Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 21, 2018

Jacqueline Stevens
Northwestern University
Dept. of Political Science
601 University Place
Evanston, IL 60208

Re: FOIA 2015-27249

Dear Prof. Stevens,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek investigatory materials relating to certain complaints against immigration judges (IJs). We apologize for the delay in providing this response; the response was delayed both by the complexity of the request, and the litigation surrounding *AILA v. EOIR.*

Responsive documents are enclosed. Portions of the enclosed documents have been redacted in accordance with 5 U. S.C. § 552(b)(6) to avoid a clearly unwarranted invasion of personal privacy, and/or 5 U. S.C. § 552(b)(5) to protect privileged information. The reason for redaction is clearly marked on each redacted portion. Additionally, each complaint was evaluated for release in conformity with *AILA v. EOIR,* No. 13-840 (D.D.C. filed June 6, 2013). In each case, it was determined that the public interest in release did not outweigh the privacy interest of the immigration judge.

There will be no charge for the enclosed documents.

Please note that the following complaint numbers did not contain any responsive records: 253, 513, 678, 682, and 718. These complaints may have been combined with other complaints, or may have been expunged from the record pursuant to an agreement or order.

In the following cases, documents not created or maintained by EOIR were referred to other agencies for direct response to you:

#789: Report of Investigation (Office of the Inspector General)
#770: Memorandum of 6/4/2013 w/attachment (Office of the Inspector General)
#731: Report of Investigation (Office of the Inspector General)

#762: E-mails and documents Oct 2012 (ICE)
E-mail of 2/11/2013 (Office of Professional Responsibility)
Letter of 8/8/2014 (Office of Professional Responsibility)
E-mail of 7/12/2012 (ICE)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* http://www.justice.gov/oip/foiapost/2012foiapost9.html.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline. regulations.gov/foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Joseph R. Schaaf
Chief Counsel for Administrative Law

Enclosure:

EOIR FOIA# 2015-27249

Single Complaint Detail

Complaint Number: 751 **Immigration Judge:** (b) (6) **Complaint Date:** 04/29/13

Current ACIJ	Base City	Status	Final Action	Final Action Date
Maggard, Print	(b)	CLOSED	Complaint dismissed because it cannot be substantiated	07/24/13

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
(b) (6)	Bias In-court conduct	Respondent Atty (b) (6)

Complaint Narrative: R counsel claims a bias by the IJ toward DHS, citing denial of bond when DHS does not object to release. She also claims inappropriate off the record comments concerning the non-viability of R's (b) (5). Counsel complains of many conversations taking place off the record.

Complaint History	
04/29/13	ACIJ met with the attorney
05/02/13	Discussed complaint with the IJ
05/03/13	Database entry created
06/18/13	Received an email from the source, she filed a motion to continue - both denied by the IJ
06/19/13	Complaint information forwarded to the IJ for (b) review
07/02/13	Received written response for IJ
07/09/13	ACIJ reviewing IJ response
07/24/13	Complaint dismissed because it cannot be substantiated

Processing, FOIA (EOIR)

From: Maggard, Print (EOIR)
Sent: Thursday, May 02, 2013 2:04 PM
To: Moutinho, Deborah (EOIR); Keller, Mary Beth (EOIR)
Subject: Complaint intake and documents from complaintant - IJ (b)
Attachments: Background Info A#(b) (6) .pdf; Declaration Atty (b) (6) .pdf; Memorandum IJ (b) A(b) (6) ;4-18-12.pdf; Memorandum IJ (b) A(b) (6) ;10-23-12.pdf; Transcript IJ (b) Bond A#(b) (6) ;3-26-13.pdf; complaint intake- (b) -2 May 13.doc

Follow Up Flag: Follow up
Flag Status: Flagged

New complaint with documents from respondent counsel for IJ (b) (6), detained docket in (b) The case is ongoing and (b) has a hearing on an (b) (6) scheduled in June. Counsel will be making a motion to recuse this week.
)

Thank you.

PRINT MAGGARD
Assistant Chief Immigration Judge
United States Immigration Court
Executive Office for Immigration Review
(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6) [redacted]

In re:	**Date: October 23, 2012**
(b) (6) [redacted]	**File Number: A** (b) (6) [redacted]
Respondent.	**In Bond Proceedings**
	MEMORANDUM

The respondent has filed a motion for a custody redetermination hearing. The motion contains no statement of the history, procedural posture, or current status of this case. The only factual basis asserted in support of the request for a bond hearing is that "Respondent has been in the custody of the Department of Homeland Security since September 2011." Respondent has cited no case, and the court is aware of none, holding that any alien, regardless of the procedural posture of her case, is automatically entitled to a bond hearing *by an immigration judge* after 45 days, five months, or six months.

The Immigration Courts, as an administrative body within the Department of Justice, have only those powers conferred by statute and regulation. As the (b) (6) Circuit noted long ago, Immigration Judges can do only what a valid statute or regulation authorizes them to do. (b) (6) [redacted]

Cases from the Court of Appeals for (b) (6) Circuit such as (b) (6) [redacted] (b) (6) [redacted] (b) (6) [redacted] create a limited exception for persons who have an administratively final removal order from the BIA, have filed a petition for review with the (b) (6) Circuit, and who have received a stay of removal from that court. The respondent points to no statutory or regulatory authority, and the court has found none, which authorizes this court to expand the (b) (6) line of cases beyond their specific facts.

ORDER: The motion for a custody redetermination hearing is denied.

(b) (6) [redacted]
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6) [redacted]

In re:	)	**Date: January 14, 2013**
(b) (6) [redacted]	)	**File Number: A** (b) (6) [redacted]
	)	**In Bond Proceedings**
Respondent.	)	
	)	**MEMORANDUM**

The respondent has filed a second motion for a custody redetermination hearing. As was the case with her first motion, respondent has cited no authority which authorizes this court to conduct a custody redetermination hearing at this time Accordingly, the motion for a custody redetermination hearing is denied.

(b) (6) [redacted]
Immigration Judge

(b) (6)

Background:

(b) year-old woman, for adult USC children, eight USC grandchildren. EWI 1980 from El Salvador. History of petty shoplifting (mostly food items) -- eight petty theft convictions and to DUIs over 30 year period. Last arrest in 2010. Formerly had TPS.

(b) (6)
(b) (6)
El Salvador during the Civil War. (b) (6) raised four children primarily as a single mother. (b) (6) 2005 (b) (6)
(b) (6)

Procedural History

9/2011—Resp. is picked up at her home and placed in proceedings; deemed subject to mandatory detention based on her convictions (last one in 2010). Multiple applications (most for which Resp is ineligible) submitted by counsel (b) (6) and (b) (6) including (b) (6)
(b) (6)

8/2012—(b) (6) - denied. Prior counsel files "pro se" notice of appeal to BIA. (b) (6)

10/2012—(b) (6) retained. (b) (6) was filed with defective certification—signed by a random legal assistant in DA's office) person. (b) files motion for custody redetermination, arguing prolonged detention. IJ denies motion.

12/2013—(b) files second motion for custody redetermination based on "when released" argument.

1/2013- IJ denies second motion for custody redetermination.

2/2013-(b) with ACLU file habeas petition.

3/13/2013- Habeas granted based on "when released" argument, does not reach prolonged detention issue. Orders bond hearing within 30 days.

3/26/13—Bond hearing held in place of scheduled master hrg. *See* Transcript.

All Resp' family present. TA (b) (7)(C) (he told me he did not oppose bond and would not appeal release). Testimony heard from Resp and (b) (6)

During post-testimony arguments, when (b) (6) points out that Govt does not think Resp is a flight risk,

IJ states: *It doesn't matter whether he agrees with you or not it matters whether I agree with you. So there's no point in putting him in that position. The viable relief is the* (b) (6)

IJ refuses to rule from bench, states (b) (6) will issue written decision.

I try to file new (b) (6) based on (b) (6) claim; IJ refuses to accept application and tells me to file it at window. Ind'l Hrg set 4/24/13.

After going off the record, IJ called (b) (6) up to the bench. IJ stated that the District Court got it wrong. "No brainer" that "when released" means anytime after release from criminal custody.

3/27/13-- (b) (6) issues one paragraph decision stating simply that (b) (6) was a flight risk and a danger to the community and that memorandum would be written if necessary upon appeal.

4/11/2013- (b) (6) files motion to continue 4/24/13 hearing, informing court that RFE for passport photos was issued by Vermont Service Center, and Resp needed more time to prepare. IJ calls (b) (6) to ask what RFE means and sets status conference for next day.

4/12/2013—Status Conference

Before going on Record:

IJ asked (b) (7)(C) for news. (b) (7) (C) stated that [redacted] sent email to VSC that morning and had no response; (b) (6) did not know what the request for photos implied. IJ said that if (b) (6) can get some specific information about the (b) (6) and not just simply that it remains pending, such information would impact (b) (6) view of bond, that as (b) (6) is preparing the bond memorandum, information that the (b) (6) is likely to be granted would greatly change (b) (6) perspective. IJ pushed (b) (7) (C) to try to get more info, to speak to (b) (6), acting field office director for (b) (6), to see if (b) (6) can get more information and sets another status conference the following week.

IJ goes on Record:

IJ recapped status of (b) (6), stating that status of the (b) (6) was important—as viable releif is the biggest factor on his determination of flight risk. (b) (6) is the only viable releif that is "likely to go anywhere."

IJ Goes off Record:

(b) (6) reminded (b) (6) that in addition to (b) (6) there is a pending (b) (6)

(b) (6) states (b) (6)
(b) (6)

(b) objects and states Resp had a legitimate (b) (5) claim (b) (6) standing recognized by DHS in (b) (6) (b) objects that IJ prejudged the (b) (6) claim without hearing any of the evidence.

IJ states (b) is open to hearing the evidence, but just expressing (b) opinion that claim not viable claim. If (b) (6) is denied, Resp is a flight risk.

(b) argues that IJ's opinion of claim is not as important to the assessment of flight risk as Resp's own belief and that of her counsel that claim is viable and therefore had an incentive to make all her court appearances and to file any and all appeals to which she had a right.

IJ then gives hypothetical about Resp having a fear of "striped cats" in El Salvador," but if (b) finds people who fear striped cats are (b) (6) Resp would lose any incentive to appear in court and would flee if not in custody.

(b) (6) also again questioned whether Resp was precluded from filing (b) (6) because BIA had remanded for status of (b) (6) and not for other claims. (b) (6) reminded IJ of arguments raised in her brief.

IJ names a (b) (6) Circuit decision ((b) ?) about woman whose (b) (6) claim, filed 10 yrs ago, was denied, and after appeals and motions to reopen, she was still here. IJ questioned DHS's ability to deport her after all these years. Because she was released on bond, she was allowed to stay and litigate for years making it less likely that DHS could execute removal. IJ stated concern that Congress was not allocating sufficient resources for DHS to be able to go out there and "dragnet" all who had final orders.

Picking up INA, IJ states (b) interest ensuring that (b) removal orders are executed-- "When I issue a removal order, it's not just for fun, I do it with the expectation that the person will actually be removed," that if (b) can't be sure that someone (b) orders removed will ultimately be so removed by DHS, then (b) has to find that the person is a flight risk.

(b) argued that whether someone will be ultimately removed years from now by DHS after appeals should not be considered in assessment of whether someone is currently a flight risk. (b) (6) disagreed. (b) reminded IJ of Resp's family and that Resp would not desert her (b) (6) grandchild over whom she has custody. (b) (6) stated the Resp would not "have far to flee" and DHS may not have resources to pick her up.

TA (b) (7) (C) had very little to say. (b) (6) did agree with the judge's assessment that DHS did not have enough free sources and he pointed out that there are "thousands" of people out there with final orders.

4/17/2013—Status Conference:

OFF RECORD:

(b) (7) (C) states (b) has no information about (b) (6) IJ states there is no time to "think of an alternative at this point...." States that (b) (6) is Resp's only relief ....

(b) (6) argues Resp has a pending (b) (5) and argues not appropriate to judge flight risk solely on merits of claim before evidence is presented, that pending claim for relief is just one factor.

IJ counters that it is appropriate to consider likelihood of success—"it's incumbent on me to determine the strength of the application and where the case law strongly indicates that it's not a good case, then I have to take that into account."

(b) (6) states inappropriate of IJ to compare Resp's (b) (6) of "striped cats." IJ states (b) (6) didn't say SHE was a striped cat... "I'm only saying if her claim is not viable then her only relief at this point is the (b) (6).. States (b) (6) is not prejudging her claim... "It's just not enough to say I have an application... simply having an application is not enough...You have to consider the likelihood of success...."

Back to (b) (6) IJ asks why decision taking so long, "What the heck is going on?"

ON THE RECORD:

IJ recaps status of (b) (6), states why (b) (6) believes status of (b) (6) s so important ... 1) Respondent has tremendous incentive to appear 2) allows her immediate relief. States without (b) (6) Resp is flight risk.

(b) (6) Court is focused on available relief. Court should consider other relevant factors. Court has made assessment of (b) (6) claim without having heard the evidence. Court should reconsider denial of bond now that Vermont Service center has received photos and file is now complete. Respondent has (b) (6) application and Resp and counsel believe there IS a claim... Resp has an incentive to appear for her hrg.

(b) (6) At last hrg, off record, Court discussed the fact that in "2, or even 10 years from now, after all has been litigated, DHS may not have resources to remove respondent." Whether another agency will the resources years from now is not appropriate consideration. Case law does not support such consideration

IJ: You are wrong

R: I would like to hear...

IJ: There is (b) (6) ---- You will read it in my memorandum ... the basis of my decision...

R: Has a deadline been set for the bond memorandum?

IJ: Yesterday.. it was due yesterday...

DECLARATION OF (b) (6)

I (b) (6), declare as follows:

1. I make this declaration from my personal knowledge and if called to testify to these facts, could and would do so competently.

2. I am licensed to practice law in (b) (6). I am a (b) (6) at the (b) (6) and my business address is (b) (6) (b) (6)

3. My office and (b) (6) represented (b) (6), a noncitizen in removal proceedings who is detained in the (b) (6) in a habeas petition in federal court. (b) (6) is (b) (6) immigration attorney. I do not represent (b) (6) in her immigration proceedings.

4. On March 26, 2013, I attended (b) (6) bond hearing before Immigration Judge (b) (6) in the (b) (6) Immigration Court at (b) (6)

5. On March 28, 2013, I learned that Judge (b) (6) had issued an order denying (b) (6) (b) (6) motion for release on bond.

6. On April 12, 2013, I attended a status conference on (b) (6) case before Judge (b) (6). (b) (6) appeared for (b) (6) and (b) (7)(C) appeared for the government.

7. Judge (b) (6) stated that (b) purpose for holding the conference was to ascertain the status of (b) (6) application. (b) explained that the likelihood of the (b) (6) being

granted was critical to [redacted] bond decision because aside from the [redacted] had "no relief."

8. [redacted] reminded Judge [redacted] that [redacted] also had a pending [redacted] based on [redacted]. In response, Judge [redacted] stated that the [redacted] claim was not a viable claim. [redacted] expressed [redacted] view that [redacted] would not be able to prove that [redacted]

9. During ensuing dialogue between Judge [redacted] and [redacted], Judge [redacted] reiterated several times [redacted] opinion that the [redacted] claim was not viable. [redacted] concluded that while it was possible that [redacted] would present some "wonderful" evidence [redacted] view at the moment was that the [redacted] claim was very weak.

10. [redacted] stated that [redacted] assessment of the strength of her [redacted] claim, not Judge [redacted] was most relevant to [redacted] risk of flight. [redacted] stated that she would advise [redacted] that the [redacted] claim was strong, and consequently, [redacted] would have every incentive to appear for her immigration court hearings.

11. In response, Judge [redacted] described a hypothetical situation in which [redacted] claimed [redacted] El Salvador because she is afraid of striped cats and striped cats are prevalent in El Salvador. [redacted] stated that even if [redacted] believed that this was a strong [redacted] claim, [redacted] was unlikely to grant it. [redacted] then stated that once [redacted] denied the [redacted] claim, [redacted] would have little incentive to appear for future hearings or present herself for removal.

12. [redacted] then raised the fact that [redacted] is the primary caregiver for her young grandson and therefore unlikely to flee. Judge [redacted] stated that [redacted] s role as caregiver did not matter. [redacted] explained that because Immigration and Customs Enforcement does not have

sufficient resources to locate noncitizens who fail to appear for their removal hearings, (b) (6) "would not have to flee very far" to avoid detection.

13. Judge (b) (6) also expressed (b) (6) view that non-detained individuals who are ordered removed have absolutely no reason to present themselves for removal. In support of this point, (b) (6) cited a (b) (6) Circuit opinion that involved a noncitizen who had received a final removal order, pursued a motion to reopen and various appeals, and ten years later still had not been removed from the country.

14. Both Judge (b) (6) and (b) (7)(C) commented on the large numbers of noncitizens who have removal orders but continue to live in the United States. Judge (b) (6) attributed this situation to Immigration and Customs Enforcement's lack of resources for executing removal orders. (b) (6) commented that Congress had not allocated sufficient funds for immigration enforcement.

15. Judge (b) (6) stated that (b) (6) does not issue a removal order "for fun," but rather with the expectation that the noncitizen will actually be removed from the country.

16. Because (b) (7)(C) did not have information regarding the status of (b) (6) (b) (6) application, Judge (b) (6) scheduled an additional status conference for the following week and requested that (b) (7)(C) inquire into the matter prior to that conference.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

This declaration was executed on this 26th day of April, 2013 in (b) (6)

(b) (6)

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

In re:	)	**Date: April 18, 2012**
(b) (6)	)	**File Number: A** (b) (6)
Respondent.	)	**MEMORANDUM**

The respondent is a citizen of El Salvador who entered the United States without inspection in 1981. After a series of criminal convictions she was placed in removal proceedings in September 2011 and charged with having entered without inspection and also with the commission of a crime involving moral turpitude. *See* Immigration and Nationality Act (INA) Sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(I). Because of respondent's multiple theft convictions she was subject to mandatory detention. INA Section 236(c)(1)(A).

Respondent's case was continued for several months by this court because respondent's prior counsel advised that she was seeking a (b) (6) That application was eventually denied by U.S. Citizenship and Immigration Services (CIS). Respondent then went forward on applications for (b) (6) (b) (6) which were denied after a merits hearing. Represented by new counsel on appeal to the BIA, respondent filed a second application for a (b) (6) arguing that her first counsel had not properly filed the first application.

The BIA remanded the case to this court on January 11, 2013 "to ascertain the status of [respondent's] application for (b) (6) nonimmigrant status, and if appropriate, to determine whether she has established good cause for a continuance" pending adjudication of that application.

Respondent filed a motion for bond with this court after the remand, which was denied because under the plain language of INA Section 236(c) she was subject to mandatory detention. Respondent then filed a petition for a writ of *habeas corpus* in a district court in (b) (6) arguing that she was eligible for a bond hearing because DHS did not arrest her at the instant she was released from state custody. The district court acknowledged that the only federal appellate court to have addressed this issue had ruled against the respondent's interpretation of the "when released" language in INA Section 236(c). *Hosh v. Lucero*, 680 F. 3d 375 (4th Cir. 2012). The district court nevertheless expressed its agreement with some other district courts that bond

proceedings for respondents in [redacted] position are governed by INA Section 236(a), not 236(c). The district court did not order respondent's release. It ordered the Executive Branch to conduct a bond hearing for respondent.

That hearing was held by this court on March 26, 2013. Shortly thereafter the court issued a summary order denying bond and advised the parties that a bond memorandum would be filed if an appeal to the BIA was perfected. After an appeal was filed, the respondent sought a continuance of her next hearing because CIS had requested photographs of her in connection with her [redacted] application. The court then convened a status conference to ask the parties whether the request for photographs indicated how CIS was going to decide the [redacted] application.

The court was advised that the request for photographs by itself was not a reliable indicator of what decision would be made on the [redacted] The court asked Chief Counsel's office to contact CIS and ask if CIS would tell us whether it was likely or unlikely that the [redacted] would be granted. CIS declined to make any comment, stating only that the application was "pending." Without more concrete information about the status of the [redacted] application, the motion for release on bond must be decided on the information previously available in the record regarding flight risk and danger to persons or property.

The respondent is [redacted] years old. She is not married. She has four adult children who are U.S. citizens, and her mother is a permanent resident. She has eight citizen grandchildren, one of whom she was helping to raise because one of her daughters became involved in drug usage. She has siblings with legal status. She formerly worked at a taco truck, but she did not have work authorization.

Respondent has been arrested, by her estimate, between eight and ten times. She was found guilty of driving under the influence in 1993 and again in 2008. She last drank alcohol in 2011. Respondent was convicted for theft and petty theft for stealing from stores in 1991, 1992, 1999, 2004, and 2011.

Respondent blamed her admittedly difficult personal life, which [redacted], as well as her status as a single mother of four children, for her proclivity to drink and to steal. She admitted that she had stolen many times when she had not been caught, and said she stole in the past one to two times per week. She said she generally stole food items but she also stole clothes. She denied driving under the influence on any occasion other than the two times she happened to be caught.

[redacted] Respondent proposed that she be released on a bond of $5,000.

The Attorney General has stated that:

> As recognized by the Supreme Court, section 236(a) does not give detained aliens any *right* to release on bond. *See Carlson v. Landon*, 342 U.S. 524, 534 (1952). Rather, the statute merely gives the Attorney General the authority to grant bond *if* he concludes, in the exercise of broad discretion, that the alien's release on bond is warranted. The extensive discretion granted the Attorney General under the statute is confirmed by its further provision that "[t]he Attorney General's discretionary judgment regarding the application of this section shall not be subject to review." Section 236(c) of the INA. Further, the INA does not limit the discretionary factors that may be considered by the Attorney General in determining whether to detain an alien pending a decision on asylum or removal. *See, e.g., Carlson*, 342 U.S. at 534 (Attorney General's denial of bail to alien is within his lawful discretion as long as it has a "reasonable foundation"). . . . s*ee also Sam Andrews' Sons v. Mitchell*, 457 F.2d 745, 748 (9th Cir. 1972) (Attorney General's exercise of discretionary authorities under the INA must be upheld if they are founded "on considerations rationally related to the statute he is administering").

Matter of D-J-, 23 I&N Dec. 572, 575-76 (A.G. 2003) (emphasis in original). The BIA has consistently held in interpreting INA §236 that the immigration judge must determine whether the respondent is a flight risk or a danger, and that either can be a basis for a denial of bond in an appropriate case. *See, e.g. Matter of Adeniji*, 22 I& N Dec, 1102, 1113 (BIA 1999) ("Consequently, to be eligible for bond, the respondent must demonstrate that his 'release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.'"); *Matter of D-J-, supra* at 581 (finding respondent should not be released on bond because, among other things, he posed a risk of flight); *Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006) ("In the present matter, the respondent's custody determination is governed by the provisions of section 236(a) of the [INA]. An alien in a custody determination under that section 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").

Guerra lists a number of factors that an immigration judge may consider in assessing a bond request. But *Guerra* emphasizes that "[a]n Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations. The Immigration Judge may choose to give greater weight to one factor over others, as long as the decision is reasonable." 24 I&N Dec. at 40.

The BIA has noted that

> . . . for well over a decade Congress has expressed through legislation its intent that criminal and terrorist aliens should generally, if not always, be detained until the completion of their immigration proceedings. The legislation indicates that

> Congress views criminal and terrorist aliens as threats to persons and property in the United States who should be segregated from society until a decision can be made regarding whether they will be allowed to remain in this country. It further reflects that Congress views them as poor bail risks who have little likelihood of relief from removal *and who therefore have little incentive to appear for their hearings if they are released from custody, regardless of family and community ties.*

Matter of Satsana, 24 I&N Dec. 602, 607 (BIA 2008) (emphasis added) *overruled on other grounds by Matter of Garcia Arreola*, 25 I&N Dec. 267 (BIA 2010).

Over twenty years ago the BIA observed that "[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." *Matter of Andrade*, 19 I&N Dec. 488 (BIA 1987). In *Matter of Ellis*, 20 I&N Dec. 641, 643 (BIA 1993) the BIA upheld a denial of bond pending the conclusion of deportation proceedings because "the immigration judge stated in his decision that the respondent is not statutorily eligible for any form of relief from deportation, which is a factor that contributes to the likelihood that the respondent will not appear for his deportation hearing."

In (b) (6) , the Attorney General reversed an immigration judge's decision to grant a bond, noting in part that "the respondent was denied (b) (6) by the Immigration Judge on February 12, 2003. The respondent appealed that decision to the BIA on March 14, 2003, and that appeal remains pending. The IJ's denial of the respondent's application for (b) (6) increases the risk that the respondent will flee if released from detention."

As the BIA has noted:

> . . . Congress was frustrated with the ability of aliens, and particularly criminal aliens, to avoid deportation if they were not actually in Service custody when their proceedings were completed. *See* S. Rep. No. 104-48 (1995) (stating that many criminal aliens who are released pending deportation never appear for their proceedings, and that some criminal aliens abscond after being issued a final order of deportation); 141 Cong. Rec. S7803, S7823 (daily ed. June 7, 1995) (statement of Sen. Abraham); see also *Ofosu v. McElroy*, 98 F.3d 694, 702 (2d Cir. 1996) (stating that released aliens who abscond calculate correctly that the Service lacks the resources to conduct a dragnet) . . . . Congress was not simply concerned with detaining *and removing* aliens coming directly out of criminal custody; it was concerned with detaining *and removing* all criminal aliens.

Matter of Rojas, 23 I&N Dec. 117, 122 (BIA 2001) (emphasis added). *See also Matter of Noble, supra* at 681: "Congress has become increasingly concerned over the years about the growing criminal immigrant population in this country as well as the failure to effectuate the

removal of many of these aliens."

In this case respondent, through her conduct, has made herself ineligible for cancellation of removal, adjustment of status (without departing the United States), NACARA, and even voluntary departure. If removed, she likely faces a period of at least ten years' wait before she can return to this country. Her claim for (b) (6) was denied. If the respondent had a (b) (6) she would be in a very different posture. But she does not have a (b) (6) at this time.

Respondent filed a motion with this court to reopen her removal proceedings to file a new (b) (6) application. But she has to make that motion to the BIA, because the BIA remand was limited and very specific: this court was directed to assess respondent's eligibility for a (b) (6) and evaluate her request for a continuance and nothing else. The BIA specifically declined to consider any other contention she made on appeal.

In addition, her purported new claim for (b) (6) lacks merit on its face. Respondent claims that (b) (6) in El Salvador (b) (6) (b) (6)

Regarding her (b) (6) respondent has not identified what (b) (6) (b) (6)

On the contrary, the record indicates respondent was regrettably, but simply, (b) (6) (b) (6)

circumstances: she is no longer a child. She is an autonomous adult.

As the respondent stands before the court today, she really has little incentive to return for immigration court proceedings, and no proceedings are currently scheduled, because she is simply waiting for an adjudication of her visa application. But respondent has no incentive whatsoever to return to court or surrender herself for removal if her visa application is denied, and at this time we have no information as to whether it will be denied or granted.

Looked at in this light, respondent's family ties to the community in fact give her an incentive *not* to appear, because appearing for removal would cause her, as a practical matter, to sever the ties she says she values. Community ties help assure a bond applicant's appearance if

the applicant has relief clearly available and a failure to appear would deprive the applicant of the relief. The most that can be said of this respondent is that the possibility of relief is speculative at this time.

The only incentive the respondent could really point to as a motivation to come back to court and to report for removal should that become necessary is that her family would lose $5,000. But as noted above, respondent's prospects for returning to the United States after removal are not sanguine. Because DHS "lacks the resources to conduct a dragnet," *Ofosu v. McElroy, supra*, the respondent could either relocate to a community near where her family lives, or stay in the same community. She would then be able to continue to interact with her family members, something she could not do if she were removed to El Salvador. Under these circumstances, the court is greatly concerned that respondent and her family could conclude that forfeiting a sum of money to the United States would be, on balance, worth it.

Ultimately a monetary bond cannot force respondent to appear for removal and so, at the end of the day, we are left with respondent's promise to appear. There is no reason why the people of the United States should have to take that chance. Respondent's prospects for relief from removal are very low at this time. Reporting for removal would take her away from her family. Respondent has made it abundantly clear that she does not want to return to El Salvador, and will not do so willingly. Under these particular circumstances, this respondent is a flight risk.

The court also finds that respondent is a danger to persons and property. The evidence shows that respondent (b) (6) and the court is concerned that if her removal proceedings do not turn out favorably she may do so again. She has been convicted twice for the dangerous behavior of driving under the influence of alcohol. Respondent has also been a chronic and compulsive taker of others' property. She pointed out, quite rightly, that she stole small things, including food items and clothing. But the community is under no obligation to put up with respondent's thefts simply because that are not big thefts. And again, if respondent does not get her (b) (6) the court is concerned that she may return to her criminal activity, which has been both extensive and long-standing.

If respondent does not receive a (b) (6) (and we have no way of knowing whether she will receive a (b) (6) it would be frankly irrational for her to have any further contact with the Immigration Court. It is therefore prudent, especially in light of the fact that the parties expect a decision on the (b) (6) in the very near future, to decline to order respondent's release at this time. The court finds that, under the specific facts of this case, the government has shown by clear and convincing evidence that respondent is a risk of flight and a danger to persons and property.

ORDER: The respondent's motion for a custody redetermination is DENIED.

(b) (6)

Immigration Judge

(b) (6) A(b) (6)

March 26, 2013, Bond Hearing. IJ (b) (6) ACC (b) (7)(C)

(b) (6) I'm going to try and make this quick so…

IJ: Take your time don't worry about it were actually…we're doing fine on time. We're absolutely fine. I mean I.. if we need more time and we cant get it accomplished today we'll make time some other place soon in order to get it accomplished. You make your full and complete record. This is (b) (6) [sic] bond proceedings with (b) (6) (b) (7)(C) here for the government. A couple of things… I got one exhibit, documents in support of request for release on bond. It originally had tabs "A"-"F". There's now a tab "G" as well and I'm going to make that Bond 1 There's a full record in this case including conviction documents and oral decision…probably the sensible thing to do in the interest of time… is just to incorporate the oral decision and make that Exhibit 2 because I think that discusses all the relevant factors. Any preliminary matters (b) (6) ?

(b) (6) Yes your honor I wanted to just inform the Court I believe an email was sent to the court last night but we do have a journalist in the court room today from Public Radio International. And I just wanted to let the Court know that. I just became aware of that yesterday and have met her this morning.

IJ: Yeah, I mean, yeah that's fine. It's an open court room. Unless you…you obviously don't have an objection to it. (laughing)

(b) (6) None your honor I just wanted to let everyone know.

IJ: Government did you want to… I don't think…. This is not (b) (6) proceeding so…as long as there is no privacy objection from the respondent.

(b) (6) I agree your honor I have no problem.

IJ: Good. Lets go ahead and get some testimony.
Is your true name (b) (6) ?

Resp: Yes your honor.

IJ: Do you swear you will say nothing but the truth?

Resp: Yes I do.

IJ: (b) (6) were going to have a bond hearing for you this morning. There's two issues I have to consider: are you a danger to the property of anyone else or to anyone else's person… and are you a risk of flight. Are you going to return to court when you are supposed to.

Now (b) (6) will ask you some questions about that and the Government attorney (b) (7)(C) . will ask you some questions also. Please take your time… Listen to the questions carefully. If anyone one of us asks you a question you don't understand let us know that right away. We will ask it again or say it another way.

Resp: okay

IJ: I mentioned to your counsel that I put this on the calendar because I wanted to get this hearing done for you as soon as possible but if we do not have enough time to finish today don't be concerned about that we will find additional time somewhere on the calendar… and we will finish it that way. I want to make sure you have time to present all the evidence that you need….
Ready?
Go ahead (b) (6)

(b) (6) TO Resp.

Q. Thank you your honor.. (b) (6) how old are you?

A. (b) (6) years old.

Q. And where were you born?

A. In El Salvador.

Q. And when did you come to the United States?

A. 1981

Q. Have you left the country since then?

A. No.

Q. Are you married?

A. No.

Q. Do you have children?

A. Yes I have four daughters… and…one grandson who is 9 years old.

Q. Okay. How many grandchildren do you have?

A. I have eight

Q. Why did you mention you have 1 grandchild?

A. Because I do have one grandchild that I have raised since he was six weeks old and now he is (b) years old.

Q. And what is his name?

A. (b) (6)

Q. Who is his mother?

A. (b) (6)

Q. Why are you raising that grandchild instead of his mother?

A. Because she had drug issues after she had the child so I took the child away from her. Because she was pretty much on the streets with the child. So in order for her not to raise the child like that.

Q. Okay and have you been raising this child since 6 weeks?

A. Yes.

Q. Now your four children that you said you had… what is their immigration status in the United States?

A. Oldest daughter (b) born in El Salvador but is U.S. citizen. I have twins that were born here (b) years old… (b) year old also born here.

Q. Do you have any other children in El Salvador?

A. No.

Q. What about other family members living here in the United States.. do you have any other family member here in the US…Parents? Brothers? Or sisters?

A. I have my mother living here.. and brother… and one sister…in total we are 5 siblings.

Q. Do you know what the Immigration status are?

A. 1 brother citizen and the rest resident.

Q. And what about your mother?

A. She is also a resident.

Q. Okay so are you the only one that doesn't have papers?

A. Yes.

Q. Okay. Where were you living at the time that you were taken into Immigration custody?

A. With my daughter (b) (6)

Q. And where was that?

A. At (b) (6) street.

Q. What city?

A. (b) (6)

Q. Ok and who lived there with you?

A. My three grandchildren,my daughter, and my daughter's husband.

Q. And did (b) (6) live there as well? I know you understand some English but you need to wait until I'm done and the interpreter has finished interpreting what I say. Okay? So was your grandchild (b) (6) living with you when you were taken into immigration custody?

A. Yes.

Q. If you were released from Immigration custody where would you live?

A. With my daughter (b) (6)

Q. Have you discussed with her that you want to go back and live with her?

A. Yes.

Q. And has that been arranged?

A. Yes.

Q. Okay. Now at the time that you were taken into immigration custody were you working?

A. Yes.

Q. What kind of work were you doing?

A. I had a small business.

Q. What kind of small business?

A. Taco truck.

Q. Did you own that truck?

A. No my friend bought it. Well I had my own business where I would sell at the soccer league.

Q. Okay. But did you also work at the food truck?

A. Yes.

Q. Okay and did you own that truck?

A. Together with another person.

Q. Now (b) (6) do you recall how many times you have been arrested?

A. Eight or ten times.

Q. Do you recall what most of them were for?

A. Well taking items from stores.

Q. Okay so shop lifting?

A. Yes.

Q. Okay what else?

A. And two DUIs.

Q. Do you recall when those DUIs were?

A. In 1993 and second in 2008.

Q. 93 and 2008?

A. Yes.

Q. Any other DUIs?

A. No.

Q. In 1993 your first DUI. What were the circumstances of that arrest?

A. I went with some friends to a dance club and when we left the police arrested me.

Q. Were you speeding?

A. No I made an illegal turn.

Q. Okay now at that time were you drinking a lot of alcohol?

IJ. You mean in that time period or in that…?

Q. In that time period your honor..in 1993?

A. No… I wasn't drinking much because for a while because I had been seeking help to stop drinking. I looked for help on my own to try and stop drinking alcohol.

Q. Okay so when did you start drinking alcohol?

A. When I came to this country in 1981.

Q. Okay now you said that on your own you tried to get help?

A. Yes.

Q. Do you recall when that was? What year?

A. 1991 my brother died after my brother died. I was (b) (6) I tried to intoxicate myself. I also took a bunch of pills. After I was able to leave the hospital I went to a clinic called "(b) (6) " to try to get help to stop drinking alcohol.

Q. Okay so let me be clear with this you went to the hospital because you took pills? Is that what you're saying?

A. Yes plus alcohol as well.

Q. Why did you do that?

A. Because I was (b) (6) my life since I was a child.

Q. Your honor. I'm trying… I'm trying to avoid leading. Did you check yourself into the hospital?

A. No the ambulance took me there.

Q. Why?

A. Because again I had taken a whole bunch of pills.

Q. And why did you do that?

A. Because in that time I thought I rather just finish my own life.

Q. Okay so after you came out of the hospital. Did anybody make you go get help? Or on your own?

A. On my own.

Q. At this place called "(b) (6) "?

A. Yes "(b) (6) " and then they sent me to "(b) (6) ".

Q. And did you find that helpful?

A. Yes for 2 years I went there.

Q. Did you stop drinking completely?

A. Yes.

Q. But what happened in 1993?

A. Well I went to a party with my girl friends and I felt like having drinks.

Q. Okay and after the arrest for the DUI in 1993 did you continue to drink?

A. No.

Q. At all?

A. No.

Q. When did you start drinking again?

A. I started drinking in 2005. When I had that incident—(b) (6) and..

Q. Okay, now following that incident in 2005 did you get any additional treatment?

A. I went [redacted]

Q. And how much were you drinking around that time?

A. Well when I was going to parties or [redacted] I had a feeling that that was helping me (crying).

Q. Okay were you um…you were [redacted] at that time…correct?

A. Yes.

Q. Did you tell them about your drinking?

A. No not totally. I didn't tell them about my problems with alcohol because I was focusing more on my troubles with [redacted]

Q. Okay now what happened in 2008? How did you get arrested for a DUI?

A. It was [redacted] 2008. I gave a lady a ride home who helped me at work and she had a dinner party. And I had three drinks. Three shots.

Q. Why did the police stop you? Were you speeding?

A. Because the alcohol affects my [redacted] My hand fell asleep so I was trying to shake my hands and I released the steering wheel to move my hands… my car moved… and the highway patrol was behind me.

Q. Okay and um.. What were you required to do…as far as… What kind of punishment did you get?

A. Well they took me to the hospital. And they gave me hearing notices for court hearings and a fine and then a nine months program.

Q. Why did you have to go to the hospital? Did you crash?

A. No my [redacted]

Q. When was the last time that you had a drink?

A. The last time I drank was [redacted] 2011 at a funeral in a cemetery. One of my nephews died.

Q. Where were you drinking?

A. At the cemetery.

Q. Okay besides that time (b) (6) 2011… when you drank had you been drinking regularly… let me rephrase that… before that time in 2011 (b) (6) .. When was the time before that you last had a drink?

A. In 2008.

Q. Okay now since that alcohol that you consumed in 2011 have you had any other instances of drinking alcohol?

A. No.

Q. (b) (6) do you think you have a problem with alcohol?

A. Yes.

Q. Do you think you need ongoing treatment or a program to help you with this?

A. Yes.

Q. Okay and if the judge releases you on bond will you join some type of alcohol related program?

A. Yes.

Q. Do you understand that you abuse alcohol because you have some other issues going on?

A. Yes. Well before I didn't really know that I had that problem from when I was younger but now since I've been detained I realized that I did have a problem because a (b) (6) (begins to cry again) and ever since I spoke with (b) (6) I beg you that if I have the opportunity to be let out I will join any program if the judge gives me this opportunity. I will look for any type of help that I may need (crying).

Q. Are you okay?

A. Yes.

Q. (b) (6) do you own a car currently?

A. No.

Q. If you were released do you have access to a car?

A. No.

Q. How will you get around?

A. Public transportation.

Q. Is there public transportation near where you live?

A. Yes.

Q. What's the closest bus line?

A. There is a bus line on (b) (6)

IJ. In (b) (6) right?

Resp. I'm sorry…

(b) (6) to Resp.

Q. That's okay. Now that food truck that you mentioned. Did you drive that food truck?

A. No.

Q. Who drove that food truck?

A. Another person.

Q. Now (b) (6) you have been arrested quite a lot for your theft offenses. Generally what were the items the types of items that you stole?

A. Usually most of them were food items.

Q. Why did you steal food?

A. Because when my daughters were young because I was a single mother. I had four children. And it was easier..I had problems a lot of emotional problems.

Q. Okay so as the years went on…What I'm hearing is that you had some tough times?

A. Yes.

Q. But later on was that the same reason you continued to steal food?

A. No.

Q. Why did you continue to steal food?

A. I think that I have problems. I was [redacted]..

Q. [redacted] when was the first time you stole food?

A. When I was little. When I was a young girl. When my father passed away.

Q. And as a young girl why did you steal food?

A. Because we needed food. We didn't have enough food. When my father passed away my mother was left with six children and she had to go to work and sometimes I had to steal food in order to support my six siblings.

Q. Now you mentioned earlier you had [redacted]

A. Yes.

Q. Were you referring to this period in your childhood when you were going hungry?

A. Yes.

Q. Was there anything else going on in your childhood?

A. [redacted]

Q. How old were you when that began?

A. [redacted] years old.

Q. And how long did this abuse last?

A. 2, 3 years 4 years.

Q. And this period of time… did that coincide with the period of time that you were stealing food?

A. Yes.

Q. Do you understand that you have shown a pattern of shoplifting?

A. Before I didn't realize it but [redacted] understand that I had this problem.

Q. What [redacted] are you talking about?

A. I don't remember

Q. It's okay if you don't know the name. Where did you meet with this (b) (6) ?

A. Detention Center at (b) (6) . She visited me there.

Q. Now prior to this (b) (6)
(b) (6)

A. No I never talked about it because I felt shame talking about the issue.

Q. Even when you were (b) (6) in 2005 you didn't talk about it?

A. No.

Q. Do you understand that in order for you to stop this behavior you need to talk about it in (b) (6) ?

A. Now I do but before I did not understand that. I felt a lot of shame talking about those issues.

Q. Okay… um.. If you are allowed to be released on bond. Are you willing to come back for every court hearing that you have?

A. Yes.

Q. Will you stay away from drinking and driving?

A. Well I'm not planning to drink I am going to look for help.

Q. Okay and are you planning to look for help with your shoplifting?

A. Ofcourse. For everything.

Q. Now, are you willing to talk about it not just with a (b) (6) but also with your family?

A. Yes to be more open with my family. To trust them.
Q. I have no further questions your honor

IJ. Government. Questions?

(b) (6) **o Resp.**

Q. I have a few your honor. Ma'am if you are released on bond how are you planning on supporting yourself?

A. I'm going to live with my daughter and take care of her children.

Q. And how old is your daughter?

A. My daughter is (b) (6) years old.

Q. And is she working?

A. Yes.

Q. And she agreed to take care of you?

A. Yes.

Q. Are you planning on looking for a job or are you just going to take care of your grandchildren?

A. When my work permit comes, yes.

Q. Okay, does anyone depend on you for support anymore?

A. My grandchild, (b) (6) . He is going to live with me and my daughter as well.

Q. Okay so your daughter is planning on financially taking care of him as well?

A. Yes.

Q. You told the (b) (6) that when you moved to the (b) (6) you started associating yourself with some Salvadorans that like to steal. Is that true?

A. Yes.

Q. Who are these people?

A. Once I got my DUI. I stopped contacting them.

Q. The 2008 DUI?

A. Yes.

Q. Why was it the DUI that caused you to stop associating with them?

A. Because I was with one of them when I got the DUI. I was coming from her house..so..That's why I decided to stay away from them.

Q. Okay well you continue to steal even after you stopped hanging out with those people right?

A. One more time.

Q. Just once more?

A. Well I don't remember once or twice…I'm not totally sure.

Q. Did you ever steal anything and not get caught?

A. No.

Q. You were caught every time you tried to steal something?

A. Yes.

Q. She's getting a look from her counsel.

A. I didn't understand the question.

IJ. Repeat it to her.

(b) (6) I will your honor.

(b) (6) to Resp.

Q. Did you ever steal anything in the United States and not get caught?

A. Yes.

Q. Is it fair to say you were stealing on a regular basis?

A. Well sometimes once per week. Twice.

Q. Okay and this continued right up to 2011, right?

A. Yes.

Q. Okay you were arrested in 2000 for a drug offense. What happened there?

A. Well that time I was renting a house. I had another apartment in the back and I rented that apartment to another person. And person was selling drugs.

Q. Did you know they were selling drugs?

A. No.

Q. Do you use illegal drugs?

A. No.

Q. I don't have any further questions your honor.

IJ to Resp.

Q. Do you remember (b) (7)(C) asking you a minute ago if you have ever stolen anything and not gotten caught?

A. Yes.

Q. Have you ever driven your car or a car and not gotten caught?

A. No.

Q. Have you ever stolen anything other than food?

A. No.

Q. Are you sure?

A. I don't remember.Oh I'm sorry. I'm sorry your honor… apart from food…right?

Q. Right apart from food?

A. Yes yes.

Q. What kinds of things?

A. Clothes.

Q. Anything else?

A. No.

Q. Do you own any real property? Any house or condominium in this country?

A. No.

Q. Did you have a license to operate the food truck?

A. Yes a permit.

Q. Was it yours or was it the other persons?

A. The other persons. Yes.

IJ. Any redirect?

(b) (6) Your honor just one question.

IJ. Yup

(b) (6) to Resp.

Q. (b) (6) you know that we are in the process of trying to get you a (b) (6) right?

A. Yes

Q. Do you understand that if you get arrested again for any of these things it could, even if you get the visa approved, it could endanger you of continuing to get the (b) (6) ?

A. Yes.

Q. And that it could prohibit you from obtaining residency ultimately.

A. I do know yes.

Q. And that… that could lead to deportation.

A. Yes.

Q. No further questions your honor.

IJ. Which leads do the next question. What is the status of the (b) (6) ?

(b) (6) It is still pending

IJ. Have you gotten a request for evidence or anything?

(b) (6) I did and I have responded to it. And I responded to it earlier this month. I believe it was March 10th when I responded.

IJ. Anybody have any idea what kind of time frame we are talking about?

(b) (6) Well yesterday I got a very bizarre notice. It didn't even say it was a receipt notice or anything it just said. "Your I-765 has been reopened".... I have no idea what that means.

(b) (6) I don't have any information your honor.

(b) (6) Yes it just says that this courtesy notice is to advise you of the action taken on this case after review. We have reopened the above application and the above application listed is the I-765...but it is from the Vermont Service Center.

IJ: Well let me join the crowd. I have no idea what that means.

(b) (6) Me neither.

IJ. Um... and....I was just trying to track this out I mean... the problem with the petition for alien relative.. is she is not eligible for voluntary departure so she would have a 10 year wait...

(b) (6) That is correct and she also would need a waiver of inadmissibility and she doesn't have a qualifying relative for that.. With the unlawful presence because its only..

IJ: Oh that's right she's got the 212(a)(9) problem.

IJ. Yup! Alright...

(b) (6) Your honor are you interested in hearing arguments or?

IJ. Did you want to call the (b) (6) ?

(b) (6) Yes.

IJ. (b) (6) why don't you have a seat next to your lawyer please.

(b) (6) I'd like to call (b) (6) to the stand.

(Interpreter jokes about the (b) (6) needing an interpreter—(b) (6) says she does not)

IJ to (b) (6)

Q. Tell us your full name please.

A. (b) (6)

Q. And do you swear every statement you make will be the truth?

A. Yes .

Q. Go ahead (b) (6)

(b) (6) to (b) (6)

Q. Thank you (b) (6) for coming in today… um do you recall meeting with (b) (6)?

A. Yes I do.

Q. Okay and when did you meet with her?

A. I met with her in (b) (6) of 2011 at (b) (6)

Q. And um was that the first time you met with her?

A. Yes .

Q. And how long did you meet with her?

A. I met with her for the entire day it was approximately seven to eight hours.

Q. And can you tell us what occurred during those seven to eight hours?

A. So during that time (b) (6)
(b) (6)

Q. Okay and was she cooperative?

A. Yes she was.

Q. Okay and before we get down to the nitty gritty can you tell us your overall impression of her (b) (6) if that's the correct term?

A. My overall impression of (b) (6) is that she is someone that has experienced (b) (6)

Q. Okay and did you reach some sort of conclusion as to what (b) (6)?

A. Yes. [redacted]

Q. And how at all was she dealing with these issues?

A. It seems to me that she was doing as best as she could given the circumstances… um… [redacted]

Q. Okay and you're aware that following her [redacted] in 2005 she [redacted]?

A. Yes.

[redacted]

A. It appears that she [redacted]

Q. Do you know why that was not [redacted]?

A. Well, I don't know exactly why. But from what [redacted] shared with us—part of the information was not shared with [redacted]

Q. Why do you think she didn't share that?

A. Well from what I understand and from what [redacted] shared with me. She became [redacted]

Q. Okay um did you reach [redacted]?

A. [redacted]

(b) (6) [redacted]

Q. Okay now I've read (b) (6) [redacted] (b) (6) [redacted].

A. Yes.

Q. Now how is that different from just… (b) (6) [redacted] (b) [redacted]?

(b) (6) [redacted]

A. Not that I'm aware of.

Q. Okay.

(b) (6) [redacted]

A. No.

(b) (6) [redacted]

Q: I have no further questions your honor

IJ. Government any questions for this witness?

(b) (6) [redacted] to (b) (6) [redacted]

Q. Thank you your honor just a couple. Good morning ma'am.

A. Morning.

Q. Have you met with (b) (6) [redacted] since (b) (6) [redacted] 2011?

A. No I have not.

Q. Have you reviewed any documents or anything since then?

A. No further documents other than at the time of the assessment.

Q. Well actually then… no further questions thank you.

IJ. Any redirect?

(b) (6) [redacted]: No your honor

IJ. Thank you (b) (6) [redacted]. Your welcome to stay if you want to or if you need to go by all means…get back on with your life.. thank you very much. Any other witnesses?

(b) (6) [redacted]: No your honor.. I just want to point out to the Court that pretty much all of (b) (6) [redacted] family is here in the court room today here for emotional and moral support but also to evince that (b) (6) [redacted] will not be released into an unsupportive environment if she

were to be released on bond. And her daughters in particular who are here today have been very concerned and motivated to really assist and help their mother.

IJ. Fair enough. Government anything on this?

(b) (6) No thank you.

IJ. Alright thanks. Let me think about it. I'll do a written decision for you. Anything else today?

(b) (6) No your honor. When can we expect a decision?

IJ. Very quickly.

(b) (6) Okay. Can I make some further arguments then if you need to think about it. I would like to have my say. I do want to point out that generally, at least in this circuit petty theft is not considered a behavior that constitutes a danger to the community. I can point to a specific case, (b) (6) and that is a 201 I (b) (6) decision that discusses prolonged detention and does talk about petty theft specifically and states that "under a clear and convincing evidence standard the BIA might conclude that (b) (6) s largely non- violent prior bad acts do not demonstrate a propensity for future dangerousness." And I would like to point out your honor that even though we haven't really discussed it, that at this point given the length of time that (b) (6) has been in custody which is 17 months, I think we can all agree that that's quite a prolonged period and that the burden should actually be on the government to prove by a clear and convincing standard that..

IJ. That was the premise under which I was operating and I know that this is technically a pre-decisional 1226 (a) case but so that we don't end up repeating ourselves that's exactly the burden I was going to use.

(b) (6) Okay…

IJ. But… go ahead

(b) (6) And I'd also like to point out your honor that I think that (b) (6) has really shown despite her repeated history of offenses that she is motivated to seek treatment and as serious as her DUIs are I think that the fact that she really stopped drinking in 2008. She did drink on one occasion, she said but that was due to the death of her young nephew. She drank at the cemetery. I don't think that necessarily shows a propensity to return to drinking. I think in effect she has been sober since 2008. She is aware of the dangers not only to herself but to others if she continues to engage in that kind of behavior. With respect to the repeated theft--clearly that's an issue that concerns the Court. I would like to point out however that she is motivated to seek treatment and at the very worst circumstances if she were to offend yet again, I'd like just the Court and for everyone to keep into perspective that we are talking mostly about very minor food

items and given the cost to the government and the tax payers—in keeping her incarcerated, I think we want to weigh any potential danger to society against the cost to society.. And that's not to concede that petty theft is a dangerous offense since it is my contention that it is not.

IJ. You don't disagree with me that the length of time that the person is incarcerated doesn't really correlate to flight risk or danger?

(b) (6) No..no your honor I'm not saying that. I'm just saying that it should be considered that she has been in custody now for 17 months and for very minor offenses. In fact…she has served more time in civil detention under immigration custody than for all of her offenses combined.

IJ: Right but that's because she filed applications for relief and I had to give her a hearing and I had to adjudicate them and there's a lot of people in line ahead of her and that's why she's remained detained and keep in mind that.. I mean she has a very sympathetic personal story… *but keep in mind--This is a person who entered the country illegally in violation of the law---Congress said that by itself made her deportable*. And then she committed multiple criminal offenses and congress took the position in 1996 if you do that--you're supposed to be detained while your case is adjudicated so I mean…

(b) (6) Okay

IJ. Its not like somebody's picking on her or the system has somehow singled her out. I mean those are judgments made by the federal legislature.

(b) (6) Okay, well let's get down to basics. Is she a flight risk and is she a danger to the community? I don't think she's a flight risk and I don't think even the government would argue she's a flight risk. She's got viable relief. She's got a network of family. She is mainly responsible for a nine year old… she's not going to disappear. Are we in agreement with that? [looking to (b) (7)(C)].

IJ: **It doesn't matter whether he agrees with you or not it matters whether I agree with you.** So there's no point in putting him in that position. The viable relief is the (b) (6)

(b) (6)

IJ. **Not to me.**

(b) (6) Yes, to you.

IJ. No you're not (laughing)…I've already adjudicated (b) (6) claim.

(b) (6) It's a new claim your honor and I have a brief actually that argues why it should be considered. Which I'm prepared to submit today your honor.

IJ. Alright.

(b) (6) It's an alternative form of relief just in case the (b) (6) is denied.

IJ. I mean that was frankly one of my concerns because I was sort of making a list as we went along and it looked to me, because I had already adjudicated what I though was the (b) (6) claim, What she was left with was the (b) (6) and we have no idea whether she's going to get the (b) (6) or not.

(b) (6) That's correct your honor.

IJ. That's a worry.

(b) (6) And that's why I have an alternative form of relief prepared.

IJ. I think you better file it (laughing) and you better.... You don't have to do it with me.. you can do it at the window but..

(b) (6) Well it does have to be filed in open court because it's (b) (6) application.

IJ. You can do it at the window. Its (b) (6)

(b) (6) Okay well were not going to..

IJ. We're not going to.. but I would like to take a look at that because I want to factor that in and ugh... (sigh) I guess your position would be that the Court's order is an open remand.

(b) (6) Yes. And I have... I've written a brief with that argument.

IJ. File it because I want to read that before I make a decision. Now you can do all of that at the window I don't need it. I just want to read it before I issue a decision.

(b) (6) Sure your honor---

IJ. Sorry I didn't mean to interrupt ...

(b) (6) You know, again your honor, as far as danger to the community. She might go and steal a pound of ground beef tomorrow. I don't think she will but if she did ..if she does... is that a danger to the community? I don't think that's what congress had in mind when they said that immigration court must consider danger to the community when determining whether someone should be released on bond. And like I said the ninth circuit has also stated that petty theft is really not a dangerous crime.. And I don't think

her petty theft.. even though it is quite extensive.. I don't think that amounts to the kind of danger to the community such that she needs to continue to stay in detention while she fights her removal.

IJ. Government anything on this?

(b) (6) No your honor.

IJ. Submitted? Submitted?

(b) (6) Submitted by the department.

(b) (6) Your honor I'd also like to since I don't know what your decision will be… but if it's a favorable decision, I'd like to ask-- can we discuss the bond amount because if the court sets an amount that the family cant afford its of no use to anybody.

IJ. (laughing)—Okay we don't start with the answer and work back. If a bond amount was set its got to be an amount that would reasonably ensure the..protect the safety of the community and ensure her appearance.. not.. We don't start with what the family can afford and then work backwards from there.. but if you want to give me a recommendation with respect to bond that you think the family can pay. I'll be happy to consider it. Tell me what that would be.

(b) (6) 5000 your honor.

IJ. Okay. I'll consider it.

(b) (6) Thank you.

IJ. Case submitted..Thank you folks.

Processing, FOIA (EOIR)

From: Maggard, Print (EOIR)
Sent: Wednesday, June 19, 2013 11:09 AM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Subject: (b) (6) complaint update
Attachments: complaint intake-(b) (6) -2 May 13.doc

(b) has til 3 July to respond (but knowing (b) I will get a response this week). The attorney emailed me yesterday, (b) denied a motion to continue, a motion to recuse and certified the case back to the BIA.

PRINT MAGGARD
Assistant Chief Immigration Judge
United States Immigration Court
Executive Office for Immigration Review
(b) (6)

HQ Use Only:
complaint #: _____
source: first / subsequent

Immigration Judge Complaint Intake Form

Date Received at OCIJ:

complaint source information

complaint source type

☐ anonymous ☐ BIA ☐ ___ Circuit ☐ EOIR ☐ DHS ☐ Main Justice
X respondent's attorney ☐ respondent ☐ OIL ☐ OPR ☐ OIG ☐ media
☐ third party (e.g., relative, uninterested attorney, courtroom observer, etc.)
☐ other: _____

complaint receipt method

☐ letter ☐ IJC memo (BIA) ☐ email ☐ phone (incl. voicemail) X in-person
☐ fax ☐ unknown X other: In person & provided documents

date of complaint source

(i.e., date on letter, date of appellate body's decision)

Meeting on 29 April 2013

additional complaint source details

(i.e., DHS component, media outlet, third party details, A-number)

A(b) (6)

complaint source contact information

name: (b) (6)
address: (b) (6)
(b) (6)
(b) (6)
email: (b) (6) .com
phone: (b) (6)
fax: (b) (6)

complaint details

IJ name	base city	ACIJ
IJ (b) (6)	(b) (6)	(b) (6)

relevant A-number(s)	date of incident
A(b) (6)	Approx (b) (6) 2013, ongoing case

allegations

- Respondent counsel claims a bias by the IJ toward DHS, citing denial of bond when DHS does not object to release
- She also claims inappropriate off the record comments concerning the non-viability of respondent's (b) (6) claim, stating the (b) (6) is her only form of relief before hearing (b) (6) claim (set for June); and (b) prejudging of the application before evidence (counsel has R and a country conditions expert).
- Counsel complains of many conversations taking place off the record

nature of complaint

X in-court conduct ☐ out-of-court conduct ☐ due process X bias ☐ legal ☐ criminal
☐ incapacity ☐ other: _____

actions taken		
date	**action**	**initials**
29 Apr 13	Met with Attorney [redacted], she provided documents (forwarded with this form) and discussed her issues with IJ [redacted]. She specifically stated she wanted to make a formal complaint and she was going to do a motion to recuse. [This is a long tern detained case of a grandmother who used to have TPS, entire family except respondent has some form of status, over 30 years in US, 8 convictions over time for petty theft, she is a [redacted], she has two DUIs. She is sober now and cares for the children]	[redacted]
2 May 13	Opened complaint process, scanned documents and forwarded to HQ	[redacted]
15 May 13	Discussed the complaint with IJ [redacted] wanted to respond	[redacted]
18 Jun 13	Received an email from [redacted], she filed a motion to continue and a motion to recuse, both were denied, IJ [redacted] certified the case back to the BIA	[redacted]
19 Jun 13	Forwarded the written complaint documents to IJ [redacted] for [redacted] review before responding to the complaint, due date for the response is 3 July	[redacted]

Processing, FOIA (EOIR)

From: Maggard, Print (EOIR)
Sent: Tuesday, July 02, 2013 6:05 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Subject: IJ (b)
Attachments: complaint intake- (b) -2 May 13.doc

Updated intake. Will close out early next week. Please let me know if you have any questions.

PRINT MAGGARD
Assistant Chief Immigration Judge
United States Immigration Court
Executive Office for Immigration Review
(b) (6)

Processing, FOIA (EOIR)

From: (b) (6) (EOIR)
Sent: Tuesday, July 02, 2013 3:00 PM
To: Maggard, Print (EOIR)
Subject: (b) (6) Complaint
Attachments: (b) (6) MTRecuse Den'd 2.docx; Print Comments(b) .docx

Dear Judge Maggard:

Attached please find two documents which are submitted to you as my response to the complaint filed by(b) (6)
(b)

(b)

HQ Use Only:
complaint #: _____
source: first / subsequent

Immigration Judge Complaint Intake Form

Date Received at OCIJ:

complaint source information

complaint source type

☐ anonymous ☐ BIA ☐ ___ Circuit ☐ EOIR ☐ DHS ☐ Main Justice
X respondent's attorney ☐ respondent ☐ OIL ☐ OPR ☐ OIG ☐ media
☐ third party (e.g., relative, uninterested attorney, courtroom observer, etc.)
☐ other: _____

complaint receipt method

☐ letter ☐ IJC memo (BIA) ☐ email ☐ phone (incl. voicemail) X in-person
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date of complaint source

(i.e., date on letter, date of appellate body's decision)

Meeting on 29 April 2013

additional complaint source details

(i.e., DHS component, media outlet, third party details, A-number)

A(b) (6)

complaint source contact information

name: (b) (6)
address: (b) (6)
(b) (6)
(b) (6)
email: (b) (6)
phone: (b) (6)
fax: (b) (6)

complaint details

IJ name	base city	ACIJ
IJ (b) (6)	(b) (6)	(b) (6)

relevant A-number(s)	date of incident
A(b) (6)	Approx (b) (6) 2013, ongoing case

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date	**action**	**initials**
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18 Jun 13	Received an email from (b) (6), she filed a motion to continue and a motion to recuse, both were denied, IJ (b) (6) certified the case back to the BIA	(b)
19 Jun 13	Forwarded the written complaint documents to IJ (b) (6) for (b) review before responding to the complaint, due date for the response is 3 July	(b)
2 Jul 13	Received written response from IJ (b) (6)	(b)
8-9 Jul 13	Reviewing written response and memo to BIA from IJ (b) (6), listening to DAR recordings. Estimate a decision on this compliant by 12 July.	(b)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

In re:	**Date: July 2, 2013**
(b) (6)	**File Number: A** (b) (6)
Respondent.	**In Removal and Bond Proceedings**
	MEMORANDUM

I. Background

The respondent is a citizen of El Salvador who entered the United States without inspection in 1981. After a series of criminal convictions she was placed in removal proceedings in September 2011 and charged with having entered without inspection and also with the commission of a crime involving moral turpitude. *See* Immigration and Nationality Act (INA) Sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(I). Because of respondent's multiple theft convictions she was subject to mandatory detention. INA Section 236(c)(1)(A).

Respondent's case was continued by this court many times, over a lengthy period, at respondent's request because respondent's prior counsel advised that she was seeking a (b) (6) and other relief. That application was eventually denied by U.S. Citizenship and Immigration Services (CIS). Respondent then went forward on applications for (b) (6), which were denied after a merits hearing. Represented by new counsel on appeal to the BIA, respondent filed a second application for a (b) (6), arguing that her first counsel had not properly filed the first application.

The BIA remanded the case to this court on January 11, 2013 "to ascertain the status of [respondent's] application for (b) (6) status, and if appropriate, to determine whether she has established good cause for a continuance" pending adjudication of that application.

Respondent filed a motion for bond with this court after the remand, which was denied because under the plain language of INA Section 236(c) this court had no jurisdiction to consider bond. Respondent then filed a petition for a writ of *habeas corpus* in a district court in (b) (6), which ordered a bond hearing.

That hearing was held by this court on March 26, 2013. Shortly thereafter the court issued a summary order denying bond and advised the parties that a bond memorandum would

be filed if an appeal to the BIA was perfected, as is the usual procedure in bond cases. The court subsequently issued a full bond memorandum explaining the reasons for the denial of bond. CIS subsequently denied respondent's second application for a (b) (6).

After the (b) (6) was denied, this court certified the case back to the BIA, because the BIA's remand was explicit in limiting this court to ascertaining "the status of [respondent's] application for (b) (6)."

Respondent has filed a motion requesting that this court recuse itself from hearing a claim for (b) (6) the respondent wishes to present in the future, if the BIA authorizes her to do so. The purpose of this decision to address the claims of respondent's counsel that this court would not be impartial in the adjudication of that case.[1]

There are two cardinal principles which should be kept in mind in reviewing respondent's claims:

1. A review of the record of all the proceedings in this case shows that this court has conducted all of those proceedings in a fair and impartial manner. Respondent has at all times been accorded respect and courtesy.

2. Every decision this court has made on respondent's case has been consistent with the case law, legal principles and legal interpretations that his court employs in all cases involving similar facts and legal issues. This court has issued dozens of bond memoranda, including cases in which the applicant had been ordered removed. The court's analysis in this case is entirely consistent with the analysis it routinely employs in similar cases.

II. Respondent's Claims

A. Respondent's counsel asserts that this court "pre-judged" the merits of her proposed (b) (6) claim at her bond hearing. This claim is false. As the cases cited by this court in its bond memorandum, as well as common sense make clear, not only the technical availability of relief but the likelihood of success on the merits of the proposed relief are important factors that must be evaluated in order to carry out an individualized determination of flight risk. *See, e.g.*

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[1] Contrary to respondent's assertion at pp. 4-5 and 8 of her motion, her case was never set for an individual hearing on her proposed (b) (6) claim. The court told respondent that in its view the BIA remand was limited and the court had no authority to consider a new (b) (6) claim without authorization from the Board. If there were any doubt about this, the court said the same thing at p. 5 of its April 18, 2013 bond memorandum. The June 28, 2013 hearing referred to by respondent was no more than a status conference with respect to respondent's (b) (6), as evidenced by the fact that June 28th is a Friday morning. That calendar is always set with multiple cases and used for miscellaneous matters.

Matter of Andrade, 19 I&N Dec. 488, 422 (BIA 1987): "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."

It was the respondent's counsel who requested an *individualized* determination of the likelihood that she would continue to participate in removal proceedings. Respondent's request for an individualized determination necessarily required the court to make a preliminary assessment both of whether she was eligible for (b) (6) and a preliminary assessment of the likelihood she would prevail on her claim.

This is not a novel concept. In ruling on an alien's motion to reopen a court must determine whether the applicant has shown a "reasonable likelihood of success on the merits so as to make it worthwhile to develop the issues further at a full evidentiary hearing." *Matter of A-N- & R-M-N-*, 22 I&N Dec. 953, 956 (BIA 1999). In ruling on an alien's request for a stay of removal, a court must determine whether the alien has shown "a likelihood of success on the merits." *Nken v. Holder*, 556 U.S. 418, 438 (2009). *See also* 18 U.S.C. §3142(b)(1)(B) (directing in general that a convicted defendant "shall be" detained pending appeal unless, among other things, the appeal is "likely" to be successful).

Because bond proceedings are separate from removal proceedings, a preliminary judgment at a bond hearing about the likelihood of success of a claim does not constitute a judgment at a merits hearing. It does not foreclose the possibility that evidence will be produced at a merits hearing which meets the applicant's burden of proof. That is precisely why the court said (as respondent concedes) that she might come in to a merits hearing with good evidence which would make a persuasive case.

But the court rejects the notion that the mere filing of an application for relief, without more, is strong evidence that an alien will continue to participate in removal proceedings. The court also rejects the notion that two applicants for bond should be considered as equivalent bail risks if one applicant has alleged facts which clearly indicate that the applicant will get relief and the other has alleged facts which on their face call the likelihood of relief into serious question. That is the opposite of the individualized bail risk determination respondent sought, not to mention grossly unfair to the applicant with a facially very strong claim for relief.

Respondent's counsel states at p. 6 of her motion that this court "compared respondent's claim that she belonged to (b) (6) striped cats." This claim is false, as shown, ironically, by the declaration of respondent's counsel and the declaration of her legal assistant.

In discussing whether the filing of a claim of any kind demonstrated that an alien was not a flight risk (on the theory that she had "applied for relief") the court posed what even respondent's counsel and her assistant describe as a *hypothetical.* A hypothetical is by definition not an analysis or description of the actual facts before a court. *See Descamps v.*

United States, ___ U.S. ___, No. 11-9450 (June 20, 2013), Slip Op. at 6 (emphasis added) (explaining that in a prior case "we hypothesized a statute with alternative elements," and that in a later case "the hypothetical we posited in Taylor *became* real. . . .").

In this case, the issue was whether simply filing a claim for relief reduced an applicant's risk of flight by a meaningful degree. In order to illustrate that fallacy of that view, the court said that, hypothetically, if a person filed a claim for (b) (6) because they had a fear of striped cats, while it would be true that the person had a pending claim for relief, such a claim would do little to assure the applicant's appearance in court. In addition, this court specifically stated to respondent and her counsel at that time that the court was *not* referring to respondent and *not* referring to this respondent's claim.

It is also untrue that this court conclusively stated that respondent's (b) (6) application was not a viable claim. Motion to Recuse, p. 5. What the court consistently said was that it did not *appear* to be a strong claim, for the reasons described in this court's bond memorandum.[2]

Respondent also asserts that, in her view, the court placed too much emphasis on respondent's lack of relief from removal in deciding her bond motion. But *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) explicitly states that "[a]n Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations. The Immigration Judge may choose to give greater weight to one factor over others, as long as the decision is reasonable." *See also* 8 C.F.R. § 1003.19 (d): "The determination of the Immigration Judge as to custody status or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or the Service."

This court has conducted dozens of bond hearings involving aliens with removal orders. This court always gives great consideration to whether the alien has any realistic or reasonable prospect for relief. Again, this is just common sense, as well as what the BIA's case law says: an alien who is less likely to prevail on a claim for relief is correspondingly less likely to continue to participate in removal proceedings. Family ties combined with a good chance of relief give a respondent an incentive to participate in removal proceedings. But for an applicant who has been ordered removed, *and* who does not have a strong case for relief, family ties actually provide a *disincentive* for a respondent to continue participating in removal proceedings. This is because, in the latter case, continued participation increases the likelihood that a respondent will be detained, removed, and separated from his or her family.

When, as here, the court (1) follows the BIA's case law and (2) applies the same

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[2] Respondent's counsel stated at one point that (b) (6) claims have been successful. But a statement at that level of generality is almost meaningless. Of course there have been successful "(b) (6) claims." That is like saying there have been successful claims (b) (6). While true, it says nothing about whether the respondent's particular claim appeared strong or weak.

standards to respondent's case that it applies to others similarly situated, that does not show bias. That shows the opposite of bias, because the court has followed the law, and treated similarly situated applicants similarly.

B. Respondent's counsel asserts that the assigned DHS attorney was in agreement that she should be released on bond, but the court improperly refused to accept the parties' proposed disposition. Even if respondent's representations about the assigned DHS attorney are accurate, it is this court, not the litigants, which is responsible by law for deciding whether a respondent should be released and if so under what conditions. This court, as a matter of policy, does not abdicate its responsibility to decide how any case should be decided. While the court considers proposals and agreements of the attorneys, it is not bound by agreements made by the parties.

There is an important reason for this. While the litigants in a particular case are generally concerned about their particular case, the court has to decide similar cases day after day. It is critical in deciding those cases that similarly situated people be treated similarly, and so the court has to follow its own standards, rather than simply accede to what particular attorneys want.

In addition, and once again, the disposition of respondent's case was entirely consistent with this court's disposition of similar cases. This respondent has endangered the public at least twice by driving drunk, she said she steals at least once per week, she has no assets, and has been ordered removed. Under the standards this court consistently applies, this respondent is a very poor bail risk.

Respondent's counsel also complains that this court stated it did not issue removal orders for fun. But no court anywhere issues orders for fun. Courts issue orders with the expectation that the orders will be carried out. When a state court sentences a defendant to jail, the court expects that the defendant will be sent to jail. When a court issues a civil judgment, it expects the judgment to be satisfied. What this court was saying was that it issues removal orders with a similar expectation; that orders are not an academic exercise; and that they are not issued frivolously.

In the view of respondent's counsel, a statement by the court that it takes the performance of its duties seriously somehow shows that the court is biased. This does not make sense to this court.

In a related vein, respondent's counsel asserts that this court should not have considered whether DHS has the resources to apprehend aliens with removal orders. But as the Supreme Court has said, the "basic purpose" for detention of aliens ordered removed is "assuring the alien's presence at the moment of removal." *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). As set forth in detail in this court's bond memorandum, the likelihood of a respondent appearing for removal is both a legitimate concern and also a key concern where, as here, the applicant for

bond has been ordered removed.[3]

C. Lastly, respondent's counsel asserts that she did not get an impartial bail hearing because this court disagreed with the district court's analysis of the "when released" clause in Section 236(c) of the INA. But the Board of Immigration Appeals disagrees with the district court's analysis of the "when released" clause. *Matter of Rojas*, 23 I. & N. Dec. 117, 127 (BIA 2001). The only federal appeals court to have considered the question disagrees with the district court's analysis of the "when released" clause. *Hosh v. Lucero*, 680 F. 3d 375 (4th Cir. 2012).

In its clearest form, the district court's position was that when Congress provided for greatly expanded mandatory detention of criminal aliens, it *intended* that those aliens would *not* be subject to mandatory detention if DHS was not waiting to detain them immediately. The district court's view leads to the following result. (The reader is cautioned that this is a hypothetical.) Suppose there are two aliens who are convicted of the exact same crime, and they are released on the exact same day from the same jail. One alien is apprehended by DHS immediately. The other alien through an oversight is apprehended some time later. According to the district court, it was the *unambiguous intent* of Congress that the first alien be subject to mandatory detention, and the second be eligible for bond.

But what is most important for this case is that, according to the respondent's attorney, if this court agrees with binding precedent from the BIA, and agrees with a reasoned precedent from a federal circuit court, this shows the court is biased against the respondent. Again, this makes no sense to this

* * * * *

As this court stated during the March 26, 2013 bond hearing, there are factors in the respondent's case that make her a sympathetic figure. She has had a difficult life, and some bad things have happened to her in that life. But this court has no generalized discretionary power to remedy these things in the context of removal proceedings. While the respondent is entitled to an impartial court, she is not entitled to a pliant court. What the record in this case shows is that this court has been impartial in the handling of respondent's case, and did so consistently with its handling of similar cases. If this court had deviated from its usual practices in the handling of this case, respondent would be right to be concerned. But the opposite is true here. The respondent's attorney speculates that this court, after many months, and for no discernible reason, has become biased against respondent. But the truthful and accurate explanation is simply that, in this court's estimation, respondent's counsel did not present persuasive legal arguments.

The motion to recuse is denied.

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[3] Respondent's counsel suggests, but does not quite claim, that the court derided her legal arguments. This suggestion is false. The best evidence of this is the D.A.R. recording of the March 26, 2013 bond hearing, which the court urges be reviewed.

(b) (6)

Immigration Judge

MEMORANDUM

TO: ACIJ Print Maggard
FROM: IJ (b) (6)
RE: Complaint by (b) (6)
DATE: July 2, 2013

Dear Judge Maggard:

In response to the compliant by (b) (6) that you forwarded to me, I have attached to this email a copy of the decision I issued in response to (b) (6) recent motion to recuse. The decision, I believe, addresses all the same issues raised in (b) (6) complaint.

I would like to just highlight a few points.

1. I urge you to listen to the DAR recording of the March 26, 2013 bond hearing and the subsequent, brief hearings. I do not believe any fair-minded listener could conclude from those hearings that I was in any way biased against anybody involved in the proceedings.

2. During the March 26th bond hearing respondent testified that she had (b) (6) . She is now a (b) year old adult. (b) (6) here is a real stretch because she would have to show that the (b) (6) But even if she did that, she would have to show that she was (b) (6) , or had (b) (6) and that (b) (6) as opposed to simply being (b) (6) criminal acts Even if she did all that she would have to overcome the rather fundamental (b) (6) brought about by the fact that she is now a grown woman. This is why I said her (b) (6) claim did not appear strong.

3. I would like to draw your attention to the recording of the April 12, 2013 status conference. (b) (6) suggests that I was determined to deny bond to the respondent. But the reason I called the status was to find out if respondent was closer to getting a (b) (6) , and I expressly said that if we had a good indication that she was going to get the (b) (6) she ought to be released on bond.

4. I also note, with respect to "striped cats," that (b) (6) own notes from the April 17, 2013 status conference confirm my clear and specific recollection that (1) I told her the "striped cats reference was a hypothetical, and (2) I specifically told her I was not referring to respondent or respondent's claim. I deliberately chose an extreme example in order to clearly illustrate the fallacy of equating the filing of an application with having a strong claim. In addition, by explaining why simply filing an application is not enough I put her on notice of, and gave her an

opportunity to address, my concerns.

5. Lastly, I should reiterate that if you pull up bond memos I have done in other cases, you will see that I consistently take the same legal positions that I took in this case. The respondent cannot logically say that she was treated unfairly if she was treated according the same principles and standards I always employ, especially after she was put on notice as to what those standards are.

If there are matters which I have overlooked or otherwise not addressed please let me know and I will do so. If you need any additional information from me, please let me know.

(b) (6) [redacted]

Processing, FOIA (EOIR)

From: Maggard, Print (EOIR)
Sent: Tuesday, July 09, 2013 6:07 PM
To: Keller, Mary Beth (EOIR)
Subject: IJ (b) complaint

Mtk,

I have reviewed IJ (b) (6) response and listened to the DAR recordings. At this point I do not find (b) did anything unprofessional or showed bias. I find that the complaint issues are those best left to the appeal process. I will counsel on advising (b) to conduct business on the record.

Hopefully we will have a chance to talk in the next couple of days and I can close out Friday.

Thank you!

PRINT MAGGARD
Assistant Chief Immigration Judge
United States Immigration Court
Executive Office for Immigration Review
(b) (6)

Processing, FOIA (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, July 24, 2013 1:15 PM
To: Maggard, Print (EOIR)
Subject: RE: Samples
Attachments: (b) Response - (b) .doc

Print,
Some suggestions for your consideration.
Mtk

MaryBeth Keller
Assistant Chief Immigration Judge

From: Maggard, Print (EOIR)
Sent: Wednesday, July 24, 2013 12:12 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: Samples

Draft of (b) response, I did put in a line about staying on the record, but not that it was a counseling, please feel free to red line me all up ☺

PRINT MAGGARD
ACIJ
United States Immigration Court
San Francisco, Seattle, Portland, Tacoma
Executive Office for Immigration Review

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, July 24, 2013 7:50 AM
To: Maggard, Print (EOIR)
Subject: Samples

Some quick examples…they run the gamut. Call me if you want to discuss.

MaryBeth Keller
Assistant Chief Immigration Judge
(b) (6)
(b) (6) @usdoj.gov

U.S. Department of Justice

Executive Office for Immigration Review
Immigration Court
(b) (6)

(b) (6)
(b) (6)
(b) (6)
(b) (6)

RE: Complaint concerning A(b) (6)

Dear (b) (6),

On 29 April 2013, we met and you discussed many issues you were having with IJ (b) (6). Specifically, you believe IJ (b) (6) shows a bias toward DHS, citing denial of bond when DHS does not object to release. You also complained of inappropriate off the record comments concerning the non-viability of respondent's (b) (6) claim, citing (b) ~~stating~~ the judge's statement that the (b) (6) is her only form of relief before hearing the (b) (6) claim, and that (b) prejudged the application before evidence is received.

I have reviewed the documents you provided and I have listened to all of the digital audio recordings for this respondent, as well as the judge's decision to deny recusal and (b) certification of the record back to the Board of Immigration Appeals (BIA) ~~by IJ~~ (b) (6). In addition, I reviewed a response to me from IJ (b) (6) responding to the complaint. I have discussed this case in detail with IJ (b) (6).

As you know the case was certified back to the BIA by IJ (b) (6). Where counsel believes an incorrect result was reached ~~but misconduct is not indicated~~ or disagrees with the judge's rulings, ~~,~~ the appropriate recourse is the appellate process ~~that is being pursued~~. Based on my review of all of the available information, I do not find misconduct by the judge ~~on behalf of IJ~~ (b) (6) ~~.~~ though I have discussed staying on the record with IJ (b) (6) ~~. ; but I find no bias or misconduct on~~ (b) ~~behalf in this case. An appeal of IJ~~ (b) (6) ~~'s decision by you would be the appropriate response if you disagree with~~ (b) ~~rulings and decisions~~.

Thank you for bringing your concerns to my attention.

PRINT MAGGARD
Assistant Chief Immigration Judge

Processing, FOIA (EOIR)

From: Maggard, Print (EOIR)
Sent: Wednesday, July 24, 2013 4:06 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: Samples
Attachments: complaint intake-(b) -2 May 13.doc

Thank you, the letter to the attorney went out with corrections.

PRINT MAGGARD
ACIJ
United States Immigration Court
San Francisco, Seattle, Portland, Tacoma
Executive Office for Immigration Review

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, July 24, 2013 10:15 AM
To: Maggard, Print (EOIR)
Subject: RE: Samples

Print,
Some suggestions for your consideration.
Mtk

MaryBeth Keller
Assistant Chief Immigration Judge

From: Maggard, Print (EOIR)
Sent: Wednesday, July 24, 2013 12:12 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: Samples

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San Francisco, Seattle, Portland, Tacoma
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From: Keller, Mary Beth (EOIR)
Sent: Wednesday, July 24, 2013 7:50 AM
To: Maggard, Print (EOIR)
Subject: Samples

Some quick examples…they run the gamut. Call me if you want to discuss.

MaryBeth Keller
Assistant Chief Immigration Judge
(b) (6)
(b) (6) @usdoj.gov