommodations.

ARGUMENT

Pursuant to 8 C.F.R. Section 1003.19(e), if an Immigration Judge has previously ruled in bond proceedings, a subsequent request for a bond hearing must be in writing and must show that the Respondent's circumstances have changed materially since the last decision. *Matter of Sugay*, 17 I & N Dec. 637 (BIA 1981). [REDACTED] circumstances have materially changed since his prior hearing. To wit:

1. [REDACTED] is not a flight risk.

[REDACTED] is not a flight risk because he has a pending T-Visa application, submitted to USCIS on October 23, 2017. *See* Exhibit A, [REDACTED] filed T-Visa

application. [REDACTED] has resided in the United States for three years, has filed a claim under Fair Labor Standards Act with the Department of Labor against the [REDACTED] restaurant, and has a wage theft claim that he is currently pursuing against his former employer. [REDACTED] intends to remain in the United States to pursue all of these claims and to pursue recovery of his bond money through cooperation with local law enforcement. Because he has lost his family's savings in attempting to post bond, he wants to remain here to recover this money.

2. [REDACTED] is indigent.

[REDACTED] has no ability to pay a monetary bond, and requests a new hearing to consider either his financial ability to post bond or his suitability for release on alternative, non-monetary conditions of supervision. [REDACTED] has no assets, personal property, or savings. He is indigent because he is the victim of wage theft at the [REDACTED] restaurant and because after his wife sold their house in Mexico to try to make the bond previously set by this Court, those funds were stolen by the family member of a fellow detainee.

On [REDACTED] 2017, the Ninth Circuit held that consideration of a detainee's financial ability to post bond and suitability for release on non-monetary conditions is required under the Fifth Amendment's Due Process Clause. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). As the Court explained, "[d]etention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). As a result, due process requires "consideration of the detainees' financial circumstances, as well as of possible alternative release conditions . . . to ensure that the conditions of their release will be reasonably related to the governmental interest in ensuring

their appearance at future hearings.” *Id.* By contrast, the failure “to consider the individual’s financial ability to obtain a bond in the amount assessed or to consider alternative conditions of release . . . risks detention that accomplishes ‘little more than punishing a person for his poverty.’” *Id.* at 992 (quoting *Bearden v. Georgia*, 461 U.S. 660, 669 (1983)). Moreover, the Ninth Circuit specifically upheld an injunction requiring new bond hearings for individuals who were currently detained on a bond that they were not able to post. *See id.* at 987, 998–1000.

Here, the Court should consider [REDACTED] changed circumstances regarding his inability to pay the bond amount. [REDACTED] wife sold their family home in Mexico, their only asset, to pay the \$7,000 bond amount set by the Immigration Judge. Due to circumstances outside of [REDACTED] control, the money for [REDACTED] bond has presumably been stolen leaving [REDACTED] and his family with nothing. [REDACTED] is no longer able to pay the bond amount set by the Immigration Judge and requests the Court to consider his inability to pay in a custody redetermination hearing due to material, changed circumstances.

3. [REDACTED] does not present a danger to the community.

[REDACTED] has had no encounters with law enforcement while in the United States, no criminal cases pending against him, and no criminal convictions. There is no evidence that he is a danger to the community.

**REQUEST FOR CONDITIONAL PAROLE
AS AN ALTERNATIVE TO MONETARY BOND**

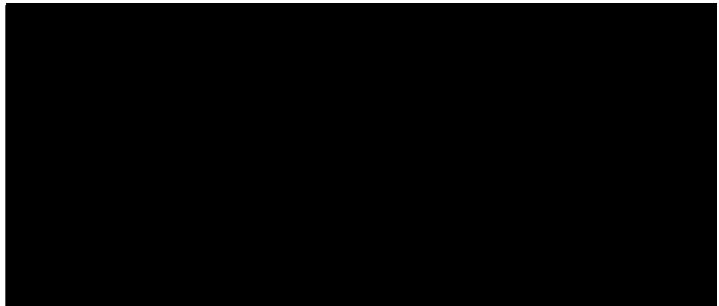
In the alternative, [REDACTED] requests the Court grant release on recognizance under INA § 236(a)(2)(B). Immigration Judges have authority under INA § 236(a), 8 U.S.C. § 1226(a) to grant release on conditional parole as an alternative to release on a monetary bond. “[INA § 236(a)] clearly presents [conditional parole] as an alternative to releasing [a noncitizen]

subject to bond.” *Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. 2015); *see also In re Joseph*, 22 I & N Dec. 799, 800, 809 (BIA 1999) (upholding the Immigration Judge’s order releasing individual on his own recognizance after determining that he was properly considered for release on recognizance under INA § 236(a)); *Matter of Patel*, 15 I & N Dec. 666, 667 (BIA 1976) (ordering, under former INA § 242(a), that the “respondent shall be released from custody on his recognizance”).

CONCLUSION

In light of the foregoing, Respondent respectfully requests this Court grant a custody redetermination hearing to allow him a good faith opportunity to present his case for bond, including his testimony, and in the alternative requests the Court grant him release on recognizance under INA § 236(a)(2)(B).

Respectfully submitted this 13th day of November 2017.



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