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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FRED NGUGI,

vs.
JANET NAPOLITANO,
Secretary of Homeland Security, et al.

Petitioner,

Respondents.

CASE NO. 08cv1259 BEN (WVG)
ORDER DENYING PETITION

INTRODUCTION

Petitioner Fred Ngugi petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is being detained by the Department of Homeland Security (“DHS”) pending removal to Kenya. Petitioner claims that his bond hearing was insufficient. The Government claims that Petitioner is lawfully detained and his bond hearing was sufficient. Because the Court finds Petitioner’s detention is authorized by 8 U.S.C. § 1226(a) and he has been afforded a proper bond hearing before an immigration judge (“IJ”), the Petition is **DENIED**.

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1 **BACKGROUND**

2 Petitioner is a native and citizen of Kenya. He entered the United States on a student visa, but
3 stayed beyond the termination of his visa. Petitioner came to DHS' attention when he was arrested
4 for a false report of a bomb threat. DHS then discovered Petitioner had been arrested a number of
5 times for battery and obstructing a public officer and had been convicted of driving under the influence
6 of alcohol. DHS commenced removal proceedings against Petitioner and set his bond at \$15,000.
7 Petitioner initially sought a bond redetermination, but withdrew that request. Petitioner never posted
8 bond.

9 Petitioner was ordered removed to Kenya by an IJ. That decision was upheld on appeal to the
10 BIA. Petitioner then obtained a stay of removal while he petitioned for review before the Ninth Circuit
11 Court of Appeals. During the stay, DHS reviewed Petitioner's custody status twice and found that he
12 should remain in custody. DHS found he posed a danger to the community based on his criminal
13 history and a disciplinary incident resulting in 15 days of segregation while he was in detention. DHS
14 found that he posed a flight risk because his removal to Kenya was likely in the foreseeable future, he
15 had no recent ties to the community, and he had no employment prospects.

16 Petitioner also received a bond hearing before an IJ, where he was represented by counsel and
17 questioned by the IJ. After summarizing the positions of Petitioner and the Government and outlining
18 the Government's burden under *Casas-Castrillon v. Department of Homeland Security*, 535 F.3d 942,
19 950 (9th Cir. 2008), the IJ found that Petitioner should be held without bond because the Government
20 met its burden by showing Petitioner was a danger to the community. The IJ focused, in particular,
21 on Petitioner's arrest for making a false bomb report. Petitioner was arrested after approaching two
22 police officers and telling them, at least twice, that he had a bomb. The IJ questioned Petitioner about
23 his statements and Petitioner admitted that he may have said something about having a bomb. The IJ
24 found that making a bomb threat was a serious and dangerous matter, particularly when made to
25 police.

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1 danger to the community.” *Id.* Petitioner has received the individualized determination to which he
2 is entitled under *Casas-Castrillon*. *Id.*

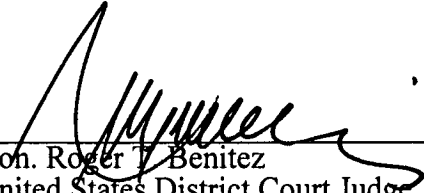
3 The record before the Court reflects that, in conducting Petitioner’s bond hearing, the IJ
4 imposed the correct burden, requiring the Government to show that Petitioner was a flight risk or a
5 danger to the community. The IJ detailed and assessed the evidence presented by Petitioner and the
6 Government and found that the Government met its burden. The IJ also considered the factors
7 outlined in *Matter of Guerra*, 24 I. & N. Dec. at 40. The IJ considered Petitioner’s fixed address,
8 length of residence, the stability of his environment, his employment history, his criminal activity, and
9 his manner of entry into the United States. Taking all these factors into account, the IJ found that
10 Petitioner was a danger to the community based on his criminal conduct, particularly his false bomb
11 threat to law enforcement. Accordingly, Petitioner’s bond hearing was sufficient. As to Petitioner’s
12 argument that the absence of a transcript of the bond hearing constitutes a denial of due process,
13 Petitioner does not cite, and this Court is not aware of, any authority requiring that a bond hearing
14 before an IJ be transcribed.

15 **CONCLUSION**

16 For the reasons set forth above, the Petition is **DENIED**. The Clerk is directed to close the file
17 in this case.

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19 **IT IS SO ORDERED.**

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21 DATED: February 11, 2011

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23 _____
24 Hon. Roger V. Benitez
25 United States District Court Judge
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