

DETAINED

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[REDACTED]

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA**

In the Matter of

Name,

Respondent

File No. A XXX XXX XXX

**IN CUSTODY & BOND
PROCEEDINGS**

RESPONDENT'S BRIEF IN BOND APPEAL

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I. INTRODUCTION

The respondent, Name Name, through undersigned counsel, filed a timely appeal of the Immigration Judge’s (“IJ”) May XX, 2017 decision denying bond. *See* Memorandum of the Immigration Judge (June XX, 2017) (hereafter “Bond Memo”). In rendering her decision, the IJ made multiple legal errors, such as applying the incorrect legal standard. The IJ also erred in assessing the facts of the case, as she overlooked the positive evidence in the record, and misstated Name’s eligibility for relief. As a result of these mistakes and a general misunderstanding of the facts presented, the IJ denied bond to a teenage asylum seeker, a former unaccompanied minor, with one conviction for reckless driving despite his full and proactive compliance with a successful diversion program, remarkable community support and a detailed, specific release plan supported by letters from five service providers and mentors, and seven additional letters of support.

Name is a 19-year-old asylum seeker from Guatemala. When he was 4 years old, his parents took his other siblings and came to the United States, leaving him behind. At age 15, fleeing

violence and political uncertainty, Name crossed the border alone and after being detained for weeks, he was eventually reunited with his parents in Oregon. He filed an asylum application with USCIS within one year of entering the United States. As a teenager in high school, Name initially struggled to adapt to his new life in a new country with family he had not seen in over a decade. He gravitated towards friends who had also been left behind by their parents as young children, and fell into drinking. In January 2017, he was arrested for driving under the influence—his only arrest. As he had no prior convictions, Name was entered into a diversion program on February XX, 2017, pleading guilty to reckless driving with the condition that the DUI charge would be dismissed upon his successful completion of the program. In the month before he was arrested by ICE, he had already completed most of the program requirements and was in full compliance. On March XX, 2017, ICE officers tracked Name down and detained him as he was leaving the Victim Impact Panel at [REDACTED] in Portland.

At and prior to his bond hearing on May XX, 2017, Name submitted evidence of his compliance with the diversion program requirements, proof that he had already been referred to an Spanish-language alcohol treatment program, letters of support from 12 community members—five social service providers and mentors, six high school teachers and a pastor—as well as a detailed release plan. *See* Bond Exh. 2. Name also submitted evidence that demonstrated that the diversion program has a 60-70 percent success rate. *See* Bond Exh. 3.

In sum, the IJ erred by 1) in finding Name to be a danger, applying the incorrect standard and failing to consider the significant positive factors presented; 2) determining that he constituted a flight risk despite his compliance with court orders, history of appearances in court, extensive

ties to the community and eligibility for relief. Accordingly, we ask that the BIA set a bond of \$1,500.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Name Name was born in Guatemala on [REDACTED]. When he was about 4 years old, his parents, older brother, and sisters came to the United States without him, leaving him behind with his grandparents. Bond Exh. 2, p. 1. In Guatemala, his grandfather was targeted and badly beaten by gang members. *Id.* His area was also plagued with frequent political and ethnic violence, and soldiers entered his neighborhood and shot people. *Id.*

At 15, Name was sent, alone, across the U.S. border. He was detained and held in a shelter for unaccompanied minors for about three weeks. *Id.* Within one year of his entry, he filed an asylum application with USCIS as an unaccompanied minor. When he was reunited with his family in the Portland area he struggled to adjust to his new surroundings. As he states in his declaration:

When I first got here, it was really hard, because I did not really know my parents or my siblings. I had not seen them since I was about 4 years old. It felt weird to call my parents ‘mom’ and ‘dad’ because I used to call my grandparents that, since they were the ones that raised me. My siblings all spoke English and went to school, but I did not know any English. I felt like a stranger in my own family.

Bond Exh. 2, p. 1. At 16, Name found comfort in friends who, like him, were new to the United States, spoke Spanish, and had also been abandoned by their parents at a young age. *Id.* Through these friends, he began to drink. *Id.*

In January 2017, he was arrested for driving under the influence of alcohol. Bond Exh. 2 at 2. The police released him without requiring him to pay a bond, after determining he had no prior criminal history or failures to appear in court. Bond Exh. 2 at 17-20. The report notes that he

had not frequently changed his address, that he had no pending charges, no warrants, no misdemeanor or felony convictions, no former failure to appear events, and no history of drug abuse. Bond Exh. 2 at 20. Accordingly, he was given a low “release assessment score,” and was released on his recognizance without having to post bail. *Id.* In February 2017, he entered the DUI diversion program with no objection from the state. Bond Exh. 2 at p. 47.

In his first month in the diversion program, Name completed most of the requirements. He was required to (1) pay various court fines, (2) attend a Victim Impact Panel, (3) complete an alcohol and drug assessment, (3) abstain from drugs and alcohol for a year and (4) complete a recommended treatment program. Bond Exh. 2 at Tab C. Prior to his arrest by ICE, Name had already had undergone an assessment and had identified a treatment program, and paid the fees for the evaluation and referral. Bond Exh. 2, p. 2-3, 21-22, 33-34. If he wanted to drive, he would have to install an ignition interlock device which would require a breathalyzer test each time he started the car, but he elected to forgo driving altogether, and he forfeited the car. Bond Exh. 2 at 3. Name also attended the Victim Impact Panel, as DHS’s own evidence demonstrates, as its officers detained him as he was leaving the panel at a hospital in Portland, Oregon. *See* Bond Exh. 1 at p. 2-3.

Name takes responsibility for and deeply regrets the incident: “This was my mistake and I take responsibility for it. I could have hurt someone else or myself. I am a Christian and I thank God that no one was hurt. I know I am here in detention because of this... I will never do that again... I do not want to ever drink or smoke again.” Bond Exh. 2 at 2, 5. He states further that he will go to the Spanish-language treatment program to which he has been referred, and that he will stay away from drugs and alcohol. *Id.* at 3. At the Victim Impact Panel, a “very powerful class

about the tragedy of impaired driving,” Name was touched by a speaker who was in a wheelchair after driving drunk, and in the words of Name, “his words stayed with me.” Bond Exh. 2 at 3, 21. Perhaps in part because of powerful panels such as this one, the Oregon diversion program has been very successful—in 2003, under a prior version of the program with fewer incentives to complete the program, 60 to 70 percent of participants completed the program successfully. *See* Bond Exh. 3 at 48-50.

Name created a detailed release plan with support from five service providers and mentors in his community. Bond Exh. 2, Tab B, Tab E. Chief among his plans is his continued compliance with the diversion program. NAME, an Addictions Benefits Counselor for [REDACTED], submitted a letter verifying that he is working with Name, that Name had completed the court evaluation, paid the initial fee, and attended the Victim Impact Panel. Bond Exh. 2 at 21. Mr. NAME confirms that he has referred Name to Puentes, a Spanish-language alcohol treatment program that serves Latinos in the Portland area. *Id.* at 21, 23-24. He also noted that Name will be required to provide 90 days of clean drug and alcohol tests to complete the diversion program to help hold him accountable. *Id.* at 21-22. While at Puentes, Name will also have access to mental health services, case management and a recovery mentor. *Id.* at 22. Furthermore, Puentes encourages participants to stay involved in the program and other self-help groups even after completing the program. *Id.* Mr. NA pledges to be part of Name’s support system and to encourage and assist him. *Id.*

The release plan also includes steps for a job training program, GED enrollment and completion and regular case management, identifying specific supporters in the community to help him navigate these systems and meet his goals. *See* Bond Exh. 2 at 6-8, 25-30. These supporters

have submitted letters detailing how they plan to continue to support Name. *Id.* For example, DD from the Latino Network describes the 14-16 hour a week training program which Name is a part of, and explains that Name will also have case management and help attending meetings, court dates and classes. Bond Exh. 2 at 25. OM, an education and employment coordinator at Northwest Family Services, describes his prior work with Name, in which he helped Name plan his educational future and took him to a GED orientation program at a nearby community college. Bond Exh. 2 at 29. He also states that he will help Name complete his enrollment in the class and obtain his GED. *Id.* MX, of the Latino Network, attests to Name's growth, summarizes the programs available to him, and states: "This community, that I am part of, will lift him up, support him and keep him accountable so he can be successful moving forward." Bond Exh. 2 at 28.

One of Name's most long-standing supporters is CP, who first met Name when he arrived in Portland and has been his tutor and mentor since then. Bond Exh. 2 at 31-35. She attests to his difficult adjustment—as he "was struggling with rebuilding relationships with family members he had never met, such as his sister born here in the US, as well as family members he hadn't seen in over a decade." Bond Exh. 2 at 31. This struggle, she states, was the cause behind his drinking: Name "was using substances as a way to cope with his sense of isolation and disconnection at home and difficulty adjusting to life here." Bond Exh. 2 at 33. Ms. P has helped Name navigate the U.S. since he first arrived—she helped him learn how to drive and for his 18th birthday, she took him to a free dental clinic, and waited with him all night in line on the street to ensure he received the care he needed. Bond Exh. 2 at 32. Ms. P is in close contact with his family and teachers, and has met with him weekly to help him with his school work.

After Name was arrested for the DUI, he immediately told Ms. P, and she has supported him as he has sought to take responsibility and make amends for this mistake. Bond Exh. 2 at 33. She went with him to his meeting with his public defender, and reviewed the steps of the diversion program with him so that he fully understood them. Bond Exh. 2 at 33. She states: “After speaking with his lawyer and fully understanding his options, Name became both hopeful and confident about his ability to successfully complete diversion. He was ready to follow through on his commitment as well as learn more about his issues through classes and other services.” *Id.* Ms. P then helped Name obtain all the records he needed, attended his assessment, and helped to set up his treatment program. *Id.* Upon discovering that his insurance no longer covered the referred program, she set up another appointment to find another treatment program. *Id.* Unfortunately, Name was detained by ICE before he could attend this second appointment. *Id.*

Ms. P is also an important aspect of the release plan. Since his detention, she has continued to support Name, has visited him multiple times, driving from Portland to Tacoma, and has helped rally the community around him. Bond Exh. 2 at 4, 34. While Name was originally resistant to her help when he first met her, Ms. P attests to his growth and potential: “During the three years I have known Name, I have seen him make incredible strides from being an angry, hurt, betrayed teenager due to his childhood and his difficult reunification with his family to a responsible, accountable, and self-advocating young adult.” Bond Exh. 2 at 34. Now, Name proactively reaches out for assistance, is on time to legal and tutoring appointments, and accepts responsibility for his actions. *Id.* at 34-35. Finally, she will continue to ensure he attends court dates, and to meet with him weekly to make plans and goals for his continued education and sobriety. *Id.* at 35.

Name's own declaration confirms these plans, and his gratitude for the remarkable amount of support he has. Bond Exh. 2 at 3-5. Name takes responsibility for his actions, and is invested in continuing his rehabilitation:

I am very lucky because I have a lot of people who want to help me, and I am going to lean on them... If I am released, I will be better. I am going to think better and not do things like I was doing before. Before I thought of myself as a young person who was just enjoying life. I do not know why I was behaving like that—with no respect for the church or God. Now I am going to think better and be better. I was doing things the wrong way, I wanted to hang out with older kids and fit in. I have learned this is not the right way. Things went badly for me because I was not doing things in the right way. I take responsibility for what I did. It was really bad. But if you do something bad, you have to learn something. And I have learned a lot of things. I have learned from my mistakes.

Bond Exh. 2 and 4-5. He commits himself to a sober future, and to surrounding himself with positive influences, such as Ms. P. Bond Exh. 2 at 5.

Name's teachers at High School confirm that he struggled initially to adapt to the school environment, but that he has demonstrated maturity and proven his ability to grow and improve. *See* Bond Exh. 2 at 36 (JW, an English teacher: "Initially... we had several points of conflict... However, with Name, something occurred that isn't typical of many of the student in the school. I watched as Mr. NAME, of his own initiative, worked to end any dispute with me... he apologized for his errors, and over the course of a few weeks, he transformed into an excellent student...Rarely have I seen such an intentional change of behavior and attitude...He knows he has a tremendous opportunity to build his life, and that the power lies in his hands. His efforts in my classes demonstrated to me an awareness of this fact."); 39 (CT, math teacher: "Name was one of my hardest working students... on his last day he wrote me a letter thanking me for being his teacher and wishing me luck in all the classes I am teaching...I can assure you that Name will attend his

future court dates because he wants to defend his name in the right way. He is full of integrity and has an entire army of supportive people who also have integrity behind him.”); 41 (KS, school counselor: “Over the years, I have seen Name mature and grow both as a student and a young, respectful man... While in 10th grade, Name was having some issues with classroom rules and showed some defiance. I met with him individually quite a bit to coach him through his anger... His behavior improved 100% by his senior year. He has matured into a very capable young man... There is a lot of support in this community for Name... people know him and care about him.”); 42 (A, English teacher: “He had difficulty adjusting to life in America the first year he was enrolled at HS, but with the help of several school programs, Name was following the rules and checking in with me and other teachers about how to become a better student in his second year.”); 44 (E, science teacher: “Name is a young man with great potential.”); 45 (J, history teacher: “I am aware of the mistake Name made that has landed him in this current predicament. At the same time, I am equally aware of his kindness, his dedication to family and work, his experiences and escape from atrocity in Guatemala, and his willingness to accept his mistakes and go through the state’s diversion program and classes.”).

On May 9, 2017, a week prior to the bond hearing, Name submitted 45 pages of supportive evidence. *See* Bond Exh. 2. At the bond hearing, Name submitted an additional two exhibits, bring the total to 53 pages. *See* Bond Exh. 3. Despite the significant evidence of his rehabilitative efforts and plans, his absence of other criminal history, and the tremendous amount of community support, the IJ denied bond on danger and flight risk grounds.

III. ISSUES PRESENTED ON APPEAL

Whether the IJ erred in finding the respondent to be a danger; and whether the IJ erred in finding the respondent to be a flight risk.

IV. STANDARD OF REVIEW

All of the issues raised in this appeal are questions of law, discretion and judgment which the BIA should review *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii).

V. ARGUMENT

A. The Immigration Judge Erred in Finding the Respondent to be a Danger

The IJ's determination that Name is a danger is not supported by the record and is unreasonable. Although an IJ making a custody redetermination has broad discretion in deciding which factors to consider, and how to weigh them, the determination must be reasonable. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006); *Matter of Urena*, 25 I&N Dec. 140, 140 (BIA 2009) (finding no error with the IJ's custody redetermination where the appealing party did not demonstrate the IJ's conclusion was "without a reasonable foundation"). An IJ must also consider all facets of a case, and significant positive factors must be weighed against negative ones. *See Matter of P-C-M-*, 20 I&N Dec. 432, 435 (BIA 1991) (vacating an IJ's custody determination where the IJ failed to mention several critical facts, and concluding the IJ "did not consider all facets of the case"); *Matter of Saelee*, 22 I&N Dec. 1258, 1262 (BIA 2000) (stating that an initial custody determination must demonstrate that significant favorable factors are weighed against significant adverse ones). Moreover, in rendering decisions, IJs must adequately explain their

reasoning and link the facts presented to their conclusions in order to provide adequate opportunity for review. *See Matter of A-P-*, 22 I&N Dec. 468, 474-75 (BIA 1999) (holding that even summary decisions must adequately explain and link facts and law to enable meaningful challenge and review on appeal); *Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (holding that reasons for an IJ's decision must be identified and fully explained).

Here, the IJ erred in two important respects. First, she applied the incorrect legal standard, erroneously stating that Name had to rebut a presumption of dangerousness. Bond Memo at 2. Second, she failed to consider the significant positive factors presented, and as a result, her conclusions are not supported by the record. As her decision was unreasonable, the BIA should reverse her decision and set a bond of \$1,500.

1. The IJ applied the incorrect legal standard to Name's case

In explaining her decision, the IJ states that there is a presumption of dangerousness—“Even if the alien rebuts the presumption that he or she is a danger to the community, the issue of flight risk must still be considered.” Bond Memo at 2. This is incorrect. In support of this erroneous statement, the IJ cites *Matter of Drysdale*, 21 I&N Dec. 815 (BIA 1994). However, the presumption at issue in *Drysdale* was the presumption of dangerousness under the former INA § 242(a)(2)(B) when an individual had been convicted of an aggravated felony. *Drysdale*, 21 I&N Dec. at 816-817 (“We have held that the statutory scheme and the language of section 242(a)(2)(B) create a presumption against the release from Service custody of any alien convicted of an aggravated felony unless the alien demonstrates that he was lawfully admitted to the United States, is not a threat to the community, and is likely to appear for any scheduled hearings.”). This standard did not apply to Name's case, as this is no longer good law, and as he has not been convicted of

an aggravated felony. The IJ's statement to contrary indicates that she applied the incorrect standard to the custody redetermination. Such an egregious legal error, on its own, is grounds for reversal.

2. The IJ did not consider significant positive factors in assessing Name's alleged dangerousness

Additionally, the IJ's determination that the respondent is a danger is without reasonable foundation. *Urena*, 25 I&N Dec. at 140. First, the IJ did not appear to consider all the facets of the case, in particular, the significant positive factors. *P-C-M-*, 20 I&N Dec. at 435; *Saelee*, 22 I&N Dec. at 1262. Her entire analysis and reference to the 50+ pages of evidence consists of the following sentence: "He presented letters of support and a declaration." Bond Memo at 3. Indeed, she does not cite to the record at all, appear to label or list the submitted evidence or otherwise indicate that she has reviewed the submissions with any level of scrutiny. There is no reference to the police's motion for release, Name's diversion program records, the release plan, or the evidence regarding the success of the diversion program. It appears she did not consider all facets of the case, and in particular, omitted from any serious consideration the positive factors. *P-C-M-*, 20 I&N Dec. at 435; *Saelee*, 22 I&N Dec. at 1262. This is especially problematic considering that the Court had ample time to review the record in advance of the hearing.

Specifically, the IJ does not acknowledge: (1) proof of Name's compliance with the diversion program, including the fact that he was arrested by ICE as he was leaving a Victim Impact Panel; (2) that he has already identified and been referred to a comprehensive, linguistically and culturally appropriate treatment program; (3) his detailed release plan based on his strong network of support; (4) that he would be subject to 90 days of drug and alcohol tests upon release;

(5) the general success of the diversion program, as evidenced by a 60-70 percent success rate under a version of the program with fewer incentives; or (6) that local police released Name on his own recognizance after reviewing factors they deemed relevant to danger and flight risk. These factors are all directly relevant to an assessment of his alleged dangerousness, currently and prospectively, and their omission from consideration constitutes an unreasonable error. *P-C-M-*, 20 I&N Dec. at 435; *Saelee*, 22 I&N Dec. at 1262.

First, Name took immediate proactive steps to rectify his error and comply with the diversion program—he did everything possible in the four weeks between his entrance into the program and his detention. His only remaining requirements are to complete the 90-day treatment program, and to stay sober for a year. This evinces a genuine and strong ability and desire to rehabilitate and avoid any similar mistakes in the future, and should have been considered in assessment of his prospective or current dangerousness. Second, that Name has already identified a specific program, which provides comprehensive services including mental health treatment, is strongly probative evidence of his likelihood of enrollment, especially in light of the involvement of Mr. G. As both he and Ms. P affirm, he is ready to enroll in the treatment and benefit from its services, including mental health services, to learn more about his issues and to stay away from drugs and alcohol. Bond Exh. 2 at 3, 33. Third, his release plan articulates, with great detail and specificity, how Name will continue his compliance with the diversion program, and is supplemented with letters from each organization named in the plan. Bond Exh. 2, Tab B. This demonstrates not only a great network of support, but also multiple accountability sources which will ensure Name’s compliance with the program and continued sobriety.

Fourth, the fact that Name will be subject to routine drug and alcohol tests for three months in the program constitutes another accountability mechanism, and further increases the likelihood of his compliance and sobriety. Fifth, the IJ did not at all consider the evidence regarding the diversion program's general success. Name submitted evidence that demonstrated in 2003, under a prior version of the program, that 60-70 percent of participants completed the program. Bond Exh. 3, Tab H. Since this time, as detailed in that section, the program has only added further incentives to complete the program, and although no data is available regarding its current success rate, it may be reasonably inferred that it is at least as high, if not higher than the 2003 rates. *Id.* This data also bolsters the probability of Name's success in the program, and resultantly, indicates a lower probability of repeat offenses. Sixth, finally, the fact that another agency, a police department, with expertise in matters relating to recidivism and crimes, deemed Name sufficiently safe and likely to return to court that they released him on his own recognizance—without requiring any bond whatsoever—is relevant and should have been weighed in his favor.

In sum, the overwhelming weight of the evidence in the record demonstrates that Name poses no danger currently or prospectively. The IJ unreasonably erred in omitting these highly relevant and strongly positive factors from her analysis. *P-C-M-*, 20 I&N Dec. at 435; *Saelee*, 22 I&N Dec. at 1262.

B. The IJ Erred in Finding the Respondent to be a Flight Risk

Once a respondent demonstrates that he is not a danger to the community, the Court must then determine “the extent of flight risk posed” by the individual. *Urena*, 25 I&N Dec. at 141. The IJ provided nine factors to consider in assessing flight risk: 1) fixed address; 2) length of residence;

3) family ties; 4) employment history; 5) record of appearance in court; 6) criminal record; 7) immigration violations; 8) attempts to flee prosecution and 9) manner of entry. Bond Memo at 2-3. Although the IJ delineated these factors, she does not appear to weigh them, as at least eight of them weigh in Name's favor.

Name has lived at the same address since 2014 with his parents and siblings, and thus, the first three factors weigh heavily in his favor. Additionally, he has a history of attending school and attending work training programs, which leads 4 to weigh in his favor as well—especially considering he is only 19 years old. He has attended every court hearing—in both immigration court and in criminal court, thus the fifth and eighth factors weigh in his favor. Moreover, Name was only 15 years old when he was sent across the border and thus his age is a strong mitigating factor with regards to immigration violations and manner of entry.

With regards to his criminal history, the BIA has held criminal history to be relevant to an assessment of flight risk “insofar as it relates to a respondent’s character” or limits his eligibility for relief. *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (finding that a respondent’s criminal history—six convictions for attempted robbery, burglary, and receipt of stolen property over a 12-year span—indicated a consistent disrespect for the law and negatively reflected upon his character); *see also P-C-M-*, 20 I&N Dec. 432, 435 (BIA 1991) (deeming a respondent to be a flight risk in part because of his criminal history, which included multiple drug offenses, theft of a person, and burglary, which “reflect[ed] adversely on his character with respect to his potential for absconding upon release and also [made] questionable his eligibility for asylum, withholding of deportation, and other forms of relief from deportation”); *see also Matter of Ellis*, 20 I&N Dec. 641 (BIA 1993) (finding the respondent to be a flight risk where he was not eligible for any relief

due to his criminal history). Any evidence regarding a respondent's criminal history must be weighed in totality with other evidence in the record in assessing whether he is a flight risk. *Andrade*, 19 I&N Dec. at 490-91 (holding that a criminal record is not “*per se* a reasonable basis for a high bond amount” and emphasizing that the focus on the respondent's criminal history did not reflect the BIA's intent to punish him for his crimes, but rather the BIA's conclusion that his crimes, even when considered with other evidence in the record, indicated that there was a low likelihood that he would appear at future court dates).

Here, Name's criminal history is limited to a guilty plea to reckless driving—his DUI charge will be dismissed at the end of the year of the diversion program. This isolated incident is mitigated by his rehabilitative efforts and plans, and does not affect his eligibility for relief. *Ellis*, 20 I&N Dec. 641. It is notably less serious than the criminal history the BIA has previously relied upon to find a criminal history relevant to flight risk, and certainly does not demonstrate that he has poor character—especially when considered with the multitude of positive evidence in the record, as is required. *Andrade*, 19 I&N Dec. at 490-91; *P-C-M-*, 20 I&N Dec. at 435. Moreover, his compliance with the diversion program, through concerted and proactive steps, evinces a likelihood of complying with any orders from the immigration court. In addition, the police—a source with expertise in assessing dangerousness and risk of flight in a criminal context—assessed factors they deemed relevant to those questions, and released him on his own recognizance. Thus, a thorough review of his criminal history suggests that he is not a flight risk.

In addition to the enumerated factors, the IJ also appeared to consider available relief. In so doing, she relied on an erroneous understanding of Name's case, stating that voluntary departure may be his only option for relief. Bond Memo at 3. As was stated in his declaration and at the bond

hearing, he submitted an asylum application to USCIS within the one-year deadline, and is seeking asylum before the Court. Bond Exh. 2 at 1. The IJ's reference to him stating that he had no fear is not supported or otherwise cited. Bond Memo at 2. He remains eligible for asylum and is pursuing that application in his removal proceedings, and thus the relief available in those separate proceedings is not a negative factor, but rather a positive one.

The IJ's analysis of flight risk can be summarized as follows: "Respondent was given opportunity to have his removal proceedings delayed. However, as a minor he was involved with drinking and driving... He [*sic*] limited forms of relief. Given the evidence of record the court has not [*sic*] confidence that he will comply with any court orders." Bond Memo 2-3. The relevance of the procedural history of his case—wherein his case was administratively closed in Portland when he was 15 years old—is unclear. This is especially true in light of his submissions, which the IJ does not appear to take into consideration, and nowhere does the IJ acknowledge his youth at the time of his entry or thereafter. Additionally, her lack of confidence in his ability to comply with court orders does not acknowledge his actual compliance with the diversion program, his attendance at his criminal and immigration court hearings, or the multiple supporters stating that they will ensure he attends future hearings. *See* Bond Exh. 2 at 25 (DD); 28 (MX); 35 (CP). As such, this concern is unsupported by the record. *P-C-M-*, 20 I&N Dec. at 435; *Urena*, 25 I&N Dec. at 140.

Finally, even if Name did represent some degree of flight risk, the IJ erred both legally and factually in finding that no amount of bond could secure his future appearances. In a notable legal error, the IJ overlooks the fact that denying bond altogether solely on flight risk grounds is reserved, under controlling case law, for the most extreme cases. The IJ cites the only precedential

BIA decision denying bond solely on flight risk grounds, *Matter of Khalifah*, 21 I&N Dec. 107 (BIA 1995), but does not acknowledge the significant differences between the facts of that case and Name's case. In *Khalifah*, the respondent had been sentenced to death after being convicted of participation in a terrorist conspiracy in Jordan, where he faced pending criminal charges, rendering him highly unlikely to return to court if released. *See Matter of Khalifah*, 21 I&N Dec. 107 (BIA 1995) (upholding the IJ's determination that the respondent was a flight risk such that no bond could secure his appearance).

Indeed, the IJ does not recognize in her memo that, absent such extreme facts, the BIA has otherwise granted bonds where the only question presented is flight risk—even where a respondent has a lengthy criminal history and has few or no positive factors. *See, e.g., Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981) (upholding an IJ's determination that the respondent was a flight risk and setting of a bond of \$30,000 where the respondent had been convicted of murder in the Philippines and absconded to the United States while the case was on appeal, had previously been deported, frequently changed his address, had no stable employment and had been arrested for brandishing a knife); *P-C-M-*, 20 I&N Dec. at 435 (vacating the IJ's decision to release a respondent on his own recognizance, and reinstating a \$10,000 bond after deeming him to be a flight risk due to his lengthy criminal history, and his lack of a fixed address, work history, family or community ties in the United States); *Drysdale*, 20 I&N Dec. at 817 (upholding a bond of \$20,000 where the respondent committed a drug trafficking offense shortly after entering the country, did not have a fixed address and was ineligible for any relief).

Here, the IJ's determination that no amount of bond could secure Name's future appearances was unreasonable. The IJ did not articulate why she found the risk of flight to be so

high that it could not be abated by setting a bond. None of the factors presented here are remotely as extreme or serious as those at issue in *Matter of Khalifah*. Unlike the individuals at issue in *P-C-M-*, *Drysdale*, *Sugay* and *Khalifah*, Name is eligible for relief, has minimal criminal history and extensive and strong family and community ties, as well as a proven record of attending hearings and complying with court orders. Given the multitude of positive factors presented, it was unreasonable for the IJ to refuse a bond in any amount. *Urena*, 25 I&N Dec. at 140.

VII. CONCLUSION

Name has a tremendous amount of community support from more than a dozen dedicated mentors and advisors. Upon being brought to the United States as a child, he struggled initially and fell into bad habits with alcohol, but has learned from these mistakes and dedicated himself to never making them again. Through his actions and proactive planning, Name has proven his commitment to rehabilitating himself with the help of his network of supporters. He is eligible for asylum, has attended all prior hearings, complied with court orders and requirements of the diversion program, and was recognized by Multnomah authorities as a low flight risk. His personal growth and maturation, combined with the immense, active support from more than a dozen community members, will ensure that Name does not make a similar mistake in the future, and that he will attend all his future court hearings. Accordingly, we ask that the BIA set a bond of \$1,500.

Dated: July XX, 2017

By: _____

EOIR ID: XXXXXX

Attorney for Name Name

CERTIFICATE OF SERVICE

I, [REDACTED], hereby certify that on [REDACTED] I served a copy of the foregoing [REDACTED] to the Office of Chief of Counsel by uploading it onto ECAS, in which the government participates, therefore, no separate service is required.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]