



Detail

Complaint Number: 756

Immigration Judge: (b)(6)

Complaint Received Date: 04/28/13

Current ACIJ
Bertolomei, Richard J.

Base City
(b) (6)

Status
CLOSED

Final Action
Complaint dismissed as
frivolous

Final Action Date
05/07/13

Past ACIJ:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Legal	Respondent (b) (6); (b) (6)

Complaint Narrative: R alleges that the ij did not properly handle his § 236(b)(1)(B) Bond hearing property & that Judge erred by captioning it a "Removal Hearing." He alleges that staff improperly inputted information regarding the § 236(b)(1)(B) bond hearing when he checks the automated system it provides him incorrect information.

Complaint History

04/09/13	Review the extensive materials provided by the R
05/07/13	Complaint dismissed as frivolous
05/28/13	Database entry created

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: _____

complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input type="checkbox"/> BIA <input checked="" type="checkbox"/> XX respondent <input type="checkbox"/> OIL <input type="checkbox"/> EOIR <input type="checkbox"/> OPR <input type="checkbox"/> DHS <input type="checkbox"/> OIG <input type="checkbox"/> Main Justice <input type="checkbox"/> media
complaint receipt method	
<input checked="" type="checkbox"/> letter <input type="checkbox"/> fax	<input type="checkbox"/> IIC memo (BIA) <input type="checkbox"/> unknown <input type="checkbox"/> email <input type="checkbox"/> other: _____ <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) April 2, 2013 April 28, 2013	name: _____ address: (b) (6) email: N/A _____ phone: N/A _____ fax: N/A _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number) A (b) (6)	

IJ name	base city	ACIJ
Immigration Judge (b) (6)	(b) (6)	Rico J. Bartolomei
relevant A-number(s)	date of incident	
A (b) (6)	October 1 through March 22, 2013	
allegations		
R alleges that Judge (b) (6) did not properly handle his (b) (6) Bond hearing properly and that Judge (b) (6) erred by captioning it a "Removal Hearing." He alleges that the staff improperly inputted information regarding the (b) (6) bond hearing so that when he checks the automated system it provides him incorrect information.		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input type="checkbox"/> due process <input type="checkbox"/> bias <input checked="" type="checkbox"/> XX legal <input type="checkbox"/> criminal

009523

(b) (6)

RECEIVED
U.S. DEPT. OF JUSTICE
2013 APR -8 PM 1:08
E.O.I.R.
D.C.I.J.

April 2, 2013

Chief Immigration Judge
Board of Immigration Appeals
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

VIA USPS CERTIFIED MAIL

RE: (b) (6) LPR File No. A(b) (6)

**FORMAL COMPLAINT AGAINST IMMIGRATION JUDGE (b) (6)
AND URGENT REQUEST FOR OFFICIAL INVESTIGATION OF IRREGULAR
CONDUCT AND IRREGULAR BOND PROCEEDINGS SERIOUSLY AFFECTING
SUBSTANTIAL RIGHTS AND THE INTEGRITY OF THE OFFICE.**

Dear Honorable Chief Immigration Judge,

I am a long-time Lawful Permanent Resident and the pro se Respondent in my current bond appeal from an Immigration Judge's bond decision in bond proceedings dated February 11, 2013, timely filed with the Board of Immigration Appeals on March 11, 2013.

With utmost respect and in good faith, I am hereby lodging my formal official complaint against Immigration Judge (b) (6), regarding (b) (6) irregular conduct and irregular handling of my (b) (6) Bond Proceedings from October 1, 2012 through February 11, 2013, seriously affecting my substantial rights and fundamental liberty guarantees as a long-time Lawful Permanent Resident, as more fully detailed in the enclosed documents.

I respectfully urgently request that an official investigation of this matter be initiated without delay to prevent irreparable harm. Specifically, I have not been served with any Notice of Appear in this matter, other than the one seven years ago in 2006, and I am alarmed that in (b) (6) decisions and orders made in my (b) (6) bond proceedings, Judge (b) (6) repeatedly keeps captioning the (b) (6) bond proceedings as "in removal proceedings", without ever having explained to me why (b) (6) keeps interchanging the designation, and without informing me whether (b) (6) was conducting new "removal proceedings" without my knowledge simultaneously with bond proceedings, without any opportunity to defend myself.

After I received Judge (b) (6) Memorandum Decision and Order dated March 14, 2013, denying my request for reconsideration of the excessive bond amount and continuing collateral attack on the underlying basis and authority of detention, which Judge (b) (6)

captioned as having been issued "IN REMOVAL PROCEEDINGS", and after I received on March 18, 2013 the Board's receipt for my timely filed bond appeal in bond proceedings, which the Clerk incorrectly captioned as a "MOTION" in "REMOVAL" proceedings, I requested a clarification from Judge (b) (6) as to the inexplicable discrepancy of designating my bond proceedings as "REMOVAL PROCEEDINGS".

Judge (b) (6) March 22, 2013 ambiguous explanation that (b) (6) had "erred" did not clarify the discrepancy, as two days later on March 27, 2013, I again received from the Immigration Court a copy of the same March 14, 2013 Memorandum Decision and Order recaptioned anew back to "IN REMOVAL PROCEEDINGS", when in fact, to my knowledge, no removal proceedings took place. I strongly suspect now that Judge (b) (6) may be fabricating a false record of a "removal proceeding" that did not occur in my case.

Also, pursuant to my January 10, 2013 request to the Clerk to review the tape recordings of the continued bond hearings of December 11, 2012 and January 3, 2013, I noticed that the recordings contained material omissions of some of my critical statements, arguments, and objections, and that it had obviously been edited and redacted, including abrupt cut-off for "off-the-record" matters that did not occur. I am not aware of any time that we went "off-the-record" during the bond proceedings. In other words, the recordings had obviously been altered in material respects, seriously affecting my substantial rights and the completeness and integrity of the proceedings.

THEREFORE, I respectfully urgently request that a formal thorough investigation of Judge (b) (6) irregular conduct and irregular handling of my (b) (6) bond proceedings be initiated, including a certified forensic examination, authentication, and verification of the recordings, as this may involve fraud on the Court by Judge (b) (6), undermining the integrity of the office and my bond proceedings, seriously affecting my substantial rights and fundamental liberty guarantees as a long-time non-criminal and non-removable Lawful Permanent Resident.

BEING DULY SWORN, I, (b) (6) the complainant in this action, declare that I am competent to testify in this matter, and I hereby do solemnly swear, aver, declare and testify under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Date:

April 2, 2013

April 2, 2013

(b) (6)

Enclosures

(b) (6)

Pro Se Respondent
DETAINED since December 20, 2005

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

In The Matter Of

(b) (6)

A (b) (6)

Respondent.

IN (b) (6) BOND PROCEEDINGS

File No. A (b) (6)

The Honorable (b) (6)
U.S. Immigration Judge

Date Submitted: April 2, 2013

SECOND REQUEST FOR CLARIFICATION OF THE COURT'S MEMORANDUM
DECISION AND ORDER DATED MARCH 14, 2013 AND ORDER ENTERED
MARCH 22, 2013 IN RESPONSE TO RESPONDENT'S FIRST REQUEST;
MOTION FOR PRODUCTION OF TRANSCRIPTS OF BOND PROCEEDINGS
PURSUANT TO (b) (6)

The Respondent, pro se, herein respectfully declares that this matter under consideration by the Court here has arisen *solely* in the context of the Respondent's substantive claim of entitlement to release from unauthorized and unconstitutional prolonged detention in continued (b) (6) Bond Proceedings from October 1, 2012 through February 11, 2013. Please see (b) (6) (b) (6)

(b) (6)

A (b) (6)

Within these (b) (6) bond proceedings, Respondent has properly mounted a permissible collateral attack as of right on Sixth Amendment *Gideon* grounds on the jurisdictional basis and authority for his detention, and for enforcement of the *self-executing* Sixth Amendment *Gideon* constitutional mandate prohibiting his detention under the particular facts and circumstances of

this case, which is based entirely on a *factually inexistent* predicate purported “conviction” obtained without appointment or waiver of counsel and resulting invalid order of removal, the entry and execution of which is prohibited by self-executing automatic operation of law directly under the Sixth Amendment and *Gideon v. Wainwright*, 372 U.S. 335 (1963), *Custis v. United States*, 511 U.S. 485, 496 (1994), and (b) (6)

(b) (6) as well as under the substantive provisions and equal protection guarantees and express prohibitions of the Due Process Clause of the Fifth Amendment.

Respondent is increasingly concerned that the Court keeps referring to these (b) (6) bond hearings interchangeably as “removal proceedings” (see Attachments 2, 3, 5, 6 herein). To be clear, the instant (b) (6) bond proceedings were not “removal proceedings”, and at no time during these continued bond hearings from October 1, 2012 through February 11, 2013, did any matter arise, or was any issue raised, to suggest that these were “removal proceedings” within the meaning of INA § 240 or any other statutory provision. Respondent has no knowledge of any “removal proceeding” having taken place simultaneously with the bond proceedings or of any decision by the Court made “in removal proceedings”.

The Respondent, pro se, is thus compelled to respectfully request the Court for further clarification of the Court’s Memorandum Decision and Order entered March 14, 2013, captioned “IN REMOVAL PROCEEDINGS”. In this Order, the Court denied the Respondent’s Motion to Reconsider the Court’s prior bond decision entered February 11, 2013 explicitly designated in the caption as having been made “IN BOND PROCEEDINGS”, in which the Court granted bond in an inexplicably excessive, plainly unreasonable and wholly unjustifiable exorbitant amount of \$65,000, without articulating any criteria or justification for the unrealistic excessive amount of bond which Respondent’s family cannot afford to pay, effectively preventing the Respondent’s release from unconstitutional and unauthorized continued prolonged indefinite detention, currently on appeal to the Board of Immigration Appeals (“BIA”), timely filed March 11, 2013.

Respondent further requests clarification of the Court’s confusing and contradictory March 22, 2013 response to Respondent’s first request for clarification, received March 25, 2013 (see Attachment 4 herein), which raises even more questions seriously affecting Respondent’s substantial rights and fundamental liberty guarantees.

Specifically, in its March 22, 2013 ORDER captioned “IN BOND PROCEEDINGS” (Attachment 4), the Court confesses that its March 14, 2013 Memorandum was “inappropriately” captioned “IN REMOVAL PROCEEDINGS”, and explained that it “erred by omitting the appropriate designation, “IN BOND PROCEEDINGS”, from the caption of proceedings in its March 14, 2013, Order [and] accordingly amend[ed] its March 14, 2013, decision *nunc pro tunc* to include this necessary language”. The Court, however, explained that it was doing so merely to comply with 8 CFR § 1003.19(d) (providing that bond proceedings are “separate and apart

from, and shall form no part of, any deportation or removal hearing or proceeding...”), citing (b) (6). This explanation merely implies that the Court, unbeknownst to Respondent, may have in fact conducted removal proceedings simultaneously together with bond proceedings at the same time, without Respondent’s knowledge, and that the Court was merely complying with the regulations to keep the record of the bond proceedings separate from the record of removal hearing that never took place. Or was the Court referring to the record of the 2006 removal proceedings? The Court did not make clear that it did not conduct a removal proceeding simultaneously with the bond proceedings.

Respondent’s concern was substantially heightened two days later after receiving the Court’s March 22, 2013 order and corrected caption of the March 14, 2013 Memorandum made “IN BOND PROCEEDINGS”, when on March 27, 2013, the Respondent again received from the Court the very same bond decision dated March 14, 2013, but which was re-captioned anew back to “IN REMOVAL PROCEEDINGS” (see Attachment 5 herein), together with a Notice of Appeal Form EOIR-26 kit with filing instructions, without any explanation as to why the Court had reverted the caption of its March 14, 2013 Memorandum Decision and Order back to “IN REMOVAL PROCEEDINGS”.

And two days later, on March 29, 2013, Respondent received in the mail from the BIA a “FILING RECEIPT FOR APPEAL” in “REMOVAL PROCEEDINGS” (see Attachment 6 herein), when in fact Respondent’s appeal was “in bond proceedings”. The question arises: has the Court erroneously (or perhaps intentionally) entered Respondent’s (b) (6) bond proceeding in the EOIR computer systems of records as a “removal proceeding”, causing all this confusion?

With all due respect, Respondent knows for a fact that all continued hearings in this matter running from October 1, 2012 through February 11, 2013, were conducted “in bond proceedings”, not “removal proceedings”. During this entire period of time spanning over four months, Respondent was never served with any Notice to Appear “in removal proceedings” or charged with anything, never suspected, much less told by the Court that it was conducting a removal proceeding simultaneously with the continued (b) (6) bond proceeding, and the Court’s bond decision entered February 11, 2013 was clearly and explicitly captioned “IN BOND PROCEEDINGS”, and to Respondent’s knowledge, the Court never made or entered any decision, orally or in writing, “in removal proceedings”. So the Respondent does not understand why the Court keeps changing its captions of the bond proceedings back and forth. Respondent is also preplexed as to why the BIA has classified Respondent’s timely bond appeal from the February 11, 2013 bond decision as having been made “in removal proceedings”, and why does the Court keep making the same repeated mistake of erroneously (or perhaps intentionally) designation of the decision in this case as having been made “in removal proceedings”?

The Respondent thus respectfully requests the Court to kindly further clarify, and confirm, in clear and explicit terms, that it did not in fact conduct secret removal proceedings simultaneously with the instant (b) (6) bond proceedings, without Respondent’s knowledge, so that Respondent may properly prepare and timely submit his Notice of Appeal EOIR-26 form to the BIA from the Court’s March 14, 2013 bond decision, appealing the plainly unreasonable and totally unjustified exorbitant and punitive amount of bond made “IN BOND PROCEEDINGS”,

which Respondent's family cannot afford to and which in effect prevents Respondent's release from plainly illegal and unauthorized detention.

REQUEST FOR TRANSCRIPTS OF THE ENTIRE BOND PROCEEDINGS
CONDUCTED FROM OCTOBER 1, 2012 THROUGH FEBRUARY 11, 2013,
PURSUANT TO (b) (6)

The Respondent herein respectfully requests to be provided with the Court's (b) (6) Bond Memorandum in support of its bond decision, as well as duly verified, certified and authenticated transcripts of the entire (b) (6) bond proceedings conducted from October 1, 2012 through February 11, 2013, for purposes of perfecting Respondent's timely filed appeal with the BIA.

I declare under penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. § 1746 and 18 U.S.C. § 1

Date:

April 2, 2013
April 2, 2013

PROOF OF SERVICE and
Attachments 1 thru 6 attached.

(b) (6)

(b) (6)

ATTACHMENT

1

(b)(6) & (b)(7)(C)
CHIEF COUNSEL

DETAINED

(b)(6) & (b)(7)(C)
Deputy Chief Counsel
By: (b)(6) & (b)(7)(C)
Assistant Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

Rec'd
3/14/13

(b)(6) & (b)(7)(C)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

In the Matter of:

(b) (6)

In bond proceedings

File No: A (b) (6)

DEPARTMENT OF HOMELAND SECURITY'S
OPPOSITION TO RESPONDENT'S MOTION TO RECONSIDER BOND

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE**

(b) (6)

In the Matter of:)
)
)

(b) (6))

In bond proceedings)
_____)

File No: A (b) (6)

**DEPARTMENT OF HOMELAND SECURITY'S
OPPOSITION TO RESPONDENT'S MOTION TO RECONSIDER BOND**

The Department of Homeland Security ("Department") hereby respectfully submits its opposition to the respondent's motion to reconsider the Immigration Judge's February 11, 2013 bond decision.

A motion to reopen and reconsider must specify the errors of law or fact in the previous order and must be supported by pertinent authority. INA § 240(c)(6)(C); 8 C.F.R. § 1003.23(b)(2); *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006). The respondent's motion could be construed as a request for a second bond redetermination hearing. After an initial bond redetermination, any subsequent request for bond must be accompanied by a showing of a material change in circumstances arising since the prior bond hearing. 8 C.F.R. § 1003.19(e).

At the conclusion of the respondent's February 11, 2013 bond hearing, the Immigration Judge redetermined the respondent's bond from no bond to \$65,000. At this hearing, the Immigration Judge took into consideration the respondent's criminal history as well as his equities in the United States.

The respondent has not pointed to any errors of law or fact in the Immigration Judge's decision to set bond, nor has the respondent illustrated any material change in his circumstances arising since the February 11, 2013 bond hearing.¹

Therefore, the Department respectfully requests the Immigration Judge to deny the respondent's motion.

Respectfully submitted this 13th day of March, 2013.

(b)(6) & (b)(7)(C)

CHIEF COUNSEL

(b)(6) & (b)(7)(C)

Assistant Chief Counsel

¹ The respondent contends that the Department "affirmatively conceded" that his "predicate alleged conviction" was unconstitutional. Resp. Motion at 3-4. At no point in time has the Department made this concession or any other concessions in the respondent's case.

(b) (6)

(b) (6)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on the 13th day of March, 2013, I served, a true and correct copy of the foregoing *Opposition to Respondent's Motion to Reconsider Bond*, with attachments, by first-class mail, postage prepaid, upon:

(b) (6)

(b)(6) & (b)(7)(C)

Rec'd
3/14/13

ATTACHMENT

2

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Rec'd
3/15/13
A 4 20

(b) (6)

(b) (6)

IN THE MATTER OF
(b) (6)

FILE A (b) (6)

DATE: Mar 14, 2013

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT

(b) (6)

___ OTHER: _____

(b) (6)

IMMIGRATION COURT

FF

CC:

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Rec'd
3/15/13

(b) (6)

IN THE MATTER OF:

IN REMOVAL PROCEEDINGS

(b) (6)

FILE NO. A(b) (6)

RESPONDENT

DATE: March 14, 2013

MOTION: Respondent's Motion to Reconsider

ON BEHALF OF THE RESPONDENT:

ON BEHALF OF THE DEPARTMENT:

(b) (6)

Assistant Chief Counsel
Department of Homeland Security

(b)(6) & (b)(7)(C)

MEMORANDUM DECISION AND ORDER OF THE IMMIGRATION COURT

I. INTRODUCTION

The respondent was ordered removed from the United States to Portugal on February 10, 2006. The respondent's timely appeal of this decision to the Board of Immigration Appeals was dismissed on June 21, 2006. The respondent's Petition for Review of the Board's dismissal filed with the United States Court of Appeals for the (b) (6) Circuit was denied on March 26, 2012.

The respondent requested a change in his custody status pursuant to (b) (6) (b) (6). On February 11, 2013, the Court granted the respondent's request and ordered him released from custody upon posting bond in the amount of \$65,000. (IJ Order (Feb. 11, 2013).)

On March 4, 2013, the respondent requested that this Court reconsider its February 11, 2013, bond decision. (Resp't Mot. (Mar. 4, 2013).) The Department of Homeland Security (DHS) filed its opposition to the respondent's request on March 13, 2013. (DHS Opposition (Mar. 13, 2013).)

(b) (6)

^ (b) (6)

II. STATEMENT OF LAW

An Immigration Judge upon his or her motion, or upon motion of the DHS or an alien, may reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. 8 C.F.R. § 1003.23(b)(1). Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken, whichever occurs first. *Id.* § 1003.39.

A motion to reconsider is based on legal grounds and seeks a new determination based on alleged errors of fact or law. *See* section 240(c)(6) of the Act; 8 C.F.R. § 1003.2(b)(1); *see also*

(b) (6) A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority, and such a motion must be filed within thirty (30) days of the date of entry of a final administrative order of removal, deportation or exclusion, or on or before July 31, 1996, whichever is later. 8 C.F.R. §§ 1003.23(b)(1), (2).

When a motion is untimely and requires the exercise of discretion, the Court may grant a motion to reopen or reconsider *sua sponte*. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). However, the Court's power to reopen or reconsider *sua sponte* is limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations. *Id.* The Court must be persuaded by sufficiently compelling reasoning that the extraordinary intervention of its *sua sponte* authority is warranted. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999).

The decision to grant or deny a motion to reconsider is within the discretion of the Immigration Judge. 8 C.F.R. § 1003.23(b)(1)(iv).

III. FINDINGS AND ANALYSIS

Here, the respondent's motion is timely because it was filed prior to the expiration of his time to appeal this Court's February 11, 2013, bond decision. 8 C.F.R. § 1003.39.

Nevertheless, the respondent has failed to specify any errors of fact or law in the Court's February 11, 2013, bond decision. Indeed, the Court duly considered all relevant factors in setting the respondent's bond. Moreover, the arguments contained in the respondent's motion are without merit as it is well settled that an Immigration Judge lacks authority to adjudicate the validity of state convictions that are alleged as the bases of removal. *See* (b) (6)

(b) (6)

(b) (6) The Court also acknowledges the respondent's many constitutional claims. Nevertheless, "it is settled that the immigration judge and [the] Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations." *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Therefore, the respondent's motion to reconsider shall be denied.

IV. CONCLUSION

Accordingly, the Court shall enter the following Order:

(b) (6)

^A(b) (6)

ORDER: **IT IS HEREBY ORDERED THAT** the respondent's motion to reconsider be **DENIED.**

(b) (6)

Rec'd
3/15/13

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: () ALIEN ☒ ALIEN c/o Custodial Officer () ALIEN'S ATT/REP ☒ DHS

DATE: 3/14/13 BY COURT STAFF [Signature]

Attachments: () EOIR-33 () EOIR-28 () Legal Services List () Other

ATTACHMENT

3

However, in this Memorandum Decision dated March 14, 2013, the Court entitles it as having been entered "IN REMOVAL PROCEEDINGS", when in fact it should read "IN BOND PROCEEDINGS". Respondent is thus confused and respectfully requests the Court to kindly clarify whether this March 14, 2013 bond decision denying reconsideration of its prior February 11, 2013 bond decision is "in removal proceedings" or "in bond proceedings", and specifically, for purposes of appeal, which one of the 3 boxes in section 5 of the Notice of Appeal Form EOIR-26 should be checked? Also, whether a fee or fee waiver request must be submitted with the Notice of Appeal Form EOIR-26.

Date: March 20, 2013
March 20, 2013

(b) (6)

Proof of Service attached.

(b) (6)

Notice of Appeal from a Decision of an
Immigration Judge

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):

For Official Use Only

Staple Check or Money Order Here. Include Name(s) and
"A" Number(s) on the face of the check or money order.

! WARNING: Names and "A" Numbers of everyone appealing the
Immigration Judge's decision must be written in item #1. The names and
"A" numbers listed will be the only ones considered to be the subjects of
the appeal.

2. I am ☐ the Respondent/Applicant ☐ DHS-ICE (Mark only one box.)

3. I am ☐ DETAINED ☐ NOT DETAINED (Mark only one box.)

4. My last hearing was at _____ (Location, City, State)

5. What decision are you appealing?

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of
Appeal (Form EOIR-26).

☒ I am filing an appeal from the Immigration Judge's decision in *merits proceedings* (example: removal,
deportation, exclusion, asylum, etc.) dated _____.

☒ I am filing an appeal from the Immigration Judge's decision in *bond proceedings* dated _____
(For DHS use only: Did DHS invoke the automatic stay
provision before the Immigration Court? ☐ Yes. ☐ No.)

☒ I am filing an appeal from the Immigration Judge's decision *denying a motion to reopen or a motion
to reconsider* dated _____.

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

PROOF OF SERVICE

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

In The Matter Of: (b) (6) File No. A (b) (6)
IN (b) (6) BOND PROCEEDINGS

I, (b) (6) the undersigned pro se Respondent in this action, hereby declare and certify that a true copy of the enclosed documents entitled:

REQUEST FOR CLARIFICATION OF THE COURT'S
MEMORANDUM DECISION AND ORDER
ENTERED MARCH 14, 2013.

in the above entitled case, was served by institutional internal mail and United States mail on 3-20-13 in sealed envelope(s), or securely folded and stapled together, and dropped in the designated U.S. Mail institutional mailbox for internal forwarding, addressed as follows:

[X] The Honorable (b) (6)
U.S. Immigration Judge

(b) (6)

[X] ICE District Counsel
U.S. Dept. of Homeland Security

(b)(6) & (b)(7)(C)

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability pursuant to 28 U.S.C. § 1746.

Date:

March 20, 2013

March 20, 2013

(b) (6)

(b) (6)

ATTACHMENT

4

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Rec'd
3/25/13

(b) (6)

IN THE MATTER OF:

) IN BOND PROCEEDINGS
)

(b) (6)

) FILE NO. A(b) (6)
)

RESPONDENT

) DATE: March 22, 2013
)

ORDER OF THE IMMIGRATION COURT

On March 14, 2013, this Court denied the respondent's request to reconsider the Court's decision to grant bond pursuant to (b) (6)

(b) (6) Due to an administrative oversight, the caption of proceedings in the March 14, 2013, decision inappropriately read "REMOVAL PROCEEDINGS" rather than "BOND PROCEEDINGS." *Contra* 8 CFR § 1003.19(d) (providing that bond proceedings are "separate and apart from, and shall form no part of, any deportation or removal hearing or proceeding. . ."); *see also* (b) (6) The Court now amends its March 14, 2013, decision *nunc pro tunc* to include the appropriate designation, "BOND PROCEEDINGS," in the caption of proceedings.

It is well settled that the equitable remedy of *nunc pro tunc* (literally "now for then") is fully applicable in the immigration context, and may be exercised as a matter of discretion to mitigate administrative errors. *See Matter of L-*, 1 I&N Dec. 1 (A.G. 1940) (holding that the Attorney General may exercise his discretion *nunc pro tunc*); *see also Matter of T-*, 6 I&N Dec. 410, 413 (BIA 1954) (applying the principle established in *Matter of L-*). When a matter is adjudicated *nunc pro tunc*, it is as if it were done as of the time that it should have been done. *See Matter of A-*, 3 I&N Dec. 168, 172-73 (BIA 1948) (remedying a prior failure to waive grounds of exclusion by entering an order *nunc pro tunc*).

In this instance, the Court erred by omitting the appropriate designation, "BOND PROCEEDINGS," from the caption of proceedings of its March 14, 2013, Order. To mitigate this omission, the Court accordingly amends its March 14, 2013, decision *nunc pro tunc* to include this necessary language. That amended decision is appended hereto.

Accordingly, the Court shall enter the following Order:

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

ORDER: IT IS HEREBY ORDERED THAT the Court's March 14, 2013, decision in this matter be **AMENDED** *nunc pro tunc* to include the appropriate designation "BOND PROCEEDINGS" in the caption of proceedings.

(b) (6)

United States Immigration Judge

Rec'd
3/25/13

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: () ALIEN (/) ALIEN c/o Custodial Officer () ALIEN'S ATT/REP (/) DHS
DATE: 3/22/13 BY COURT STAFF: [Signature]
Attachments: () EOIR-33 () EOIR-28 () Legal Services List () Other

Rec'd
3/25/13

(b) (6)

^ (b) (6)

II. STATEMENT OF LAW

An Immigration Judge upon his or her motion, or upon motion of the DHS or an alien, may reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. 8 C.F.R. § 1003.23(b)(1). Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken, whichever occurs first. *Id.* § 1003.39.

A motion to reconsider is based on legal grounds and seeks a new determination based on alleged errors of fact or law. *See* section 240(c)(6) of the Act; 8 C.F.R. § 1003.2(b)(1); *see also*

(b) (6) A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority, and such a motion must be filed within thirty (30) days of the date of entry of a final administrative order of removal, deportation or exclusion, or on or before July 31, 1996, whichever is later. 8 C.F.R. §§ 1003.23(b)(1), (2).

When a motion is untimely and requires the exercise of discretion, the Court may grant a motion to reopen or reconsider *sua sponte*. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). However, the Court's power to reopen or reconsider *sua sponte* is limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations. *Id.* The Court must be persuaded by sufficiently compelling reasoning that the extraordinary intervention of its *sua sponte* authority is warranted. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999).

The decision to grant or deny a motion to reconsider is within the discretion of the Immigration Judge. 8 C.F.R. § 1003.23(b)(1)(iv).

III. FINDINGS AND ANALYSIS

Here, the respondent's motion is timely because it was filed prior to the expiration of his time to appeal this Court's February 11, 2013, bond decision. 8 C.F.R. § 1003.39.

Nevertheless, the respondent has failed to specify any errors of fact or law in the Court's February 11, 2013, bond decision. Indeed, the Court duly considered all relevant factors in setting the respondent's bond. Moreover, the arguments contained in the respondent's motion are without merit as it is well settled that an Immigration Judge lacks authority to adjudicate the validity of state convictions that are alleged as the bases of removal. *See* (b) (6)

(b) (6)

(b) (6) The Court also acknowledges the respondent's many constitutional claims. Nevertheless, "it is settled that the immigration judge and [the] Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations." *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Therefore, the respondent's motion to reconsider shall be denied.

IV. CONCLUSION

Accordingly, the Court shall enter the following Order:

(b) (6)

(b) (6)

ORDER: IT IS HEREBY ORDERED THAT the respondent's motion to reconsider be DENIED.

(b) (6)

Rec'd
3/25/13

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: () ALIEN (✓) ALIEN c/o Custodial Officer () ALIEN'S ATT/REP (✓) DHS
DATE: 3/22/13 BY COURT STAFF [Signature]
Attachments: () EOIR-33 () EOIR-28 () Legal Services List () Other

ATTACHMENT

5

U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

(b) (6)

Rec'd
3/27/13

MAR 27 2013

A 4 20

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

Rec'd
3/27/13

(b) (6)

IN THE MATTER OF

FILE A (b) (6)

DATE: Mar 14, 2013

(b) (6)

___ UNABLE TO FORWARD - NO ADDRESS PROVIDED

X ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS
OFFICE OF THE CLERK
P.O. BOX 8530
FALLS CHURCH, VA 22041

___ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT

(b) (6)

___ OTHER: _____

(b) (6)

CC: _____

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Rec'd
3/27/13

(b) (6)

IN THE MATTER OF:

) IN REMOVAL PROCEEDINGS
)
)
)

(b) (6)

FILE NO. A(b) (6)

RESPONDENT

DATE: March 14, 2013

MOTION: Respondent's Motion to Reconsider

ON BEHALF OF THE RESPONDENT:

ON BEHALF OF THE DEPARTMENT:

(b) (6)

Assistant Chief Counsel
Department of Homeland Security
(b)(6) & (b)(7)(C)

MEMORANDUM DECISION AND ORDER OF THE IMMIGRATION COURT

I. INTRODUCTION

The respondent was ordered removed from the United States to Portugal on February 10, 2006. The respondent's timely appeal of this decision to the Board of Immigration Appeals was dismissed on June 21, 2006. The respondent's Petition for Review of the Board's dismissal filed with the United States Court of Appeals for the (b) (6) Circuit was denied on March 26, 2012.

The respondent requested a change in his custody status pursuant to (b) (6)

(b) (6) On February 11, 2013, the Court granted the respondent's request and ordered him released from custody upon posting bond in the amount of \$65,000. (IJ Order (Feb. 11, 2013).)

On March 4, 2013, the respondent requested that this Court reconsider its February 11, 2013, bond decision. (Resp't Mot. (Mar. 4, 2013).) The Department of Homeland Security (DHS) filed its opposition to the respondent's request on March 13, 2013. (DHS Opposition (Mar. 13, 2013).)

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

II. STATEMENT OF LAW

An Immigration Judge upon his or her motion, or upon motion of the DHS or an alien, may reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. 8 C.F.R. § 1003.23(b)(1). Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken, whichever occurs first. *Id.* § 1003.39.

A motion to reconsider is based on legal grounds and seeks a new determination based on alleged errors of fact or law. See section 240(c)(6) of the Act; 8 C.F.R. § 1003.2(b)(1); see also *Ma v. Ashcroft*, 361 F.3d 553, 558 (9th Cir. 2004). A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority, and such a motion must be filed within thirty (30) days of the date of entry of a final administrative order of removal, deportation or exclusion, or on or before July 31, 1996, whichever is later. 8 C.F.R. §§ 1003.23(b)(1), (2).

When a motion is untimely and requires the exercise of discretion, the Court may grant a motion to reopen or reconsider *sua sponte*. See *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). However, the Court's power to reopen or reconsider *sua sponte* is limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations. *Id.* The Court must be persuaded by sufficiently compelling reasoning that the extraordinary intervention of its *sua sponte* authority is warranted. *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999).

The decision to grant or deny a motion to reconsider is within the discretion of the Immigration Judge. 8 C.F.R. § 1003.23(b)(1)(iv).

III. FINDINGS AND ANALYSIS

Here, the respondent's motion is timely because it was filed prior to the expiration of his time to appeal this Court's February 11, 2013, bond decision. 8 C.F.R. § 1003.39.

Nevertheless, the respondent has failed to specify any errors of fact or law in the Court's February 11, 2013, bond decision. Indeed, the Court duly considered all relevant factors in setting the respondent's bond. Moreover, the arguments contained in the respondent's motion are without merit as it is well settled that an Immigration Judge lacks authority to adjudicate the validity of state convictions that are alleged as the bases of removal. See (b) (6)

(b) (6)

(b) (6)

(b) (6) The Court also acknowledges the respondent's many constitutional claims. Nevertheless, "it is settled that the immigration judge and [the] Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations." *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Therefore, the respondent's motion to reconsider shall be denied.

IV. CONCLUSION

Accordingly, the Court shall enter the following Order:

(b) (6)

^(b) (6)

ORDER: IT IS HEREBY ORDERED THAT the respondent's motion to reconsider be DENIED.

(b) (6)

Rec'd
3/27/13

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: () ALIEN (P) ALIEN c/o Custodial Officer () ALIEN'S ATT/REP (P) DHS

DATE: 3/14/13 BY COURT STAFF [Signature]

Attachments: () EOIR-33 () EOIR-28 () Legal Services List () Other

ATTACHMENT

6



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b) (6)

DHS/ICE Office of Chief Counsel - (b)(6) & (b)(7)(C)

Name: (b) (6)

A (b) (6)

Type of Proceeding: BOND
Removal

Date of this notice: 3/25/2013

Type of Appeal: Bond Appeal

Filed By: Alien

FILING RECEIPT FOR APPEAL

The Board of Immigration Appeals acknowledges receipt of your appeal and fee or fee waiver request (where applicable) on 3/11/2013 in the above-referenced case.

WARNING: If you leave the United States after filing this appeal but before the Board issues a decision your appeal will be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(q)).

WARNING: If you have been granted voluntary departure by the Immigration Judge, you must submit sufficient proof of having posted the voluntary departure bond set by the Immigration Judge to the Board of Immigration Appeals. Your submission of proof must be provided to the Board within 30 days of filing this appeal. If you do not timely submit proof to the Board that the voluntary departure bond has been posted, the Board cannot reinstate the period of voluntary departure. 8 C.F.R. § 1240.2(c)(3)(ii).

PLEASE NOTE:

In all future correspondence or filings with the Board, please list the name and alien registration number ("A" number) of the case (as indicated above), as well as all of the names and "A" numbers for every family member who is included in this appeal.

If you have any questions about how to file something at the Board, you should review the Board's Practice Manual at www.justice.gov/eoir.

Proof of service on the opposing party at the address above is required for ALL submissions to the Board of Immigration Appeals -- including correspondence, forms, briefs, motions, and other documents. If you are the Respondent or Applicant, the "Opposing Party" is the District Counsel for the DHS at the address shown above. Your certificate of service must clearly identify the document sent to the opposing party, the opposing party's name and address, and the date it was sent to them. Any submission filed with the Board without a certificate of service on the opposing party will be rejected.

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Userteam: PCM

PROOF OF SERVICE

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

In The Matter Of: (b) (6) File No. A(b) (6)
IN (b) (6) BOND PROCEEDINGS

I, (b) (6) the undersigned pro se Respondent in this action, hereby declare and certify that a true copy of the enclosed documents entitled:

SECOND REQUEST FOR CLARIFICATION OF THE COURT'S MEMORANDUM
DECISION AND ORDER DATED MARCH 14, 2013 AND ORDER ENTERED
MARCH 22, 2013 IN RESPONSE TO RESPONDENT'S FIRST REQUEST;
MOTION FOR PRODUCTION OF TRANSCRIPTS OF BOND PROCEEDINGS
PURSUANT TO (b) (6)

in the above entitled case, was served by institutional internal mail and United States mail on 4-2-2013 in sealed envelope(s), or securely folded and stapled together, and dropped in the designated U.S. Mail institutional mailbox for internal forwarding, addressed as follows:

[X] The Honorable (b) (6)
U.S. Immigration Judge
Executive Office of Immigration Review
(b) (6)

[X] ICE District Counsel
U.S. Dept. of Homeland Security
(b) (6) & (b) (7)(C)

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability pursuant to 28 U.S.C. § 1746.

Date: April 2, 2013
April 2, 2013

(b) (6)

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A(b) (6)

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