IN THE CROWN COURT OF CANADA

(ON APPEAL FROM THE FEDERAL COURT)

BETWEEN

NIAHL DENG

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

FACTUM OF THE RESPONDENT

TABLE OF CONTENTS

OVERVIEW

[1] This appeal asks whether an individual who is ineligible to remain in Canada, unlikely to appear for removal, and who poses a danger to the Canadian public can obtain their release from immigration detention for reasons beyond the control of Canadian officials.

[2] Niahl Deng (the "Appellant") arrived in Canada using an illegitimate passport and has since accrued a violent criminal record. His ineligibility to acquire any valid status in Canada, inadmissibility, and the validity of his removal order are not at issue. However, the Appellant claims that because his removal from Canada is not reasonably foreseeable, the Respondent must release him from detention and that any danger he poses to the public cannot alternatively justify his detainment. The Canadian Parliament ("Parliament"), the Federal Court of Appeal ("FCA"), and the Supreme Court of Canada ("SCC") disagree.

[3] Immigration detention is a long-standing practice that is necessary to ensure the safety and security of all Canadians; at the same time, it must afford respect for detainees' rights. Courts have recognized this balance in their decisions, consistently finding immigration detention constitutional but setting a clear precedent that ensures immigration officials remain within both the limits of their statutory authority and the confines of the *Canadian Charter of Rights and Freedoms* when detaining persons.[1] This appeal involves nothing more than the application of this precedent. Further restrictions on the availability of detention are unnecessary.

[4] In the decision below, the Federal Court ("FC") justified the Appellant's detention on two grounds. First, there is sufficient nexus to removal because removal is a possibility. The Immigration Division ("ID") erred in requiring that removal be reasonably foreseeable.[2] Second,

---

[1] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
[2] *Canada (Minister of Citizenship and Immigration) v Deng*, 2024 FC 97450 at para 6 [*Deng*].

the Appellant poses a significant threat to public safety which is a standalone ground for detention. This ruling properly adheres to recent precedent, correctly interprets the *Immigration and Refugee Protection Act*, and maintains consistency in the law.[3]

PART I: FACTS

The Appellant

Background

[5] On March 2, 2019, the Appellant arrived in Canada seeking refugee protection.[4] He claimed to be a South Sudanese citizen; however, the only identity document he brought with him was a non-genuine passport obtained in Kenya.[5] Canadian immigration authorities denied the Appellant's claim for refugee protection in 2022 because of unresolved inconsistencies surrounding his identity. On January 1, 2023, after the Appellant failed to voluntarily leave Canada, his conditional removal order became a deemed deportation order.[6]

Criminal History

[6] Upon his arrival in Canada, the Appellant suffered from various mental illnesses, including substance abuse issues.[7] He has also incurred extensive criminal charges for violent offences, with each charge increasing in seriousness as the Appellant was arrested seven times in thirteen months. Three charges ended in conviction. In particular, the Appellant was convicted of assault causing bodily harm in November of 2021. Less than four months later, he was convicted of assault with

---

[3] *Immigration and Refugee Protection Act*, SC 2001, c 27, s 58(1)(a) [*IRPA*].
[4] *Deng v Canada (Minister of Citizenship and Immigration)* (11 July 2024), 0003-B7-000615 (CA IRB) at para 2 [*Deng* ID].
[5] *Ibid*.
[6] *Ibid* at para 3.
[7] *Ibid* at para 4.

a weapon. Finally, the Appellant's escalating conduct led to his conviction for sexual assault with a weapon.[8]

Immigration Detention

[7] The Appellant was arrested on July 10, 2023, by the Canada Border Services Agency ("CBSA") because he was unlikely to appear for removal and he posed a danger to the public.[9] He has remained in detention since his arrest as the ID has upheld the grounds for his detention at each regular review. Although South Sudanese officials are not currently satisfied with the Appellant's citizenship status, the CBSA is continuing their efforts to procure a travel document for the Appellant.[10] These efforts include increased diplomatic pressure and efforts to obtain information from the Appellant's family members in South Sudan.[11]

Procedural History

Immigration and Refugee Board Detention Review

[8] The ID ruled that the Minister's failure thus far to convince South Sudanese authorities to issue the Appellant a travel document meant there was no nexus to removal because removal was no longer "reasonably foreseeable or achievable."[12] The ID also found that the Appellant's detention was unlawful since removal is no longer reasonably foreseeable,[13] despite s. 58(1)(a) of the *IRPA* listing danger to the public as a standalone ground for detention.[14] For these reasons, the ID ordered the Appellant's release without conditions.[15]

---

[8] *Ibid* at para 5.
[9] *Ibid* at para 6.
[10] *Ibid* at para 8.
[11] *Ibid* at para 9.
[12] *Ibid* at para 11.
[13] *Ibid* at para 13.
[14] *IRPA*, *supra* note 3.
[15] *Deng* ID, *supra* note 4 at para 18.

The Federal Court

[9] The FC stated that judicial review must succeed and set aside the decision of the ID on both issues.[16] The Court held that the ID erred in adopting the reasonably foreseeable standard for establishing a nexus to an immigration purpose. Additionally, the FC found that the ID "erred in finding that danger to the public is not a stand-alone ground for detention."[17]

[10] The Court held that the reasonable foreseeability standard was rejected by the FCA in *Brown*, as it is a "speculative standard that leads to inconsistent results."[18] The Court also referred to the SCC's decision in *Charkaoui v Canada*[19], where the Court made no reference to a test of foreseeability, but rather examined whether the removal was a possibility.[20]

[11] The FC also referenced *Canada v Taino* in holding that detention could still be ordered when removal is no longer a possibility.[21] The Court stated that "where detention has not been ordered primarily for the purposes of removal, there is no [...] requirement that detention is only lawful where removal is possible."[22] The Court held that in the Appellant's case, detention is connected to the primary purpose of public safety found in s. 3(1)(h) of the *IRPA*.[23] Therefore, the FC overturned the ID's decision.

PART II: POINTS IN ISSUE

[12] This appeal raises the following issues:

---

[16] *Deng*, *supra* note 2 at paras 2, 14.
[17] *Ibid* at para 2.
[18] *Ibid* at para 7.
[19] *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 [*Charkaoui*].
[20] *Deng*, *supra* note 2 at para 11.
[21] *Canada (Public Safety and Emergency Preparedness) v Taino,* 2020 FC 427 [*Taino*].
[22] *Deng*, *supra* note 2 at para 5.
[23] *IRPA*, *supra* note 3, s 3(1)(h).

1. Is there a nexus to removal sufficient to ground the detention of a foreign national or permanent resident of Canada under the *IRPA* so long as the state is making any active efforts to pursue removal?
2. Can a foreign national or permanent resident of Canada be detained on the basis of danger to the public pursuant to section 58(1)(a) of the *IRPA* where there is no longer a nexus to removal?

PART III: ARGUMENT

Standard of Review

[13] *Canada v Vavilov* established that courts will presumptively apply the standard of reasonableness when judicially reviewing administrative decisions.[24] As indicated in the Court below, there is no reason to depart from the standard of reasonableness.[25]

Issue 1: Any Active Efforts Are Sufficient Sufficient to Ground Detention on a Standard of Possibility

[14] Statutory power can only be exercised in connection with the purposes for which it is granted.[26] S. 58 of the *IRPA* authorizes detention if an individual is unlikely to appear for removal, for public safety reasons, and on other enumerated grounds.[27] Therefore, if immigration authorities detain an individual because they are unlikely to appear for removal under s. 58(1)(b) of the *IRPA*, there must be a connection between the detainment and eventual removal from Canada. The required strength of this connection and whether the Respondent can demonstrate its existence are at issue in this case.

---

[24] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].
[25] *Deng*, *supra* note 2 at para 5.
[26] *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 at paras 40, 44 [*Brown*].
[27] *IRPA*, *supra* note 3, s 58.

[15] The Appellant's argument for release from detention fails for two primary reasons. First, in arguing there was no "reasonable possibility of removal," the Appellant necessarily implied a standard higher than possibility by considering not just whether the Minister is making active efforts amidst the absence of impossibility, but also the timing and overall likelihood that those efforts succeed.[28] Despite the courts' inconsistent use of terminology that is vulnerable to misinterpretation, the correct standard is that removal from Canada must be a possibility. Second, the Appellant overlooks clear and reliable evidence that removal remains a possibility.

[16] There is insufficient reason to depart from the standard of possibility. Decision-makers currently apply the possibility test in a manner that achieves consistent, predictable results. The same can be done in this case. Furthermore, there is no *Charter* violation to remedy or need to provide increased clarity in the law.[29] The only reason to import reasonable foreseeability (either explicitly or through a reinterpretation of possibility) would be to grant the Appellant a release he cannot obtain under the current framework. Finally, reasonable foreseeability is susceptible to inconsistent application that would alter results for reasons beyond the Canadian government's control, causing courts to treat factually similar situations differently.

Sub-Issue 1(A): The Standard to Establish a Nexus to Removal Is Possibility

[17] Although not explicitly stated, the wording of the *IRPA* implies that the possibility of removal is necessary to ground detention, not reasonable foreseeability of removal. S. 58(1)(b) justifies detention if an individual is unlikely to appear for removal; however, it also justifies detention if an individual is unlikely to appear "at a proceeding that *could lead to the making of a removal order* by the Minister" [emphasis added].[30] It would be illogical if the Minister had to

---

[28] *Deng* ID, *supra* note 4 at paras 10-11.
[29] *Charter*, *supra* note 1.
[30] *IRPA*, *supra* note 3, s 58(1)(b).

establish the reasonable foreseeability of removal to detain an individual subject to a removal order but could, under the same section of the *IRPA*, detain an individual for whom a removal order might never be issued. A standard of possibility reconciles these reasons for detainment, ensuring that different standards are not applied without justification. Furthermore, the power of detention "[is] exercised principally, but not exclusively, pending removal."[31]

[18] Canadian courts have recently explained what the possibility standard is. As summarized by the FCA in *Brown*:

> The decision maker must be satisfied, on the evidence, that removal is a *possibility*. The possibility must be realistic, not fanciful, and not based on speculation, assumption or conjecture. It must be grounded in the evidence, not supposition, and the evidence must be detailed and case-specific enough to be credible [emphasis added].[32]

To justify detention, immigration officials must use concrete evidence of active efforts to demonstrate that a detainee's removal is possible. This evidence does not need to indicate any level of foreseeability. Rather, the Minister must act in good faith, take all reasonable steps to advance removal, and actively use the time in between detention reviews to advance removal.[33]

[19] Decision-makers must assess the possibility of removal in its proper context rather than in the abstract.[34] Doing so clearly defines "possibility" and reveals two primary scenarios in which detention is unjustified. That is, by proving impossibility, it becomes clear when possibility exists. First, even if removal is theoretically possible, immigration officials must be making active efforts to effect removal or have a sufficiently realistic plan they can implement shortly, rather than

---

[31] *Brown*, *supra* note 26 at para 44.
[32] *Ibid* at para 95.
[33] *Ibid* at para 100.
[34] *Canada (Public Safety and Emergency Preparedness) v Suleiman*, 2022 FC 286 [*Suleiman*].

suggesting speculative courses of action.[35] Second, even if active efforts are underway, detention will be unjustified if objective evidence proves that removal is impossible.[36]

[20] Because possibility is a broad notion generally, the possibility standard is sometimes referred to as the "realistic possibility" standard or the "reasonable possibility" standard.[37] Despite the inconsistent use of terminology, misinterpreting this standard as one of disguised reasonable foreseeability is incorrect and risks confusion. At its most basic, a reasonable or realistic possibility, as the possibility standard is often described, has two elements: (1) active efforts are made to effect removal, and (2) there is no concrete evidence of impossibility. There is no element of foreseeability to the analysis.

[21] In this case, after the Appellant argued that removal must be a reasonable possibility, the ID incorrectly applied a standard of reasonable foreseeability.[38] Despite the Minister's active efforts and the absence of any concrete evidence that removal was impossible, the ID ordered the Appellant's release after concluding that removal was "no longer reasonably foreseeable."[39] The Appellant can only obtain release using this more onerous standard; accordingly, they characterize the Respondent's efforts towards removal as "shot[s] in the dark" to establish the unlikelihood of a successful removal.[40] However, possibility does not require "evidence that proposed efforts could [succeed] now or in the future," as suggested by the Appellant's description of the

---

[35] *Ibid* at paras 52-53.
[36] *Dennis v Canada (Public Safety and Emergency Preparedness)*, 2022 CanLII 91639 (CA IRB) at para 46 [*Dennis*].
[37] See e.g. *Ibid* at paras 5, 32, *Al-Sama'neh v Canada (Public Safety and Emergency Preparedness*), 2021 CanLII 148520 (CA IRB) at 9.
[38] *Deng* ID, *supra* note 4 ("the Federal Court of Appeal held that the possibility of removal must be realistic and not based on speculation; in other words, there can be no detention in the absence of a reasonably foreseeable prospect of removal" at para 11).
[39] *Ibid* at para 11.
[40] *Ibid* at para 10.

Respondent's efforts.[41] Evidence of any active efforts towards removal *being made* is necessary, and, without evidence of impossibility, it is *always possible* that those efforts succeed provided there is a valid removal order. There is no evidence of impossibility in this case and therefore removal is a possibility.

[22] Courts have consistently applied the possibility standard outlined in *Brown*, which remains the highest settled law on establishing a nexus to removal in Canada (and which the SCC declined to hear on appeal).[42] The Respondent submits that this case should be no different.

Sub-Issue 1(B): The Appellant's Removal Is Possible

[23] In this case, the active continuation of existing steps may lead to removal. As found by the FC in overturning the ID's decision, the evidence indicates that the Appellant's removal to South Sudan remains possible. This conclusion is not just grounded in speculation (as the ID alleged in their initial decision).[43] Detention is justified because communications with South Sudan are ongoing, Canadian immigration officials have a potentially productive investigation planned with the Appellant's family members in South Sudan, and there are key factual distinctions between this case and previous cases (which are discussed below) where a detainee had obtained their release.

Communications with South Sudan Constitute Active Efforts

[24] Communications are ongoing with South Sudanese officials as the Minister attempts to convince them of the Appellant's nationality. Continued detention, although necessary, is undesirable for both the Appellant and the Respondent. Removal is the ideal outcome.

---

[41] *Ibid*.
[42] See e.g. *Dennis*, *supra* note 36 at para 18, *Suleiman*, *supra* note 34 at para 42; the SCC denied application for leave (see *Brown v Minister of Citizenship and Immigration*, 2021 CanLII 18039 (SCC)).
[43] *Deng* ID, *supra* note 4 at para 10.

Accordingly, the Minister intends to apply diplomatic pressure on South Sudanese officials, a strategy that has worked previously.[44] As summarized in *Brown*, there are different measures generally available to the CBSA including "political pressure, negotiated bilateral return agreements or placing visa or other entry requirements on nationals from [South Sudan]."[45] Case law indicates that it is not unusual for South Sudanese officials to accept an individual after an initial period of delay; furthermore, the fact that South Sudanese officials are responding to Canadian enquiries is indicative of an administrative system that is operational and capable of handling immigration matters – no small feat for a politically unstable, war-torn nation.[46]

[25] Although the Appellant disagrees, the email communications between the CBSA and South Sudanese officials are not problematic just because they are similar each month. In her ID decision below, Member Machado inconsistently refers to the emails as "copy and paste" or "similar". While the emails are presumably *similar* each month, there is no indication they are *the same*.[47] From a practical standpoint, the emails are necessarily similar each month because the CBSA is making the same request in substance — that South Sudan accept the Appellant. Furthermore, the CBSA is not required to phrase its request differently for the South Sudanese authorities to change their position.

Planned Investigative Steps Constitute Active Efforts

[26] The CBSA's planned investigation may uncover evidence of the Appellant's South Sudanese nationality. If so, South Sudanese authorities must permit the Appellant's entry. CBSA officials have located some of the Appellant's family members in a South Sudanese refugee camp.

---

[44] *Ibid* at para 9.
[45] *Brown*, *supra* note 26 at para 102.
[46] *Atem v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 165 at para 10 [*Atem*].
[47] *Deng* ID, *supra* note 4 at para 11.

This is a significant step considering the volatile political situation in South Sudan, a nation only recently recovered from a civil war and currently overwhelmed by an acute humanitarian crisis, located thousands of kilometres and across an ocean from Canada, and with an administrative state that is in its infancy.[48] This step also confirms that the CBSA is not merely speculating about uncovering new evidence – it is actively doing so. The CBSA intends to interview these family members to obtain evidence of the Appellant's nationality, and this evidence may be determinative or at least helpful.[49] As recently discussed by the FC in *Atem*, under South Sudanese statute, a person has citizenship by birth if either of their parents, grandparents, or great-grandparents were born in what is now South Sudan.[50] The South Sudanese government must issue a certificate of nationality to any person who fits into this category and the CBSA's investigation may prove that the Appellant does.[51]

This Case Differs from Previous Ones Where Courts Deemed Removal Impossible

[27] While communications with South Sudan and planned investigative steps demonstrate that Canadian officials are making active efforts, there is also no evidence that removal is impossible. The "current impasse" that exists because South Sudanese officials are not presently satisfied that the Appellant is a South Sudanese national may only be temporary, especially if CBSA's planned investigation is successful and diplomatic pressure increases.[52] Furthermore, there is no evidence proving the Appellant is *not* South Sudanese.

---

[48] *Ibid* at para 7.
[49] *Ibid* at para 9.
[50] *Atem*, *supra* note 46 at para 46.
[51] *Ibid*.
[52] *Deng* ID, *supra* note 4 at para 8.

[28] In previous instances of release due to the impossibility of removal, such as *Dennis v Canada* and *Canada v Suleiman*, the detainees produced objective evidence that their removal was no longer a possibility. This evidence does not exist in this case.

[29] In *Dennis*, the decision-maker deemed removal to be impossible and ordered Mr. Dennis's release. Although Liberian officials had not officially rejected Mr. Dennis – a fact the Minister exclusively relied on in their argument for detention – there was conclusive evidence that Liberian officials would not admit him based on their previous decisions and Liberian statute. In their internal communications, Canadian officials conceded that Mr. Dennis did not meet the requirements for Liberian citizenship.[53] On the contrary, the evidence in this case suggests that the Appellant may already be a citizen of South Sudan. The CBSA has located his family members in South Sudan and may obtain evidence that confirms this possibility.

[30] In *Suleiman*, the FC ordered the detainee's release because the possibility of removal was "so remote as to be speculative."[54] The CBSA had exhausted conventional actions without success. It proposed hiring private investigators to obtain further information, a strategy that failed in the past, and this raised concerns about whether the CBSA was making sufficiently active efforts. The FC based their decision on the context in which the efforts were made. That is, because all other investigatory steps had failed, the proposed new ones in a country the detainee had left thirty years prior had an insufficient likelihood of success to ground detention.[55]

[31] Three key differences distinguish this case from *Suleiman*. First, the CBSA has not conducted prior investigations in South Sudan, so there is a reasonable likelihood of obtaining new information that helps prove the Appellant's South Sudanese nationality. Second, while the thirty-

---

[53] *Dennis*, *supra* note 36 at paras 12-13.
[54] *Suleiman*, *supra* note 34 at para 44.
[55] *Ibid* at paras 52-53.

year gap between Mr. Suleiman's arrival in Canada and his detention review decreased the possibility of success, no such gap exists in this case. The Appellant only arrived in Canada in 2019 and the five-year gap between his arrival and the proposed investigation is not long enough to decrease the likelihood of investigative success. Third, Mr. Suleiman had no identifiable relatives in the potential recipient nation whereas the Appellant in this case does.[56]

[32] Situated against cases of a similar nature, the Appellant's removal from Canada is clearly a possibility – therefore, his detention is justified. If current efforts prove unsuccessful, release may occur at a future detention review. However, at this point it would prematurely impede explicit objectives under the *IRPA* such as protecting public health and safety, denying criminals and security risks access to Canada, and maintaining the integrity of the Canadian immigration system.[57]

Sub-Issue 1(C): The Lack of Justification for Change

[33] There are three general reasons to change a statute or its interpretation. First, if the court finds a statute unconstitutional, it must be changed and may be struck down in its entirety or to the extent it fails to align with the *Charter*.[58] Second, if there is a fundamental change in the parameters of the debate – i.e., if society changes enough, a court may reconsider settled jurisprudence.[59] Third, if courts frequently disagree in their interpretation of a statute so as to create uncertainty in the law, then, as a matter of common sense, change may be necessary to ensure consistent application. The *Brown* possibility standard does not engage any of these reasons and there is no compelling justification to depart from it.

---

[56] *Ibid* at para 47(c, d, i).
[57] *IRPA*, *supra* note 3, ss 3(1)(h), 3(1)(i), 3(2)(e).
[58] *Charter*, *supra* note 1, s 52(1).
[59] *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 44, citing *Canada (Attorney General) v Bedford*, 2013 SCC 72 at para 42.

Unconstitutionality

[34] In *Charkaoui*, the SCC rejected the argument that the *IRPA's* detention framework, using a standard of possibility, violates ss. 7 and 12 of the *Charter*.[60] A detention can become unconstitutional if removal is no longer possible, but immigration officials can avoid this issue by meeting review requirements as outlined in s. 248 of the *IRPR*.[61] These requirements do not mention reasonable foreseeability or any other standard more onerous than possibility.[62] On this basis, the Court in *Charkaoui* concluded that detention may be "lengthy and indeterminate" without violating the *Charter*.[63]

Fundamental Change in the Parameters of the Debate

[35] The SCC's decisions in *Canada v Chhina*[64] and *R v Jordan*[65] did not fundamentally change the parameters of the debate surrounding immigration detention since *Charkaoui* established the constitutionality of using a standard of possibility. The FCA confirmed this position in *Brown*.

[36] The claimant in *Brown* argued that in *Chhina*, the SCC indicated openness to implementing a standard of reasonable foreseeability because it found the *IRPA*'s detention review framework deficient for "provid[ing] no guidance as to *how* the length and duration of detention are to be considered and, crucially, when these factors might be outweighed by others."[66] The FCA noted that this line from the SCC was only *obiter* and, therefore, was not binding authority. Additionally, the constitutionality of the *IRPA* was not at issue in *Chhina*, which examined whether *habeas*

---

[60] *Charkaoui*, *supra* note 19 at paras 105-07.
[61] *Immigration and Refugee Protection Regulations,* SOR/2002-227 [*IRPR*].
[62] *Brown*, *supra* note 26 at para 93.
[63] *Charkaoui*, *supra* note 19 at para 105.
[64] *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29 at para 60 [*Chhina*].
[65] *R v Jordan*, 2016 SCC 27 [*Jordan*].
[66] *Chhina*, *supra* note 64 at para 60.

corpus, a remedy obtainable through provincial courts, remained available to detainees.[67] Therefore, understood in its proper context, the SCC's decision in *Chhina* suggests that the *IRPA* is insufficient to displace *habeas corpus* but remains sufficiently constitutional even without a more rigorous detention review framework.[68]

[37] *Jordan* established a ceiling beyond which pre-trial detention is presumptively unreasonable; however, this only applies in the criminal context, which differs from proceedings under the *IRPA*.[69] The Court in *Brown* emphasized the impracticality of such a ceiling in an immigration context, where the Minister does not have complete control over the length of a detention, whereas Canada controls all aspects of the criminal justice system without reliance on foreign governments.[70] But, the function of detention under the two frameworks also differs. The *Jordan* ceiling protects the accused's s. 11(b) right under the *Charter* to a trial within a reasonable period of time and, therefore, prevents the arbitrary detention of a potentially innocent individual with no method of relief. Meanwhile, inadmissibility has already been determined in an immigration context and detention is continually justified on a monthly basis. In conclusion, courts have recently confirmed the applicability of the possibility standard, and neither *Chhina* nor *Jordan* alter the debate.

Consistency in the Law

[38] The interpretation of a statute does not change without justification. Canadian courts have continually held that in assessing whether a nexus to removal exists, the question is whether removal is possible. As recently stated by the Ontario Court of Appeal: "the law must evolve in a

---

[67] *Brown*, *supra* note 26 at para 27.
[68] *Ibid*.
[69] *Jordan*, *supra* note 65 at para 5.
[70] *Brown*, *supra* note 26 at paras 52-53.

manner that brings certainty and clarity, not in a way that sows confusion and is devoid of principle."[71] The possibility standard provides predictability and consistency because the possibility of removal is easily and objectively ascertainable (as explained by the FCA in *Brown*). The reasonable foreseeability of removal is not.

Sub-Issue 1(D): A Standard of Reasonable Foreseeability Is Problematic

[39] Reasonable foreseeability cannot effectively determine the likelihood of future removal. In private law, reasonable foreseeability is a backward-facing standard that examines harm a plaintiff has already suffered and determines whether the defendant owes compensation. Liability can be accurately assessed because decision-makers have the benefit of hindsight and liability hinges entirely on the defendant's conduct rather than the actions of a third party. However, these benefits do not exist at detention reviews, where decision-makers would use reasonable foreseeability in a forward-facing manner. The future is unknown and unpredictable. While the *possibility* of removal depends on the Minister's actions, the *foreseeability* of removal is out of their control and largely depends on the actions of foreign governments. Because the exact timing of removal is inherently uncertain and in flux, decision-makers cannot use a standard of reasonable foreseeability to achieve consistent or accurate results.

[40] In *Brown*, the FCA emphasized the importance of clear, discernable criteria that produce consistent results in detention reviews; however, the FCA recognized that a standard of reasonable foreseeability leads to inconsistent results.[72] This inconsistency arises because it is unclear to whom removal must be foreseeable and to whom it must be reasonable.[73] Further difficulties arise

---

[71] *Yaiguaje v Chevron Corporation*, 2018 ONCA 472 at para 83.
[72] *Brown*, *supra* note 26 at para 94.
[73] *Ibid*.

because it is difficult to ascertain what is reasonable given the vast differences in the administrative, legal, and political structures of various potential receiving nations.[74]

[41] In addition to posing theoretical difficulties, a standard of reasonable foreseeability would also create practical problems regarding the cooperation of detainees and receiving countries. The cooperation of detainees helps facilitate removal, ending their liberty restriction. But, if detention was only justified if removal was foreseeable, detainees may have an incentive *not* to cooperate and obtain their liberty faster (and with the additional benefit of remaining in Canada) than if they cooperated and were eventually removed. Similarly, receiving countries who do not want to accept a detainee would have an incentive *not* to cooperate with the Minister on removal efforts. A standard of possibility prevents this mischief by ensuring that the justification of detention depends solely on the Minister's actions.

[42] Stated plainly, if the Minister must prove that removal is reasonably foreseeable to justify detention, a greater number of inadmissible individuals will avoid removal. Because the availability of detention would be tied to the unpredictable actions of foreign governments, these individuals could remain in Canada without authorization and the Minister would have no recourse. This outcome contradicts the intentions of the *IRPA*, which creates a detention framework to achieve public safety and ensures the integrity of the immigration system.[75]

Issue 2: Danger to the Public is an Independent Basis for Detention that Does Not Require a Nexus to Removal

[43] Maintaining public safety is an explicit objective of the *IRPA* and detention must be tethered to the *IRPA*'s objectives. Therefore, detaining the Appellant on the basis of being a danger

---

[74] *Ibid*.
[75] *IRPA*, *supra* note 3, ss 3(1)(e), 3(1)(f), 3(1)(h), 3(1)(i).

to the public is justified under s. 58(1)(a),[76] as his detention is linked to an immigration purpose. The Appellant's detention must simply have a nexus to an immigration purpose, not a nexus to removal. Even if the Appellant's removal order were deemed unenforceable, his detention would still be justified because an enforceable removal order is not required to justify detention. An analysis of the prescribed factors demonstrates the significant security risk the Appellant would pose if released; therefore, his detention is necessary.

Sub-Issue 2(A): Public Safety Is a Valid Immigration Purpose

[44] Any statutory power —in this case, the power to detain— may "only be used for the purposes for which it was intended."[77] The *IRPA* contains various purposes; however, one of the express objectives under this statute concerning immigration is "to protect public health and safety and to maintain the security of Canadian society."[78] Additionally, the *IRPA* exists to deny access to individuals, including refugee claimants, who are security risks or serious criminals.[79] This clear intention to prioritize security is accomplished by preventing individuals with an extensive criminal history from entering the country and removing those with such records from the country.[80]

[45] There is also an implicit requirement that "the power to detain must always remain tethered to the *IRPA*'s purposes and objectives,"[81] as detention can only be ordered when it is linked to an enumerated statutory purpose. In *Brown*, the FCA held that this principle, although not explicitly

---

[76] *Ibid*, s 58(1)(a).
[77] *Brown*, *supra* note 26 at para 40; *Roncarelli v Duplessis*, [1959] SCR 121 at 140, 1959 CanLII 50 (SCC).
[78] *IRPA*, *supra* note 3, ss 3(1)(h), 3(2)(g).
[79] *Ibid*, ss 3(1)(i), 3(2)(h).
[80] *Medovarski v Canada (Minister of Citizenship and Immigration),* 2005 SCC 51 at para 10.
[81] *Brown*, *supra* note 26 at para 42.

stated, has been used to guide the *IRPA*'s interpretation for years.[82] Therefore, deviating from this requirement would be unreasonable.

The Appellant's Detention is Tethered to an Enumerated Statutory Purpose

[46] As protection of the public is a valid immigration purpose, detaining the Appellant to protect Canadian society connects his detention to a statutory purpose. *Brown* held that "[s.] 58 of the *IRPA* authorizes detention for several purposes," including "on the grounds of public safety."[83] Therefore, as "detention [is] exercised principally, but not exclusively, pending removal,"[84] detaining a foreign national for the purpose of removal is not the *only* way to justify their detention.

[47] In her ID decision below, Member Machado incorrectly stated that because the Appellant is subject to a removal order, "he is clearly being detained for removal."[85] However, being subject to a removal order is not sufficient to justify detention, and does not imply that the purpose of the Appellant's detention is removal. S. 58(2) explicitly states that one of the reasons detention of a foreign national or permanent resident may be ordered is if they are "subject to a removal order *and* [... are] a danger to the public" [emphasis added].[86] Therefore, the Appellant can be subject to a removal order, while also being detained for public safety purposes.

[48] The Court below correctly held that the ID failed to consider that the Appellant was detained for public safety reasons, rather than for removal.[87] He was detained on the basis that he was unlikely to appear for removal and because he posed a danger to the public.[88] Both are valid

---

[82] *Ibid* at para 43.
[83] *Ibid* at para 44.
[84] *Ibid*.
[85] *Deng* ID*, supra* note 4 at para 16.
[86] *IRPA*, *supra* note 3, s 58(2).
[87] *Deng*, *supra* note 2 at para 17.
[88] *Deng* ID, *supra* note 4 at para 6.

grounds to detain under s. 58(1) and are tethered to the immigration objectives under s. 3.[89] As noted in the ID Decision, the Appellant's lack of valid travel documentation to facilitate his removal is only one of the reasons he remained in detention for 12 months.[90]

Sub-Issue 2(B): Danger to the Public Is a Standalone Ground of Detention

[49] The Court below correctly held that the ID erred in finding that danger to the public is not a standalone ground of detention, pursuant to s. 58(1)(a) of the *IRPA*.[91] A careful examination of the statute confirms the FC's position.

Applying the Modern Principle of Statutory Interpretation

[50] In the landmark case of *Vavilov*, the SCC held that courts apply the "modern principle" of statutory interpretation when interpreting a statutory provision.[92] In light of *Vavilov*, the words of a statute must be read in its entire context and in their "grammatical and ordinary sense harmoniously with the scheme [and] object of the Act [as well as] the intention of Parliament."[93]

[51] When s. 58(1)(a) of the *IRPA* is read in its entire context, it is clear that the ID must order the release of a permanent resident or foreign national *unless* it is proven that they are a danger to the public once the prescribed factors have been considered.[94] Moreover, as aforementioned, s. 58(2) of the *IRPA* states that one of the ways a permanent resident or foreign national can be detained is if they are subject to a removal order and are a danger to the public. Meaning, if the danger to the public aspect is proven, simply being the subject of a removal order is sufficient for an individual's detention to continue, as there is no language stating the order must be enforceable.

---

[89] *IRPA*, *supra* note 3, ss 58(1), 3(1)(h), 3(2)(g), 3(2)(h).
[90] *Deng* ID, *supra* note 4 at para 7.
[91] *Deng*, *supra* note 2 at para 14.
[92] *Vavilov*, *supra* note 24 at para 117.
[93] *Ibid*; *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC) at para 21, [1998] 1 SCR 27.
[94] *IRPA*, *supra* note 3, s 58(1)(a).

The Court in *Taino* confirms this, as they held that the "enforceability of a removal order is not a prerequisite to detention."[95]

[52] If Parliament intended for detentions to result exclusively from the *enforceability* of a removal order, this would have been explicitly stated. Parliament could have written "enforceable" in the text, as they did in other provisions, such as s. 48.[96] As this wording is not included, one "must assume that Parliament deliberately chose not to make that distinction."[97]

Reading in Terms Contradicts Parliamentary Intentions

[53] In *Taino*, the FC explained that reading in new terms which change the meaning of a statute is not in accordance with the holding in *Vavilov*.[98] *Vavilov* held that when reviewing courts decide whether a provision's interpretation is reasonable, they are not permitted to read in terms that would change the meaning of the statute.[99] Statutory powers must be used for the purposes for which they are granted and changing the meaning of a statute would prevent this.

[54] *Taino* held that reading the word "enforceable" into s. 58 of the *IRPA* is equivalent to declaring the provision unconstitutional, as reading language into a statute can be permissible if a statute is declared unconstitutional.[100] That is not the case here. In *Brown*, the FCA confirmed that "[t]he immigration detention regime is constitutionally sound."[101] Additionally, the SCC in *Charkaoui* held that extended periods of detention under the *IRPA* do not violate the *Charter* if they are accompanied by regular detention reviews, and all relevant factors have been

---

[95] *Taino*, *supra* note 21 at para 38.
[96] *Ibid* at para 55; *IRPA*, *supra* note 3, s 48.
[97] *Taino*, *supra* note 21 at para 40.
[98] *Ibid* at para 41.
[99] *Ibid*.
[100] *Taino* at para 56; *Charter*, *supra* note 1, s 52(1).
[101] *Brown*, *supra* note 26 at para 60.

considered.[102] In this case, there is no reason to read in new terms, as the Appellant has received all prescribed detention reviews and the necessary factors have been considered.[103]

[55] To allow the Appellant's interpretation of the provision would be an unreasonable departure from the current jurisprudence, as the FC's reasoning in *Taino* is similar to that of *Canada v Samuels,*[104] and *Isse v Canada.*[105] These cases consistently affirmed that unenforceability of a removal order does not mean release is mandated.

[56] The removal orders in *Taino*, *Samuels*, and *Isse* were unenforceable; however, their detentions were still justified based on being a danger to the public. The FC in all three cases held that these individuals were still subjects of valid removal orders, even though they were unenforceable.[106] Similarly to the Appellant, all three men were detained because they were a danger to the public due to their extensive criminal records, substance abuse issues, and mental illnesses.[107] Additionally, unenforceable removal orders become void when a foreign national becomes a permanent resident.[108] None of these individuals, including the Appellant, became a permanent resident thus, their removal orders were still valid and their detentions were justified. Although they no longer had a nexus to removal, they still had a valid removal order and their detention was linked to an immigration purpose: public safety.

[57] These cases illustrate that even if the Court finds that there is no longer a sufficient nexus to removal for the Appellant, his detention still "facilitates the machinery of immigration

---

[102] *Charkaoui*, *supra* note 19 at para 110.
[103] *Deng* ID, *supra* note 4 at para 6.
[104] *Canada (Public Safety and Emergency Preparedness) v Samuels*, 2009 FC 152 [*Samuels*].
[105] *Isse v Canada (Citizenship and Immigration)*, 2011 FC 405 [*Isse*].
[106] *Taino*, *supra* note 21 at para 58.
[107] *Ibid*.
[108] *IRPA*, *supra* note 3, s 51.

control."[109] Removal must only be possible when an individual is detained for the specific purposes of removal.[110] The Appellant was detained on the grounds of being a danger to the public; therefore, even if there was no possibility of removal, he is still subject to a valid removal order. Thus, danger to the public is a standalone ground of detention.

Predictability is an Essential Aspect of the Law

[58] It would be unreasonable to not apply the persuasive precedent of *Taino*, *Samuels*, and *Isse* to the case at hand, and instead read in new terms that would change the meaning of the legislation and contradict Parliament's intentions. Doing so would strike at the predictability in the field of immigration law and disrupt a key touchstone of the legal system. Predictability ensures fairness and consistency, and is necessary for individuals to make informed decisions about being law-compliant in their conduct. If courts allowed anyone to change statutory provisions in ways that best suit their needs, the law would be extremely difficult to navigate and apply, not only for the parties but also for decision-makers.

[59] For these reasons, if the Court finds that there is no longer a sufficient nexus to removal, the Appellant's detention must still be permitted. Danger to the public is a standalone ground of detention under s. 58(1)(a), and, as will be shown immediately below, he is captured by this ground.

Sub-Issue 2(C): The Appellant Is a Danger to the Public

[60] Before making a decision on detention or release, decision-makers must first consider the factors under s. 246 of the *IRPR* to establish whether the Appellant is a danger to the public.[111] Two of these factors particularly lean in favour of establishing the danger to the public grounds.

---

[109] *Brown*, *supra* note 26 at para 44.
[110] *Ibid*.
[111] *IRPR*, *supra* note 61, ss 244(b), 246.

He has been convicted in Canada for both an assault with a weapon, as well as a sexual assault with a weapon,[112] the latter being his most recent offence.[113] Therefore, there are strong grounds for detention.

[61] Once this ground is established, decision-makers must assess the prescribed factors listed under s. 248 of the *IRPR* to determine if the Appellant should be detained or released. These factors include: (a) the reason for detention; (b) the length of time in detention; (c) whether there are any elements that can assist in determining the length of time that detention is likely to continue; (d) any unexplained delays or unexplained lack of diligence; and (e) the existence of alternatives.[114]

[62] As shown below, a careful analysis of these prescribed factors demonstrates that not only is the Appellant a danger to the public, but detaining him is the only viable option to ensure both him and the public are safe. Allowing his release would be contrary to the previously mentioned explicit objective of the *IRPA*: to maintain the safety and security of all Canadians.[115] In order to substantiate this argument, a balancing of all five factors is imperative.

(a) The Reasons for Detention

[63] In *Canada v Lunyamila*,[116] the FC held that when a person poses a threat to public security, there is a stronger case for continuing a long period of detention; therefore, "this factor should be given very considerable weight."[117] The Appellant was detained due to his risk of being a danger to the public. This stems from the violent criminal history he obtained over the past few years,

---

[112] *Ibid*, ss 246(f)(i), (ii).
[113] *Deng* ID, *supra* note 4 at para 5.
[114] *IRPR*, *supra* note 61, s 248.
[115] *IRPA*, *supra* note 3, s 3(1)(h).
[116] *Canada (Public Safety and Emergency Preparedness) v Lunyamila*, 2016 FC 1199 [*Lunyamila*].
[117] *Ibid* at para 66.

with each offence increasing in seriousness over time.[118] The Appellant has not been arrested for over a year; however, this is because he has been detained and without opportunity to commit violent acts. Therefore, it is clear from the Appellant's record that the risk has been mitigated by his detention. Additionally, there is no end as to who or how many people he might hurt if released, as the Appellant's offences have involved acts of violence against strangers while intoxicated.[119] Moreover, if the Appellant was released, there is nothing that would prevent him from eliminating his consumption of alcohol, as he is currently unhoused and has no support. Therefore, detention is the only reliable option to prevent him from reoffending.

[64] Additionally, the Appellant is captured by s. 36(1)(a) of the *IRPA*, as it deems a non-citizen inadmissible on the grounds of serious criminality if they were convicted in Canada of an offence for which they received a term of imprisonment for more than six months.[120] The Appellant received a one-year prison sentence for his most recent sexual assault offence.[121] This points in favour of detention, as "the greater the danger posed to the public, the stronger the justification for ongoing detention."[122]

[65] It is also crucial to emphasize that the identity of the Appellant has not yet been confirmed. When the Appellant arrived in Canada, the only identifying information he brought with him was an illegitimate passport obtained from Kenya.[123] Due to the inability to confirm his identity, the Appellant's refugee claim and appeal were both denied, which was the start of his deemed

---

[118] *Deng* ID, *supra* note 4 at para 5.
[119] *Ibid*.
[120] "Serious criminality" is a heightened ground for inadmissibility (see *IRPA*, *supra* note 3, s 36(1)(a)).
[121] *Deng* ID, *supra* note 4 at para 5.
[122] *Chhina*, *supra* note 64 at para 133.
[123] *Deng* ID, *supra* note 4 at para 2.

deportation order, as he subsequently failed to leave Canada voluntarily.[124] Allowing an unidentified foreign national to be released into Canadian society is dangerous in and of itself, and releasing an individual with a violent criminal history heightens the security risk.

(b) The Length of Time in Detention & (c) Elements that May Assist in Determining Length

[66] "[L]engthy and indeterminate detention is permitted,"[125] as the SCC in *Charkaoui* held that the longer an individual is detained, the less likely they will remain a danger to society.[126] *Brown* affirmed *Charkaoui* and held that although they are relevant, the length of detention and the fact that the removal date is unknown are significant, but are not the only important factors.[127] In fact, "if the date of removal were known, it is doubtful that the parties would [even] be before the court."[128]

[67] The Appellant was detained for 12 months. Although this is substantial and the timeline for obtaining his travel document remains unclear, indefinite detention is not a certainty. The Appellant continues to receive his necessary detention reviews where the ID must examine fresh evidence each time.[129] Furthermore, the CBSA has planned investigative steps to continue their attempts to obtain the Appellant's travel document.[130] The fact that they are currently at an "impasse with South Sudanese [...] authorities"[131] does not mean the search has stopped. The CBSA is continuing to ensure the Appellant receives his South Sudanese travel document.

---

[124] *Ibid* at para 3.
[125] *Charkaoui*, *supra* note 19 at para 105.
[126] *Ibid* at para 112.
[127] *Brown*, *supra* note 26 at para 92.
[128] *Ibid*.
[129] *Taino*, *supra* note 21 at para 54.
[130] *Deng* ID, *supra* note 4 at para 8.
[131] *Ibid*.

Additionally, there is no evidence to suggest that he is no longer a danger; therefore, he likely has not been detained long enough to reduce his threat to society, weighing in favour of detention.

(d) Any Unexplained Delays

[68] As the ID mentioned in their decision, the Appellant has cooperated with the CBSA's efforts to obtain a travel document for him.[132] Any delays that have occurred have been due to the dissatisfaction of the South Sudanese consular authorities. These delays are beyond the Respondent's control; therefore, this factor should not be applied disfavouring the Respondent. The CBSA has exercised due diligence and continues to do so.

(e) The Existence of Alternatives

[69] The Respondent is aware that detention is a severe measure and should only be used in extreme circumstances once all other alternatives have been considered.[133] While there is a lack of evidence concerning the conditions the Appellant received during his time in a provincial jail, the Respondent concedes that being detained in jail rather than a detention centre is not ideal. However, the issue at hand concerns whether his detention in general is justified, rather than if being detained in a provincial jail is appropriate. Therefore, this is beyond the scope of this case. His detainment location does not change the fact that he cannot be released, as no alternatives to detention would protect the public from his violent tendencies; therefore, continued detention is essential for the safety of society at large.

[70] Given the *IRPA*'s strong emphasis on public safety, any conditions the Appellant would receive on release would have to "virtually eliminate [...] any risk"[134] he would pose to society at large. This is extremely difficult to do, as constant supervision is unrealistic, but given his record

---

[132] *Ibid* at para 7.
[133] *Chhina*, *supra* note 64 at para 78.
[134] *Lunyamila*, *supra* note 116 at para 116.

of multiple offences and violent tendencies, this is likely the only condition that would be sufficient to eliminate the danger he poses to the public.

[71] Although the Appellant argues that he has not had the opportunity to deal with his substance abuse issue due to his detention in a provincial jail,[135] he has had the chance to seek programming prior to detainment, as well as upon his ordered release. The Respondent is aware that the Appellant faces various barriers to accessing these resources; however, it is still possible. The Appellant arrived in Canada in 2019, and his first imprisonment was not until 2022.[136] There is no evidence that he attempted to receive help during this time; therefore, nothing supports the fact that this time will be different.

[72] If the Appellant gets released, imposing a condition to attend a treatment facility is imperative, but insufficient. Although it is unclear whether he is interested in receiving help, in general, individuals who do not want to get help are less likely to complete treatment programming, and, therefore, have a higher chance of relapse.[137] Additionally, even if the Appellant did want to receive treatment, it would be unsustainable, as he is unhoused and does not have any family in Canada to support him on his journey to recovery, which would further exacerbate his potential for relapse. If he is unable to achieve sustained sobriety, he will continue to commit these violent crimes, as he has done in the past.

[73] Furthermore, including a condition to attend therapy for his mental illnesses may be beneficial. However, similarly to attending a treatment facility, if he does not maintain regular attendance, it will not make a difference in his violent behaviour. Favouring release in the

---

[135] *Deng* ID, *supra* note 4 at para 13.
[136] *Ibid* at para 5.
[137] "Is Forced Rehab Effective for Addiction Recovery?" (4 April 2023), online (blog): *Harmony Ridge Recovery Centre* <https://www.harmonyridgerecovery.com/is-forced-rehab-effective-for-addiction-recovery/>.

Appellant's case would be forcing the public to bear a significant risk of danger,[138] as his issues have not previously been addressed; therefore, the conditions he would likely be given would not be sufficient for protection.

[74] Taken together, an analysis of all the factors proves that the Appellant is a danger to the public, which calls for detention. Although not every factor points in favour of detention, three factors strongly justify it: the reasons for detention, length of time in detention, and the existence of alternatives. In *Lunyamila*, the FC also held that it is important to emphasize that "where the detainee is a danger to the public, the scheme of *IRPA* and the *[IRPR]* contemplates that substantial weight should be given to maintaining the detainee in detention."[139]

[75] In her ID decision, Member Machado found that ongoing detention to protect the public is a role for criminal law, rather than immigration law,[140] but this is not the case. Immigration detention is not punitive, but is exercised to ensure public safety.[141] On the other hand, criminal detention is primarily punitive and serves as a punishment for criminal convictions. The Respondent agrees that the Appellant has already served time for his criminal convictions —he is not being punished for an offence that was committed in the past. Instead, he must be detained within this administrative regime which is mandated with "maintain[ing] the security of Canadian society."[142] Preventing a public security risk due to his inability to control his violent actions is permitted under the *IRPA*'s objectives. Even if the Appellant had not had a violent criminal record,

---

[138] *Lunyamila*, *supra* note 116 at para 66.
[139] *Ibid* at para 85.
[140] *Deng* ID, *supra* note 4 at para 16.
[141] Canada Border Services Agency, *CBSA's New National Immigration Detention Framework*, January 2017 (Government of Canada).
[142] *IRPA*, *supra* note 3, ss 3(1)(h), 3(2)(g).

but had violent tendencies, detention would have been warranted, as the *IRPA*'s primary concern is to protect Canadian society.

[76] The Appellant remains subject to a valid removal order and the CBSA continues to take active steps to obtain a travel document for him. Therefore, he is not just an individual being detained due to his recent offences, but is a violent, unidentified foreign national, who is inadmissible to Canada and cannot be trusted in the public even if conditions accompanied his release.

[77] The Appellant's violent and escalating criminal history, unresolved identity concerns, and lack of viable release conditions solidify the necessity of his detention. Releasing the Appellant would impose a substantial, unfair, and unreasonable risk to Canadian society, as ensuring the safety and security of Canadians through the *IRPA* is paramount. Therefore, if the nexus to removal is no longer sufficient to ground the Appellant's detention, his detainment must still be enforced. He is subject to a valid removal order and has been proven to be a danger to the public, which the law has held to be a standalone ground of detention under s. 58(1)(a) of the *IRPA*.[143]

PART IV: ORDERS SOUGHT

[78] The Respondent requests that this Court answer both certified questions affirmatively, affirm the FC's ruling and set aside the ID's decision, and order the Appellant's continued detention.

---

[143] *Ibid*, s 58(1)(a).

APPENDIX: LIST OF AUTHORITIES

Statutes and Regulations

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

Immigration and Refugee Protection Act, SC 2001, c 27.

Immigration and Refugee Protection Regulations, SOR/2002-227.

Case Law

Al-Sama'neh v Canada (Public Safety and Emergency Preparedness), 2021 CanLII 148520 (CA IRB).

Atem v Canada (Public Safety and Emergency Preparedness), 2023 FC 165.

Brown v Canada (Citizenship and Immigration), 2020 FCA 130.

Brown v Minister of Citizenship and Immigration, 2021 CanLII 18039 (SCC).

Canada (Attorney General) v Bedford, 2013 SCC 72.

Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65.

Canada (Public Safety and Emergency Preparedness) v Chhina, 2019 SCC 29.

Canada (Public Safety and Emergency Preparedness) v Lunyamila, 2016 FC 1199.

Canada (Public Safety and Emergency Preparedness) v Samuels, 2009 FC 152.

Canada (Public Safety and Emergency Preparedness) v Suleiman, 2022 FC 286.

Canada (Public Safety and Emergency Preparedness) v Taino, 2020 FC 427.

Carter v Canada (Attorney General), 2015 SCC 5.

Charkaoui v Canada (Citizenship and Immigration), 2007 SCC 9.

Dennis v Canada (Public Safety and Emergency Preparedness), 2022 CanLII 91639 (CA IRB).

Isse v Canada (Citizenship and Immigration), 2011 FC 405.

Medovarski v Canada (Minister of Citizenship and Immigration), 2005 SCC 51.

Rizzo & Rizzo Shoes Ltd (Re), 1998 CanLII 837 (SCC), [1998] 1 SCR 27.

Roncarelli v Duplessis, [1959] SCR 121, 1959 CanLII 50 (SCC).

R v Jordan, 2016 SCC 27.

Yaiguaje v Chevron Corporation, 2018 ONCA 472.

Secondary Sources

Canada Border Services Agency, *CBSA's New National Immigration Detention Framework*, January 2017 (Government of Canada).

"Is Forced Rehab Effective for Addiction Recovery?" (4 April 2023), online (blog): *Harmony Ridge Recovery Centre* <https://www.harmonyridgerecovery.com/is-forced-rehab-effective-for-addiction-recovery/>.