IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HANAD ABDI and JOHAN BARRIOS RAMOS, on behalf of themselves and all others similarly situated,

Petitioners,

v.

KIRSTJEN M. NIELSEN, Secretary of the U.S. Department of Homeland Security, *et al.*,

Respondents.

CIVIL NO. 17-CV-00721-EAW

RESPONDENTS' RESPONSE TO PETITIONERS' MOTION FOR CLARIFICATION OF PRELIMINARY INJUNCTION

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DATED: January 22, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

REGULATIONS

Respondents respectfully ask this Court to deny Petitioners' motion for clarification of the November 17, 2017 preliminary injunction. Contrary to Petitioners' claim, they are not seeking merely a clarification of the preliminary injunction, but, rather, a fundamental alteration to the Court's mandate. Their motion, premised on events that occurred only after this Court issued the preliminary injunction, seeks substantive relief that far exceeds not only the scope of the injunction, but also of their amended petition.

Three other factors also require the Court to deny Petitioners' motion. First, this Court lacks subject-matter jurisdiction over bond decisions. Second, even if subject-matter jurisdiction exists, Petitioners have not exhausted their administrative remedies as they are required to do. Finally, Petitioners' new claims lack merit: There is no precedent requiring immigration judges to consider any particular factors when rendering a wholly discretionary bond determination. Thus, this Court should deny Petitioners' motion.

I. BACKGROUND

In their amended petition, Petitioners Hanad Abdi and Johan Barrios Ramos seek discrete relief on behalf of themselves individually and for a class and subclass of aliens who seek asylum in the United States and are awaiting asylum hearings before an immigration judge. (First Amended Petition for a Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, ECF No. 17 ("Am. Pet.").) Petitioners challenge their prolonged detention without a bond hearing as violative of 8 U.S.C. § 1225(b) and the Fifth Amendment's Due Process Clause.[1] (*Id*. at ¶¶ 108-109.) Specifically, Petitioners seek only: (1) an order requiring

[1] Petitioners also contend that their parole denials violate 8 U.S.C. § 1182(d)(5)(A), 8 C.F.R. § 212.5, and the Fifth Amendment's Due Process Clause. (Am. Pet. at ¶¶ 108-109.) Because

Respondents to provide subclass members with a bond hearing before an immigration judge, where the government bears the burden of justifying further detention by clear and convincing evidence; and (2) a declaration that subclass members may not be detained for more than six months without providing them with a bond hearing.[2] (*Id*. at ¶¶ 114-115.) Petitioners include no claim in their amended petition relating to what immigration judges must consider during bond hearings.

This Court granted Petitioners' motion for a preliminary injunction on November 17, 2017. (Preliminary Injunction, ECF No. 56 ("PI").) The preliminary injunction requires the Executive Office for Immigration Review ("EOIR") to provide subclass members with individualized bond hearings consistent with *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015), and prohibits bond from being denied unless the government proves, by clear and convincing evidence, that an individual is a flight risk or danger to the community. (*Id*. at 66-68.) The injunction does not address what immigration judges must consider when conducting bond hearings; it only orders that a bond hearing be provided.

In their motion for clarification, Petitioners claim that during five subclass members' bond hearings that occurred on December 18, 2017, an immigration judge set bond at an amount that the subclass members cannot afford. (Petitioners' Memorandum of Law in Support of Motion for Clarification of Preliminary Injunction, ECF No. 67-1 ("Mot. for Clarification") at 2;

Petitioners' motion for clarification does not concern their parole-related claims, Respondents will not discuss them in this response.

[2] On December 19, 2017, this Court certified a subclass to address Petitioners' bond claims, defined as: "All arriving asylum-seekers who are or will be detained at the Buffalo Federal Detention Facility, have passed a credibly fear interview, and have been detained for more than six months without a bond hearing before an immigration judge." (ECF No. 66 at 23.)

Declaration of Scout Katovich, ECF No. 67-3 ("Katovich Decl").) None of the five bond hearings involved Petitioner Johan Barrios Ramos ("Mr. Barrios Ramos"), the sole representative of the subclass. In fact, Mr. Barrios Ramos has not had a bond hearing, because, on September 14, 2017, Immigration and Customs Enforcement released him from detention on parole. (PI at 4.)

Petitioners allege that at the five bond hearings, the immigration judge did not inquire into the class members' financial circumstances and did not address alternative conditions of release. (Mot. for Clarification at 2-3; Katovich Decl.) Petitioners now ask this Court to order immigration judges conducting bond hearings under the preliminary injunction to "consider alternative conditions of release and an individual's ability to pay in order to determine whether bond is necessary and, if so, to set bond no higher than necessary to ensure the person's return." (Mot. for Clarification at 10.) Petitioners further request that bond hearings in which "immigration judges did not take ability to pay and alternatives to detention into account and where the individual remains detained" be reopened so that immigration judges can "conform their decisions to this Court's order." (*Id*.)

II. ARGUMENT

1. This Court should deny Petitioners' motion for clarification because it seeks relief beyond the preliminary injunction or Petitioners' amended petition.

It is axiomatic that relief a court did not grant cannot be clarified. Although Petitioners fashion their latest motion as one seeking clarification of the preliminary injunction, they actually ask for entirely new relief based on facts that occurred only after this Court issued the injunction. The Court should not reward their attempted end-run around filing an amended or new petition.

The preliminary injunction in place requires *only* that subclass member be provided with individualized bond hearings and that bond only be denied if the Government proves, by clear and convincing evidence, that an individual is a flight risk or a danger to the community. (PI at 66-68.) The Court explicitly tethered this relief to the Second Circuit's decision in *Lora v. Shanahan*, 804 F.3d 601 (2d Cir. 2015), which is silent as to whether an immigration judge must consider an alien's ability to pay or alternatives to bond.[3] (*Id*. at 66.) The injunction flows directly from the only claims Petitioners raise in their amended petition. (Am. Pet. at ¶¶ 108-109, 114-115.) Now, Petitioners ask this Court – for the first time – to order the immigration judges conducting those bond hearings to consider alternatives to bond and an individual's ability to pay. In doing so, Petitioners present wholly new facts about events that occurred only after this Court issued the injunction. (ECF Nos. 67-2, 67-3.) Because these new claims and facts are beyond the scope of Petitioners' amended petition, are outside the requirements of the preliminary injunction, and are unrelated to the requirements the Second Circuit imposed in *Lora*, Petitioners cannot obtain wholly new relief through a motion for clarification. *See Ladd v. Dairyland County Mut. Ins. Co. of Texas*, 96 F.R.D. 335, 338 (N.D. Ill. 1982) (claims not mentioned in plaintiff's original or amended complaint cannot be a class issue).

To be clear, even if Petitioners had sought this new relief through their motion for a preliminary injunction instead of the current motion, it would nonetheless still not have been available to them. To obtain preliminary injunctive relief, "the moving party must establish a

[3] In *Lora*, the Second Circuit held only that "an immigrant detained pursuant to section 1226(c) must be afforded a bail hearing before an immigration judge within six months" of detention and that "the detainee must be admitted to bail unless the government establishes by clear and convincing evidence that the immigrant post a risk of flight of danger to the community." *Lora*, 804 F.3d at 616 (citation omitted).

relationship between the injury claimed in the motion and the conduct giving rise to the complaint." *Banks v. Annucci*, 48 F. Supp. 3d 394, 422 (N.D.N.Y. 2014) (citations omitted); *see also Church of Holy Light of Queen v. Holder*, 443 Fed. Appx. 302, 303 (9th Cir. 2011) ("The injunction is therefore overly broad because it reaches beyond the scope of the complaint . . . ."); *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994); *Omega World Travel, Inc. v. Trans World Airlines*, 111 F.3d 14, 16 (4th Cir. 1997). Thus, Petitioners' failure to raise these claims in their amended petition would have also doomed any attempt to introduce these claims in their original motion for a preliminary injunction.

The only procedurally sound way for Petitioners to raise their new facts and claims would be to file an entirely new petition, or, in the alternative, to seek to amend the operative petition under Federal Rule of Civil Procedure 15(a) by obtaining Respondents' written consent or leave of this Court. *See Jones v. New York State Div. of Military*, 166 F.3d 45, 50 (2d Cir. 1999) ("Once a responsive pleading has been served, 'a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.'") (quoting Fed. R. Civ. P. 15(a)) (other citation omitted). Until Petitioners follow a proper procedural channel, this Court should decline to consider their request for new relief.

2. Bond determinations are not subject to judicial review and Petitioners failed to exhaust their administrative remedies.

Petitioners allege that an immigration judge erred by not considering enough factors during five subclass members' bond hearings. However, 8 U.S.C. § 1226(e) provides that an immigration judge's bond determination is not subject to judicial review.

"No court may set aside any action or decision by the [government] under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). Immigration judges are permitted to consider a wide range of factors, and this Court should reject Petitioners' attempt to characterize the results of that weighing as a constitutional question. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 518-22 (2003) (8 U.S.C. § 1226(e) strips jurisdiction to consider challenges to discretionary determinations). Petitioners' argument boils down to a disagreement with how immigration judges' exercise their discretion in weighing evidence, which this Court is statutorily barred from reviewing.

Even if § 1226(e)'s jurisdictional bar did not foreclose Petitioners' new claims, Petitioners would still first need to exhaust their administrative remedies by appealing the bond decisions to the Board of Immigration Appeals ("BIA") before seeking relief from this Court. In the five weeks since the immigration judge set bond during the five subclass members' hearings, only two class member have appealed the determination, and these appeals remain pending. (Declaration of Elizabeth Burgus ("Burgus Decl.") at ¶¶ 5-7.)

The longstanding regulatory scheme governing immigration bond proceedings provides aliens with the remedy of an appeal to the BIA to redress any claims of error of an immigration judge. *See* 8 C.F.R. §§ 1003.19(f), 1003.38, 1236.1(d)(3) (appeal of bond determinations). Although "[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court]," *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), a habeas petitioner generally must do so "before seeking federal court intervention," *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456 (S.D.N.Y. 2010). "Under the doctrine of exhaustion of administrative remedies, a party may not

seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself." *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (internal quotation omitted); *Foster v. INS*, 376 F.3d 75, 78 (2d Cir. 2004) ("We have been nothing if not clear in requiring that a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself."). Indeed, judicial exhaustion "serves myriad purposes, including limiting judicial interference in agency affairs, conserving judicial resources, and preventing the 'frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency.'" *See Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 93-94 (2d Cir. 1998) (quoting *McKart v. United States*, 395 U.S. 185, 193-95 (1969)). The exhaustion doctrine applies to challenges to immigration bond decisions. *See, e.g.*, *Palaniandi v. Jones*, No. 15 Civ. 4021 (RA), 2016 WL 1459607, at *1-2 (S.D.N.Y. Mar. 10, 2016) ("Petitioner's remedy lies with the BIA, to which he has already filed an appeal. Should the BIA affirm [the immigration judge's] decision, Petitioner may seek appropriate judicial review at that time.").[4]

Where the exhaustion requirement is "judicially imposed instead of statutorily imposed," several exceptions permit courts to excuse a party's failure to exhaust administrative remedies. Such exceptions include when: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a

[4] In addition to filing a bond appeal with the BIA, Petitioners can also file a motion to reconsider with the immigration judge. *Cf. Matter of Valles*, I. & N. Dec. 769, 771-72 (BIA 1997) (the filing of an appeal with the BIA does not divest the immigration judge of jurisdiction to entertain subsequent bond redetermination requests involving the same alien). All five subclass members have also failed to exhaust this avenue. (Burgus Decl. at ¶ 8.)

substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (citations omitted). However, "[e]xhaustion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992).

Petitioners do not argue for an exception to the exhaustion requirement, and it does not appear from Petitioners' motion, regardless, that any exception would apply. Although the BIA does not have authority to review the constitutionality of the statute or regulations that it administers (i.e., it cannot strike down the INA or its implementing regulations as unconstitutional), this prohibition does not prevent the BIA from remedying procedural violations or from establishing rules and guidelines concerning the type and amount of legal process that aliens must receive in immigration proceedings. In fact, the BIA has demonstrated that it will not hesitate to reduce, even dramatically, a bond on appeal. *See, e.g.*, *Matter of Gomez*, 2010 WL 1607087 (BIA Mar. 23, 2010) (reducing $25,000 bond to $1,500); *Matter of Garaycochea*, 2006 WL 901383 (BIA Feb. 22, 2006) (reducing $100,000 bond to $25,000); *Matter of Harkous*, 2004 WL 2943563 (BIA Nov. 2, 2004) (reducing $30,000 bond to $3,000). Thus, the BIA may review claims concerning procedural due process, and it is capable of affording relief to aliens who raise them. *See, e.g.*, *United States v. Gonzalez-Roque*, 301 F.3d 39, 47 (2d Cir. 2002) ("[W]hile constitutional claims lie outside the BIA's jurisdiction, it clearly can address procedural defect . . . ."); *see also, e.g.*, *Matter of Chirinos*, 16 I. & N. Dec. 276, 277 (BIA 1977) (reviewing bond hearing procedures for fairness).

By bringing their challenge in district court before exhausting their administrative remedies, Petitioners are bypassing an available process that could render the Court's consideration of their new claims unnecessary. *See Bastek*, 145 F.3d at 93-94 (identifying

purposes of exhaustion doctrine as "limiting judicial interference in agency affairs, conserving judicial resources, and preventing the 'frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency'"). Thus, to the extent the Court finds that § 1226(e) does not preclude jurisdiction, this Court should require Petitioners to exhaust available remedies before considering their new claims.

3. Petitioners' new claims fail on the merits because there is no requirement that an immigration judge consider an alien's ability to pay or alternatives to detention when setting bail.

Aside from the already-discussed shortcomings, Petitioners' motion fails on the merits. An immigration judge *may* consider an alien's ability to pay and alternatives to detention at *Lora* bond hearings during their discretionary bond determinations, but there is no Supreme Court, Second Circuit, or BIA precedent decision *requiring* him or her to do so.

The BIA has established guidance for immigration judges presiding over bond hearings, including the setting of a bond amount. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).[5] The "setting of bond is designed to ensure an alien's presence at [future] proceedings."

[5] An immigration judge "must consider whether an alien who seeks a change in custody status is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (citing *Matter of Patel*, 15 I. & N. Dec. 666 (BIA 1976)). An immigration judge may also consider any number of discretionary factors, including, but not limited to: (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities, and (9) the alien's manner of entry to the United States. *Id.* Thus, "[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." *Id.*

Matter of Urena, 25 I. & N. Dec. 140, 141 (BIA 2009). In determining what will ensure an alien's future presence, the BIA has explained that an immigration judge considers any number of discretionary factors, including any information that the immigration judge may deem to be relevant. *See Matter of Guerra*, 24 I. & N. Dec. at 40. The BIA expressed, however, that the INA in no way "limit[s] the discretionary factors that may be considered" in making a bond determination. *Id*. at 39; *see also* 8 C.F.R. § 1003.19(d) (the regulations provide that "[t]he 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 [ICE]."). EOIR's "Bond Redetermination Checklist," which includes for consideration factors such as an alien's assets and employment history when setting bond, does not mandate that an immigration judge alter the factors he or she already considers under the INA, the applicable regulations, or relevant precedent. (*See* Respondents' Ex.)

Nothing in *Lora* alters this scheme. *Lora* does not require an immigration judge to consider an alien's ability to pay or alternatives to detention in setting bond, nor does it purport to abrogate or even modify the BIA's precedential decisions concerning bond. *Lora* requires only that a criminal alien subject to mandatory detention under § 1226(c) receive a bond hearing within six months of detention and that such an alien "must be admitted to bail unless the government establishes by clear and convincing evidence that the immigrant poses a risk of flight or a risk of danger to the community." *Lora*, 804 F.3d at 616.[6]

[6] In *Rodriguez v. Robbins*, 804 F.3d 1060, 1087 (9th Cir. 2015), *cert. granted sub nom. Jennings v. Rodriguez*, 136 S. Ct. 2489 (2016) (internal citation omitted), the Ninth Circuit, on the other hand, explicitly stated that immigration judges "are required to consider the use of alternatives to detention in making bond decisions." And in *Hernandez v. Lynch*, No. 16-cv-0620 (JGB), 2016 WL 7116611 (C.D. Cal. Nov. 10, 2016), the Ninth Circuit upheld a preliminary injunction for

Regarding alternatives to detention, the Southern District of New York considered the issue in *Alvarez v. Shanahan*, observing:

> In *Lora*, the Second Circuit held that "an immigrant detained pursuant to [§] 1226(c) must be afforded a bail hearing before an immigration judge within six months of his or her detention" and that "the detainee must be admitted to bail unless the government establishes by clear and convincing evidence that the immigrant poses a risk of flight or a danger to the community." 804 F.3d at 616. *Lora* does not discuss whether or not "bail" in this context includes conditional parole, and the Court is not aware of a case within the Second Circuit that has addressed the issue since *Lora*.

No. 15 Civ. (RA) (AJP), 2016 WL 3406076, at *2 (S.D.N.Y. June 7, 2016). The BIA has held that requests for conditional parole are inappropriate where an immigration judge has concluded that an alien is a flight risk or a danger to the community. *See, e.g.*, *In re Luis Navarro-Solajo*, 2011 WL 1792597, at *1 n.2 (BIA Apr. 13, 2011) (declining to address request for release on conditional parole where "bond [was] appropriate under the facts and [was] warranted in the proceedings below to ensure the respondent's presence at future scheduled immigration hearings").

In sum, during a *Lora* bond hearing, immigration judges are not required to consider an alien's ability to pay or alternatives to detention when setting bail, and this Court should not find otherwise.

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class members within the Central District of California that requires immigration judges to consider ability to pay at bond hearings for aliens detained under § 1226(a), but did not require the same consideration for aliens who receive *Rodriguez* hearings. *Rodriguez* is on appeal to the Supreme Court, and *Hernandez* remains pending.

4. Mr. Barrios Ramos has no standing to raise Petitioners' brand new claims.

A final obstacle Petitioners face is that Mr. Barrios Ramos lacks the requisite standing to bring Petitioners' new claims on behalf of the subclass. As the sole subclass representative, Mr. Barrios Ramos must demonstrate a "legally and judicially cognizable" injury, *Raines v. Byrd*, 521 U.S. 811, 819 (1997), consisting of, at minimum, a "concrete and particularized" injury that is "actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). He must "demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis v. FEC*, 554 U.S. 724, 734 (2008). Because Mr. Barrios Ramos has not had a bond hearing, he cannot claim to have suffered the injury that supports Petitioners' new request for relief.[7] Without the requisite standing, Mr. Barrios Ramos cannot raise these new claims in his individual capacity, nor can he bring these claims as a representative on behalf of the subclass. In fact, should the Court permit Petitioners to raise these brand new claims in this case, then it will be necessary for the Court to reevaluate whether the requirements of Rule 23 continue to be satisfied. *Fleischman v. Albany Medical Center*, No. 06-cv-0765, 2010 WL 681992, *2 (N.D.N.Y. Feb. 16, 2010) ("courts must, on a case by case basis, 'reassess their rulings as the case develops, and must define, redefine, subclass, and decertify as appropriate in the progression of the case from assertion to facts'") (citations omitted); *Hum v. Dericks*, 162 F.R.D. 628, 633 (D. Haw. 1995) ("The court has an ongoing duty

[7] Although this Court determined that the voluntary cessation exception and inherently transitory exceptions to the mootness doctrine preserved the claims Petitioners raise in their amended petition, those exceptions do not apply here. (PI at 31-41.) Mr. Barrios Ramos' personal interest in the new claims is not moot; rather, it never existed in the first place and cannot be rescued by a mootness exception.

to ensure compliance with Rule 23(a), even after certification."). Mr. Barrios Ramos's lack of standing, therefore, further supports this Court's denial of Petitioners' motion.

VI. CONCLUSION

The Court must deny Petitioners motion to "clarify," which is, to the contrary, a request for new relief they have not sought in their amended petition. Absent the requisite subject-matter jurisdiction over bond decisions or Petitioners' exhaustion their administrative remedies, the Court may not grant Petitioners' motion. Moreover, because no statute, no regulation, and no judicial decision mandates that immigration judges consider an alien's ability to pay in the context of a wholly discretionary bond determination, and because Petitioner Barrio Ramos lacks standing to seek the requested relief, this Court should further deny the motion.

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DATED: January 22, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2018, I filed the foregoing document with the Clerk of the Court through the Court's ECF system.

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DECLARATION OF ELIZABETH BURGUS

I, ELIZABETH BURGUS, declare as follows:

1. I hold the position of Paralegal Specialist in the Office of the General Counsel ("OGC") for the Executive Office for Immigration Review ("EOIR"). My duties include, among other things, reviewing records of proceedings ("ROP") and EOIR electronic database records for purposes of confirming case procedural history.

2. On January 19, 2018, I performed a query of the EOIR electronic database records related to the bond proceedings for: ALSANE SEYE, A209-426-074; DENEL THOMAS, A209-763-719; NANA OWUSU, A205-063-434; DAHIR MUSSE, A209-416-880; and ABOUBACAR SOUMAH A212-993-098. I reviewed the results of this query and am familiar with the procedural history of the bond proceedings for each of these cases.

3. According to the EOIR electronic database records, on December 18, 2017, the above named respondents appeared for bond hearings before Immigration Judge Steven J. Connelly at the Immigration Court located in Batavia, New York.

4. According to the EOIR electronic database records, on December 18, 2017, Immigration Judge Connelly granted the requests for bond in all of these cases. All of these respondents reserved their right to appeal. Their appeals were due on or before January 17, 2018.

5. According to the EOIR electronic database records, on January 8, 2018, Mr. Seye (A209-426-074) appealed the bond decision with the Board of Immigration Appeals ("BIA"). That appeal is currently pending before the BIA.

6. According to the EOIR electronic database records, on January 18, 2018, Mr. Soumah (A212-993-098) appealed the bond decision with the BIA. That appeal is currently pending before the BIA.

7. As of January 19, 2018 and according to the EOIR electronic database records, Mr. Thomas, Mr. Owusu, and Mr. Musse Dahir have not filed bond appeals with the BIA.

8. As of January 19, 2018 and according to the EOIR electronic database records, none of these respondents have filed a Motion to Reconsider their bond decisions.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 19, 2018

Elizabeth Burgus
Paralegal Specialist, OGC
Executive Office for Immigration Review

Bond Redetermination Checklist - INA § 236(a)

Name: *Click to Enter Respondent's Name* A Number: *Enter A Number* Date Entered DHS Custody: *Enter Date*

Initial DHS Bond Amount: *Enter Amount* Amount Requested: *Enter Amount*

☐ Danger to Community (Persons, Property, or National Security)

☐ Criminal History (Including Extensiveness, Recency, Seriousness):

- Crime: *Enter Crime* Date: *Enter Date* Sentence: *Enter Sentence*
- Crime: *Enter Crime* Date: *Enter Date* Sentence: *Enter Sentence*
- Crime: *Enter Crime* Date: *Enter Date* Sentence: *Enter Sentence*

☐ Other: *Enter Other*

If no danger, then consider:

☐ Flight Risk

☐ Entry Date: *Enter Date*
☐ Manner of Entry: *Enter Manner*
☐ Fixed Address in U.S.: *Enter Address*
☐ Length of Residence in U.S.: *Enter Length*
☐ Family Ties in U.S. (And Whether They May Lead to Permanent Residence):
☐ Spouse: *Enter Name* U.S.C. ☐ / LPR ☐
☐ Children:

- Name: *Enter Name* D.O.B.: *Enter Date* U.S.C. ☐ / LPR ☐
- Name: *Enter Name* D.O.B.: *Enter Date* U.S.C. ☐ / LPR ☐
- Name: *Enter Name* D.O.B.: *Enter Date* U.S.C. ☐ / LPR ☐

☐ Parents: *Enter Name* U.S.C. ☐ / LPR ☐ *Enter Name* U.S.C. ☐ / LPR ☐
☐ Siblings:

- Name: *Enter Name* D.O.B.: *Enter Date* U.S.C. ☐ / LPR ☐
- Name: *Enter Name* D.O.B.: *Enter Date* U.S.C. ☐ / LPR ☐
- Name: *Enter Name* D.O.B.: *Enter Date* U.S.C. ☐ / LPR ☐

☐ Other: *Enter Other*
☐ Employment History: *Enter History*
☐ Assets in U.S. (Including Property, Income, Savings): *Enter Assets*
☐ Prior Immigration Violations: *Enter Prior Violations*
☐ Prior Appearances in Court: *Enter Prior Appearances*
☐ Prior Attempts to Flee Prosecution or Escape From Authorities: *Enter Prior Attempts*
☐ Possible Immigration Relief:
ASY ☐ WH ☐ CAT ☐ 42A ☐ 42B ☐ AOS ☐ VD ☐ OTHER: *Enter Other Relief*
☐ Other: *Enter Other*

☐ BOND GRANTED: *Enter Amount*

☐ BOND DENIED