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 APPELLANT

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OVERVIEW

[1] This appeal is vital to maintaining the effectiveness and fairness of the immigration system and upholding fundamental human rights and freedoms of all individuals, regardless of their status in Canada. Although the jurisprudence has established that the immigration detention regime under the *Immigration and Refugee Protection Act* ("*IRPA*") is constitutional, it is not intended to substitute the criminal justice system by punishing individuals subjected to administrative enforcement.[1]

[2] The Federal Court ("FC") erred in applying the standard of possibility. Applying the correct standard set out in *Brown v Canada* establishes that Mr. Deng's removal is impossible and that his detention has become indefinite.[2] The Canada Border Services Agency ("CBSA") has investigated Mr. Deng's identity for at least a year, but the effort has been futile. South Sudanese officials remain unsatisfied that Mr. Deng is a South Sudanese national, and the Minister has openly admitted that no new investigative avenues are available.

[3] The FC justifies Mr. Deng's detention on the basis that danger to the public is a standalone ground for detention, which is inconsistent with *Brown*, the leading authority on this matter. *Brown* is clear that detention pursuant to s. 58(1)(a) of the *IRPA* is only valid where there is a nexus to removal that can effect a deportation order. Without the possibility of removal, the objectives and administrative nature of the *IRPA's* immigration detention scheme are undermined and take on the role of criminal incarceration.

[4] Moreover, the FC's decision discriminates against Mr. Deng, contrary to s. 3(3)(d) of the *IRPA* and the values of the *Canadian Charter of Rights and Freedoms* ("*Charter*").[3] Indefinite

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[1] *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, at s 58(1) [*IRPA*].
[2] *Brown v Canada (Citizenship and Immigration),* 2020 FCA 130 [*Brown*].
[3] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Charter*].

detention, without the prospect of removal and outside of any criminal proceedings, should not be normalized. Doing so would jeopardize the purpose and effectiveness of the immigration system in Canada.

[5] The FC's decision should be overturned, and Mr. Deng should be released with conditions. Allowing the FC's ruling to stand would set a problematic precedent that can lead to inconsistencies in the law and enable arbitrary, indefinite detentions of foreign nationals.

PART I: STATEMENT OF FACTS AND PROCEDURAL HISTORY

Statement of Facts

[6] Mr. Niahl Deng, the Appellant, sought refugee protection when he entered Canada on March 2, 2019. He hoped that gaining refugee status in Canada would allow him to escape the danger, fear, and uncertainty he faced in South Sudan and attain a basic quality of life. However, his claim for refugee protection was denied due to his inability to provide sufficient identity documents.[4]

[7] As a result of his trauma from the war in South Sudan and the uncertainty of his immigration status in Canada, Mr. Deng suffers from post-traumatic stress disorder and depression. As a refugee claimant without status in Canada, Mr. Deng did not have access to appropriate support or tools to manage these conditions. Unfortunately, he began using alcohol to manage his feelings of hopelessness during the multi-year refugee process. Mr. Deng's psychiatric report emphasizes his vulnerability and his need for mental health treatment.[5]

[8] Between 2021 and 2022, Mr. Deng was charged with various criminal offences, many of which were withdrawn. His convictions arose from non-premeditated incidents that occurred during periods of intoxication and homelessness. Notably, Mr. Deng has served sentences related

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[4] *Re Deng* (11 July 2024), 0003-B7-000615 (CA IRB) at paras 2-3 [*Deng* IRB].
[5] *Ibid* at para 4.

to these alcohol-induced offences.[6] His behavior is directly correlated to his unmet basic needs and his untreated mental illness. These concerns have not been addressed during his immigration detention.

[9] Mr. Deng has been detained at the Maplehurst Correctional Complex in Ontario since July 10, 2023, immediately following his release from his last criminal sentence. The CBSA claims he is both a flight risk and a danger to the public. However, despite Mr. Deng's full cooperation with removal efforts, South Sudan has refused to issue a travel document. The CBSA has conceded that there is a diplomatic impasse. At this point, Canada is unable to facilitate his deportation and there is no foreseeable resolution.[7]

Procedural History

ID Decision

[10] Member Matilda Machado of the Immigration Division ("ID") of the Immigration and Refugee Board issued the decision for Mr. Deng's fourteenth detention review. The ID found that Mr. Deng's removal from Canada was no longer reasonably foreseeable and that detention for the purpose of public safety, as authorized under s. 58(1)(a) of the *IRPA*, was not a standalone ground for detention.[8]

[11] The ID held that the Minister's efforts at removal, mainly consisting of a monthly "copy-and-paste" email, were ineffective in establishing an immigration nexus. Member Machado concluded that the Minister essentially wanted her to find that a nexus to removal could be established where it made <u>any</u> efforts towards a detainee's removal, regardless of the effectiveness of the efforts. Using the precedent set in *Brown*, Member Machado stated that

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[6] *Ibid* at para 5.
[7] *Ibid* at paras 6-9.
[8] *Ibid* at paras 10-16.

detention is not lawful without the reasonably foreseeable prospect of removal. Based on the evidence, Member Machado found that removal was no longer achievable, and, therefore, unlawful.[9]

[12] The ID also reasoned that s. 58(1)(a) of the *IRPA* must be read with a consideration of the standard set in *Brown*. While s. 58(1)(a) classifies danger to the public as a ground for detention, *Brown* outlines that the power should be used where there is a real possibility of removal. In short, Member Machado held that detention must be linked to an immigration purpose.[10]

Federal Court Decision

[13] The Minister applied to the FC for judicial review of the ID's decision. Justice Salamat granted the application, finding that the ID erred in its interpretation of s. 58 of the *IRPA* and applied an incorrect test for nexus to an immigration purpose. The Court held that the correct test for establishing nexus to an immigration purpose is a standard of possibility rather than a standard of reasonable foreseeability, as articulated in *Brown*.[11] Justice Salamat reasoned that since removal relies upon the cooperation of a receiving country, the test for nexus should recognize any efforts towards removal as effective in establishing the possibility of removal. Even if a detention is lengthy or indeterminate, the Court found that as long as removal remains a possibility, it provides a detention with an immigration nexus.[12]

[14] Relying on *Canada v Taino* as the basis for its reasoning, the Court found that even if removal is stayed or no longer possible, detention can still be ordered if the detainee poses a danger to the public.[13] Although detention must always be connected to a statutory purpose, the Court

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[9] *Ibid* at paras 10-13.
[10] *Ibid* at paras 13-14.
[11] *Canada (Minister of Citizenship and Immigration) v Deng*, 2024 FC 97450 at paras 6-7 [*Deng*].
[12] *Ibid* at paras 10-11.
[13] *Ibid* at para 15.

held that the immigration purpose of removal was replaced with the statutory purpose of protection of public safety and, therefore, valid. Accordingly, the Court granted the Minister's application for judicial review, set aside the decision of the ID, and remitted the decision for redetermination.[14]

PART II: POINTS IN ISSUE AND STANDARD OF REVIEW

Points in Issue

[15] This appeal raises the following questions certified by the Federal Court:

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 s. 58(1)(a) of the *IRPA* where there is no longer a nexus to removal?

Standard of Review

[16] As established in *Canada v Vavilov*, the presumptive standard of review in judicial review decisions is reasonableness.[15] There is no reason to depart from this standard on any of the issues in this appeal.

PART III: ARGUMENT

Issue 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?

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[14] *Ibid* at 14-19.
[15] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

Subissue 1(A): The evidence shows that Mr. Deng's removal is no longer possible

[17] In cases of deportation, courts address multiple case-specific factors to ensure that the Minister and the CBSA are proceeding toward achieving removal. Detention must remain tied to an immigration nexus; and in deportation cases, that nexus is removal from the country. The current standard, as established by *Brown*, is that detention must be tied to an immigration purpose.[16] Removal from Canada can serve an immigration purpose or nexus; however, where someone has been detained for the purpose of removal, such removal must be possible to maintain that nexus. If removal is not possible, there is no longer an immigration nexus, making the detention invalid.[17] Justice Salamat correctly referred to the possibility of removal as the current standard. However, the FC incorrectly determined that any efforts the Minister makes towards removal are sufficient to maintain the possibility standard.[18] On the contrary, efforts towards removal must be active and reasonable. Further, by using the standard outlined in *Brown*, the evidence in this case leads to the conclusion that removal is no longer possible.

Application of the possibility standard

[18] In *Brown,* the Federal Court of Appeal ("FCA") held that using a test of reasonable foreseeability in removal cases is problematic because it opens decision-makers to speculation about reasonability and does not offer guidance as to which "factors, considerations or evidentiary thresholds" are relevant.[19] Rather than using a test of reasonable foreseeability, the FCA proposed that a more appropriate test is to consider whether removal is a possibility based on the following factors:

> 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,

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[16] *Brown*, *supra* note 2 at para 90.
[17] *Ibid*.
[18] *Deng*, *supra* note 11 at paras 9-12.
[19] *Brown*, *supra* note 2 at paras 93-95.

> 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.[20]

In the initial decision, Member Machado incorrectly applied *Brown* by using a test of reasonable foreseeability of removal.[21] Although the ID came to the correct conclusion that Mr. Deng's removal was not achievable, using the reasonable foreseeability standard was erroneous because it misstates the test in *Brown* and invites subjective discretion rather than a focus on objective evidence.[22]

[19] In applying *Brown's* standard of possibility to the present case, the only cogent conclusion is that removal is no longer possible, and Mr. Deng's detention has become unjustifiably indefinite. The Minister has made some efforts towards Mr. Deng's removal, but they have been frustrated by South Sudanese authorities' refusal to issue travel documents. In the ID's decision, Member Machado noted that the Minister has had regular contact with South Sudanese consular authorities in the form of a monthly "copy-and-paste" email requesting travel documents, but continues to get a similar response indicating that they are not convinced of Mr. Deng's identity.[23] Other relevant factors are that the CBSA has located family members of Mr. Deng within South Sudan, and that Mr. Deng has participated in two interviews by South Sudanese consular authorities.[24] This evidence does not demonstrate that the Minister is making meaningful progress towards Mr. Deng's removal. The current avenues of communication and investigation have proven to be ineffective as they have yielded the same results for the entirety of his detention.

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[20] *Ibid* at para 95.
[21] *Deng* IRB, *supra* note 4 at para 11.
[22] *Brown*, *supra* note 2 at paras 94-95.
[23] *Deng* IRB, *supra* note 4 at paras 9-11.
[24] *Ibid* at paras 7-8.

[20] Further, there are two issues with the Minister's commitment to gather evidence from Mr. Deng's relatives in South Sudan.[25] The first is that the relatives are not likely to provide any promising information. In the ID's decision, the relatives are referred to as "more distant family members" and then as "alleged family members."[26] The Minister will have to verify whether there is actual relation to Mr. Deng before determining that these relatives can provide any credible and concrete information about his identity. To be distantly connected to someone does not necessarily imply that a person has real knowledge about someone's background. The second issue is that South Sudanese officials are not likely to be convinced about Mr. Deng's nationality based on the testimony of a distant connection. Despite Mr. Deng's willingness to participate in the investigative process, his accounts and the communication of Canadian officials have not convinced South Sudanese authorities of his identity. It is not reasonable to conclude that South Sudanese authorities would issue travel documents based on information distant relatives or connections might be able to provide.

[21] The evidence demonstrates that South Sudan does not have the appropriate information to issue travel documentation to Mr. Deng, the Minister is no closer to finding new evidence needed to secure travel documentation, and the Minister is not making reasonable efforts to look for information necessary to facilitate Mr. Deng's removal. At this point, Mr. Deng's detention has become unjustifiably indefinite because there is no progress in the removal process and no indication of a plan to facilitate removal going forward.[27] The current measures of the Minister have not resulted in removal, and there is no evidence of plans to use new efforts to effect Mr.

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[25] *Ibid* at para 9.
[26] *Ibid* at paras 7-9.
[27] *Charkaoui v Canada (Minister of Citizenship and Immigration)*, 2007 SCC 9 at para 130 [*Charkaoui*]; *Sahin v Canada (Minister of Citizenship and Immigration)*, 1994 CanLII 3521 (FC), [1995] 1 FC 214 at para 229.

Deng's removal. If the possibility of removal must be realistic and must not be based on speculation, the most reasonable conclusion is that the same ineffective actions will have the same futile result going forward.[28] If removal has not been a possibility thus far, removal will not be a possibility in the future.

Any efforts does not align with the possibility standard

[22] Justice Salamat found that the application of the *Brown* standard means that removal is possible if the Minister makes any effort towards removal.[29] Respectfully, this accounting of the standard is not an accurate characterization. It does not account for the use of evidence to ensure that the possibility is realistic and "not based on speculation, assumption or conjecture."[30] To say that removal remains possible as long as any efforts are made is to recreate the issue that *Brown* aimed to avoid. In that case, the FCA found that the reasonable foreseeability standard raised too many questions, such as what foreseeable meant to whom and what was “reasonable according to whom?”[31] Justice Salamat’s application of the *Brown* test similarly leads to questions of "possible according to whom?" If the Minister can utilize bare minimum efforts such as sending the same email monthly asking for travel documents and indefinitely say this effort creates possibility, then the door is open for indefinite detention without the prospect of removal, and possibility is exclusively and subjectively defined by the Minister on a case-specific basis.

[23] The standard of any efforts might be more convenient for the Minister or the CBSA because they get to define which efforts result in a possibility, and therefore, get to uphold detentions on that basis. A standard of any effort could result in the possibility of removal in most cases, but it does not mean that the possibility is “not fanciful” and not based on

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[28] *Brown*, *supra* note 2 at para 95.
[29] *Deng*, *supra* note 11 at para 12.
[30] *Brown*, *supra* note 2 at para 95.
[31] *Ibid* at para 94.

"speculation" and "conjecture."[32] In sum, the *Brown* standard of possibility is correct and should be upheld, but it must be applied properly with a full consideration of all reliable evidence available.[33] Failing to meet this standard could lead to very detrimental outcomes for detainees.

Subissue 1(B): Reliance on 'any efforts' does not establish the possibility of removal, and thus does not establish a nexus towards removal

[24] Under the *IRPA,* a foreign national or permanent resident may be detained for a number of reasons.[34] In the case at present, the CBSA arrested Mr. Deng on the basis that he was unlikely to appear for removal and because he posed a danger to the public.[35] The Minister has continued to support Mr. Deng's detention for these reasons but has not succeeded in advancing his removal from Canada. Additionally, a valid reason for detention is not enough on its own for a person to remain in detention. A detention must be tied to an immigration purpose, or it is no longer valid.[36] Mr. Deng's detention is no longer valid because, based on the evidence, his removal is no longer possible. Thus, Mr. Deng's detention is no longer tied to the immigration purpose of removal.

[25] The Court below made an interpretive error in law. Justice Salamat adopted the test for nexus to removal from *Brown* but stated that any efforts of the Minister towards removal were sufficient to establish the immigration nexus and that using a reasonable possibility of removal, as incorrectly characterized by the ID, does not allow Canada to manage detentions appropriately.[37] This articulation of law is a departure from the test articulated in *Brown*, which

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[32] *Ibid* at para 95.
[33] *Ibid*.
[34] *IRPA*, *supra* note 1 at s 58(1).
[35] *Deng* IRB, *supra* note 4 at para 6.
[36] *Brown*, *supra* note 2 at para 90.
[37] *Deng*, *supra* note 11 at para 10.

does demand that the Minister prove removal is a possibility.[38] In addition, the evidence in this case does not point to a possibility of removal. The Minister has conceded to being at an impasse with South Sudanese authorities, who have refused to issue Mr. Deng identity documentation, and the Minister has also admitted they have no new investigative tools for establishing Mr. Deng's identity.[39] Since the current efforts have led to an impasse and no new efforts are being taken or attempted, it is not reasonable to conclude that removal remains possible.

[26] If there is no longer a valid immigration purpose driving the detention, the confinement becomes unjustifiable. [40] Mr. Deng continues to be held in detention for the ostensible purpose of removal. However, the facts illustrate that deportation is no longer possible, therefore, the detention has departed from an immigration purpose. In addition, it is impossible to make an informed and substantiated projection about the length of time Mr. Deng will have to spend in detention. He has already spent at least 12 months in detention and without new evidence or instruments of investigation, his period of detention would remain indefinite.

[27] As established in the case of *Chaudhary v Canada*, a detention is not justified if "there is no reasonable prospect that the detention's immigration-related purposes will be achieved within a reasonable time."[41] Although a reasonable time frame is dependent upon the circumstances of each case, removal has already proven to be impossible in this case, making the future period of detention uncertain.[42] The evidentiary burden to justify detention also increases with the length

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[38] *Dennis v Canada (Public Safety and Emergency Preparedness)*, 2022 CanLII 91639 (CA IRB) at para 32-33 [*Dennis*].
[39] *Deng* IRB, *supra* note 4 at para 8.
[40] *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29 at paras 134-135 [*Chhina*].
[41] *Chaudhary v Canada (Public Safety and Emergency Preparedness)*, 2015 ONCA 700 at para 81.
[42] *Chhina*, *supra* note 40 at paras 134-135.

of time that a claimant remains detained.[43] However, for the entirety of Mr. Deng's detention, the Minister has relied upon an identical monthly email to justify continued detention.[44]

Subissue 1(C): The Minister must make active and reasonable efforts to remove a detainee

[28] The standard established in *Brown* is that removal must be a realistic possibility so detention remains grounded in an immigration purpose.[45] The Minister has the burden of establishing the possibility of removal using "evidence-based rationale."[46] If the Minister fails to meet this burden, the reason for the detention is no longer justified by an immigration purpose. In the present case, the Minister continues to make the same monthly effort to obtain travel documents from South Sudanese officials via repetitive email interaction.[47] The interaction has routinely failed to produce results, and to expect a different response going forward is neither realistic nor believable. If removal remains a possibility based on realistic and non-speculative evidence, then efforts towards a detainee's removal should also be realistic. The effort by the Minister, in this case, cannot be categorized as reasonable because it involves no more than what is referred to by Member Machado as a monthly "copy-and-paste email."[48]

Jurisprudence clarifies active and reasonable efforts towards removal are required

[29] Efforts towards removal must be reasonable, and, although not specifically addressed in the jurisprudence, it follows from that proposition that efforts must also be active. Active means that actions taken towards removal involve an effort that addresses case-specific challenges so as not to become redundant; this point is well illustrated by *Ali v Canada*.[49] In *Ali*, a foreign

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[43] *Ibid*.
[44] *Deng* IRB, *supra* note 4 at para 11.
[45] *Brown*, *supra* note 2 at para 95.
[46] *Dennis*, *supra* note 38 at para 23; *Brown*, *supra* note 2 at para 95.
[47] *Deng* IRB, *supra* note 4 at para 11.
[48] *Ibid*.
[49] *Ali v Canada (Attorney General)*, 2017 ONSC 2660, 137 O.R (3d) 498 [*Ali*].

national born in Ghana lived in Canada for 30 years without status.[50] During this time, he was charged with multiple serious crimes and eventually found inadmissible to Canada due to serious criminality.[51] Like the present case, Mr. Ali was detained by the CBSA pending his removal and found to be a danger to the public and a flight risk.[52] He remained in detention for over seven years and endured 80 detention reviews.[53] In *Ali*, the CBSA utilized multiple investigative tools to effect Mr. Ali's removal, including:

- Circulating his photo to authorities in hopes he would be recognized;
- Circulating his fingerprints to other law enforcement agencies;
- Having officials from Ghana and Nigeria interview Mr. Ali; and,
- Recovering a phone number for an immediate family member from Mr. Ali.[54]

[30] *Ali* presents an example of authorities actively attempting to confirm a detainee's identity. In that case, the CBSA explored multiple avenues of investigation and continued to contact authorities both domestically and internationally to execute removal.[55] Despite utilizing multiple efforts over a several-year period, Mr. Ali was released due to the indefinite nature of his detention.[56] In contrast, efforts to remove Mr. Deng have included a passive monthly email, each identical to the last, and locating distant relatives. These actions do not demonstrate that a genuine effort is being made towards removal, nor does it create actual movement towards removal. Thus, relying on <u>any</u> efforts, no matter how passive or unlikely they are to achieve removal, is unreasonable and leads to detentions that are unhinged from an immigration purpose.

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[50] *Ibid* at paras 2-3.
[51] *Ibid* at para 4.
[52] *Ibid* at para 15.
[53] *Ibid*.
[54] *Ibid* at para 23.
[55] *Ibid*.
[56] *Ibid* at para 29.

[31] In another analogous case, *Canada v Suleiman*, Mr. Suleiman arrived as a refugee from Kenya but was considered stateless as authorities believed he was born in Uganda.[57] He was granted permanent residence upon his arrival, but it was revoked years later due to several violent criminal convictions.[58] Like the case at present, Mr. Suleiman was detained for the purpose of removal immediately following his criminal sentence on the grounds that he was a danger to the public and unlikely to appear for removal.[59] After two years in detention, the ID ordered Mr. Suleiman's release, finding that "the possibility of deporting Mr. Suleiman had become "illusory" and "so remote as to be speculative."[60] In the case of *Suleiman*, the efforts towards removal were extensive, including:

- Requesting travel documents from Ugandan authorities;
- Investigating possible family connections and conducting interviews with family members present in Canada;
- Corresponding with Liason Officers in Kenya regarding past passport applications and documents;
- Requesting information from the United Nations High Commission for Refugees.
- Hiring private investigators in Kenya and attempting to secure one in Uganda to investigate background information; and,
- Regular interviews with the detainee.[61]

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[57] *Canada (Public Safety and Emergency Preparedness) v Suleiman*, 2022 FC 286 (CanLII) at paras 5-7 [*Suleiman*].
[58] *Ibid* at paras 7-12.
[59] *Ibid* at paras 13-14.
[60] *Ibid* at para 44.
[61] *Ibid* at para 47.

[32] *Suleiman* illustrates that the removal process must remain active so as not to become stagnant.[62] In that case, the Minister had made greater efforts than in the case at present over a similar timeline, but investigative efforts to gather new information had stalled and a further plan towards removal was no longer tangible.[63] In Mr. Deng's case, the Minister has admitted that there are no new investigative steps being taken and that they are at an impasse with South Sudanese authorities.[64] The Minister argues that they will continue attempting to persuade South Sudanese authorities through "diplomatic pressure," but there is no solidified plan for ongoing efforts, or any new measures, and the current efforts have failed.[65] Mr. Suleiman's removal had become illusory because of a stalled investigation, though comparatively greater efforts were made than in the case at present. On the same principle, Mr. Deng's removal, on the basis of much weaker efforts, is no longer possible on the authoritative standard established by *Brown*.[66]

Issue 2: Can a foreign national or permanent resident of Canada be detained on the basis of Danger to the Public pursuant to s. 58(1)(a) of the *IRPA* where there is no longer a nexus to removal?

Subissue 2(A): Danger to the public pursuant to s. 58(1)(a) does not operate as a standalone ground for detention

S. 58(1) of the IRPA must be read in light of all statutory objectives and purposes

[33] Statutory interpretation involves the consideration of the statute's entire context, and it is achieved by reading the words in their ordinary sense along with the objectives of the act and the intention of Parliament.[67] This modern approach to legislative interpretation is accompanied by

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[62] *Ibid* at para 25.
[63] *Ibid*.
[64] *Deng* IRB, *supra* note 4 at para 10.
[65] *Ibid* at para 9.
[66] *Suleiman*, *supra* note 57 at para 44.
[67] *Vavilov*, *supra* note 15 at para 117.

the presumption that "Parliament intends to enact legislation in conformity with the *Charter*" and that a legislative provision must be read in a way that is constitutional.[68]

[34] In its ordinary sense, s. 58(1) of the *IRPA* is clear that the ID is required to release a detained foreign national unless it is satisfied that the person is a danger to the public after balancing the factors set out in s. 248 of the *Immigration and Refugee Protection Regulations* ("*Regulations*").[69] These factors are mandatory considerations when deciding a detainee's release or continued detention. For detention to be grounded under s. 58(1) of the *IRPA*, s. 246 of the *Regulations* prescribes categories to help determine whether a foreign national constitutes a danger to the public. Taken together, these regulations help to determine whether the person is a danger to the public and whether detention is necessary until removal can be enforced. The very existence of the s. 248 factors establish that danger to the public by itself is not sufficient to ground detention.

[35] To determine the detention scheme and objectives of the *IRPA*, s. 58(1) must be read in the context of other provisions. Under s. 58(2), the *IRPA* grants discretion to detain a foreign national

> If it is satisfied that the permanent resident or the foreign national is the subject of an examination or an admissibility hearing or is subject to a removal order **and** that the permanent resident or the foreign national is a danger to the public or is unlikely to appear for examination, an admissibility hearing or removal from Canada [emphasis added].[70]

The wording of the provision is clear that both a removal order and a danger to the public must exist at the same time for the discretion to detain to be enabled. The existence of that discretion implies that the ID is not required to detain such individuals and instead may release a detainee

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[68] *Brown, supra* note 2 at para 46.
[69] *IRPA*, *supra* note 1 at s 58(1)(a); *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*].
[70] *IRPA*, *supra* note 1 at s 58(2).

with appropriate conditions.[71] This provision provides clarity to the power granted under s. 58(1) and establishes that danger to the public is not a standalone ground.

[36] Another notable legislative objective that limits the power of detention is found in s. 48(2) of the *IRPA* which states that enforceable removal orders "be enforced as soon as possible."[72] Therefore, in situations where there is a removal order and a detention grounded in s. 58, the enforceability of that removal must necessarily be taken into account. With the facts at hand, there is no evidence that Mr. Deng's removal order is unenforceable or that it has been stayed. His removal order remains valid despite removal no longer being possible because of the Minister's futile efforts. As such, s. 48(2) still applies and must be tied to Mr. Deng's detention. Since the CBSA cannot fulfill this statutory objective, Mr. Deng cannot remain detained solely under s. 58(1)(a) and must be released.

[37] The Court below held that where removal is not the primary purpose for detention, the gap is filled by the purpose of public safety.[73] The Appellant respectfully disagrees. Although s. 3(1)(h) of the *IRPA* indicates the objective "to protect public health and safety and to maintain the security of Canadian society," the same section, under s. 3(2)(e), contains the purpose of establishing "fair and efficient procedures that will maintain the integrity of the Canadian refugee protection system while upholding Canada's respect for the human rights and fundamental freedoms of all human beings."[74] Using immigration detention only for public safety reasons disregards the other objectives that hold equal weight. Despite being a foreign national, Mr. Deng is a refugee claimant under the *IRPA,* and s. 3(2)(e) entitles him to fair and efficient procedures and the protection of

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[71] *Canada (Public Safety and Emergency Preparedness) v Ali*, 2018 FC 552 at para 43 [*Ali FC*].
[72] *IRPA*, *supra* note 1 at s 48(2).
[73] *Deng*, *supra* note 11 at para 17.
[74] *IRPA*, *supra* note 1 at ss 3(1)(h), 3(2)(e).

his human rights and fundamental freedoms.[75] To interpret s. 58(1) as a sole basis for detention without a nexus to removal is to allow arbitrary indeterminate detentions. This does not align with the goal to maintain the refugee protection system and to uphold human rights and fundamental freedoms.

The FC's decision does not align with Charter values

[38] The *IRPA* must be interpreted in a way that aligns with *Charter* values. S. 3(3)(d) explicitly states that the *IRPA* is to be applied in a manner that "ensures that decisions taken under this Act are consistent with the *Charter* (...), including its principles of equality and freedom from discrimination." [emphasis added].[76] Upholding the FC's decision to detain Mr. Deng on the sole basis of danger to the public does not align with s. 3(3)(d). Mr. Deng's freedom from discrimination is compromised because his arbitrary indefinite detention is a result of his lack of citizenship status in Canada.

[39] In *Charkaoui*, the court held that differential treatment of citizens and non-citizens, although contrary to s. 15 of the *Charter*, is permitted under s. 6 for deportation matters and in particular, the security certificate scheme.[77] However, Mr. Deng's case is distinguished from *Charkaoui* because he is not subject to a security certificate that identifies him as a threat to national security.

[40] The *IRPA* could result in discrimination when detention becomes unhinged from the purpose of removal and leads to indefinite detention because deportation is no longer possible.[78] This is exactly what has occurred in the matter at hand. Although s. 58(1)(a) of the *IRPA* is constitutional, the FC's decision to maintain Mr. Deng's detention is discriminatory and

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[75] *Ibid* at s 3(2)(e).
[76] *IRPA*, *supra* note 1 at s 3(3)(d); *Charter*, *supra* note 3 at s 15.
[77] *Charkaoui*, *supra* note 27 at para 129.
[78] *Ibid* at paras 130-131.

contravenes s. 3(3)(d). Unlike *Charkaoui*, this case does not engage s. 6 because the issue is not regarding Mr. Deng's removal and is instead about his indefinite detention as a foreign national.

[41] Mr. Deng has the right to be protected from discrimination as a foreign national. His indefinite detention outside of the criminal justice system is discriminatory. No detention regime exposes Canadian citizens to indefinite detentions solely as a preventative measure. The liberty of Canadians is not subject to this extent of deprivation because they are not governed under the *IRPA*'s enforcement regime.

[42] As previously established, Mr. Deng's detention is no longer tethered to a purpose under the *IRPA* because his removal can no longer be effected. Allowing Mr. Deng to be detained without a nexus to removal is discriminatory because he is deprived of equal treatment under the law. He is denied the basic human rights to freedom and dignity that are afforded to citizens. If he were a Canadian citizen, the preventative purpose underlying his indefinite detention would be unconstitutional.

[43] Given the analysis above and the overall scheme of the *IRPA*, detention under s. 58(1) must serve an immigration purpose – in this case, removal – and cannot be treated as an independent ground for exercising detention powers.

Brown is the leading authority on the application of s. 58(1)(a)

[44] The FC relied on the reasoning in *Canada v Taino* to determine that detention could be ordered on the grounds of danger to the public even if removal is no longer a possibility.[79] The FC in *Deng* uses this to justify Mr. Deng's detention despite no longer having a nexus to removal. However, the FC erred in its application of *Taino* and its interpretation of the law in *Brown* when

[79] *Deng*, *supra* note 11 at para 15; *Canada (Public Safety and Emergency Preparedness) v Taino*, 2020 FC 427 [*Taino*].

it concluded that there is no implicit requirement that detention is only lawful where removal is possible.

[45] The FCA in *Brown* provides a clear framework to assess the nexus between immigration purpose and detention. The Court dictates that detention under s. 58(1) must facilitate the various immigration objectives outlined in the *IRPA*.[80] Although *Brown* specifically referenced s. 3(1)(h), it is only one of many purposes and objectives that must also be considered when analyzing the discretion permitted under s. 58(1).[81]

[46] *Brown* emphasizes that the *IRPA* is subjected to "two implicit limitations: the power to detain was limited to the purposes of removal and the responsible minister must move 'with all reasonable expedition' to ensure removal."[82] Further, "to require an express statement that the power of detention can only be exercised where there is a real possibility of removal would be to read-in a redundancy."[83] When there is no longer a nexus to removal that would justify continued detention, such detention becomes unlawful.[84] Immigration detention is not a corrective measure, and when removal becomes indefinite, detention becomes inconsistent with the principles of fundamental justice.[85] *Brown* states that "the power of detention will be exercised principally, but not exclusively, pending removal.[86] This means that "release is the rule, and detention is the exception."[87] *Suleiman* interprets the grey area of "principally but not exclusively" as permitting

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[80] *Brown*, *supra* note 2 at para 42.
[81] *Ibid*.
[82] *Ibid* at para 43.
[83] *Ibid* at para 60.
[84] *Ibid*.
[85] *Canada (Minister of Citizenship and Immigration) v Li*, 2009 FCA 85 at paras 74-75.
[86] *Brown*, *supra* note 2 at para 44.
[87] *Canada (Public Safety and Emergency Preparedness) v Thavagnanathiruchelvam*, 2021 FC 592 at para 36.

detention in non-exclusive situations where the detainee is still engaged in various immigration processes that have not yet reached the removal stage.[88]

[47] Although *Taino* ruled that danger is a standalone ground for detention, this is inconsistent with the ruling in *Brown* which supersedes *Taino* in the matter of precedential hierarchy.[89] The FC in *Deng* failed to distinguish that the detainee in *Taino* was not subject to removal upon receiving a positive Pre-Removal Risk Assessment ("PRRA").[90] The positive PRRA decision rendered his removal order unenforceable and gave Mr. Taino a legal status to remain in Canada.[91] Given the detainee's legal right to stay in Canada, the implicit possibility of removal under s. 58 did not apply.[92] Unlike Mr. Taino, Mr. Deng has an enforceable removal order that the CBSA must act upon as soon as possible pursuant to s. 48 of the *IRPA*.

[48] *Taino* is not analogous to Mr. Deng's case and should not be used to determine the outcome. It focused on the issues surrounding a stay of a removal order, whereas this appeal does not. Instead, the Appellant turns to *Suleiman* which is the most current affirmation of *Brown*. In that case, the detainee had already exhausted all immigration processes and was found to be inadmissible.[93] The final administrative step was his removal from Canada but it could not be realized due to the lack of travel documents.[94] The Court followed the reasoning in *Brown* and held that in circumstances as such, there must exist "an implicit requirement that deportation be possible in order for detention to be continued under ss. 58(1) and 58(2) of the *IRPA*."[95] Danger to

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[88] *Suleiman*, *supra* note 57 at para 68.
[89] *Ibid* at para 57.
[90] *Taino*, *supra* note 79 at para 10.
[91] *Ibid*.
[92] *Suleiman*, *supra* note 57 at para 60.
[93] *Ibid* at para 69.
[94] *Ibid*.
[95] *Ibid* at paras 70-71.

the public was not an exception to this.[96] The circumstances in *Suleiman* closely resemble the issues surrounding Mr. Deng's detention and are readily applicable.

[49] The "not exclusively" exception, as per *Brown*, does not apply to Mr. Deng. He has already been determined inadmissible to Canada and he has exhausted all immigration avenues.[97] There is no evidence that an initial PRRA has not been done or that his removal order has been stayed. Mr. Deng has reached the end of his immigration administrative process and is only waiting for his deportation from Canada, much like Mr. Suleiman.

[50] Further, Mr. Deng does not have a right to remain in Canada following the rejection of his refugee claim. His removal order can no longer be executed because of the Minister's inability to secure travel documents from South Sudan. This subjects him to indeterminate detention.

[51] Without the possibility of removal, detention cannot serve its immigration purpose and it must end.[98] Mr. Deng's continued detention on the sole basis of danger to the public without a nexus to removal is inconsistent with the framework under the *IRPA* and the *Regulations*. His detention was initially ordered as a preventative measure to protect the public from potential harm pending his removal from Canada. His removal is at the heart of the immigration proceedings, and the Minister's removal efforts have now come to an impasse. Without a nexus to removal, Mr. Deng does not have any further administrative immigration processes to pursue. He is left waiting for his removal, which is no longer a possibility and this renders his continued detention punitive rather than administrative in nature.

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[96] *Ibid*.
[97] *Deng* IRB, *supra* note 4 at para 3.
[98] *Brown*, *supra* note 2 at para 91.

Subissue 2(B): The prescribed factors do not support a finding of continued detention

[52] To justify a detainee's continued detention or release, the factors in s. 248 of the *Regulations* must be applied.[99] *Charkaoui* mandates that the ID must also consider the proportionality and alternatives to detention.[100] This requires decision-makers to weigh Canada's immigration objectives against the detained individual's right to be free from arbitrary or indefinite restraints on liberty.[101] These factors must be read in the context of the *IRPA* as a whole.[102] The greater the danger that the individual poses to the public, the stronger the justification for ongoing detention.[103]

[53] An analysis of the factors in s. 248 of the *Regulations* strongly supports the conclusion that Mr. Deng's continued detention is not justified in light of the *IRPA*'s objectives. The reason for his detention is undermined by the inability of the Minister to secure travel documents for his removal, thus leading to the prolonged and indefinite nature of his detention. Further, there are viable alternatives to mitigate any material risks regarding Mr. Deng's danger to the public. The relevant factors are outlined below.

(a) The Reason for Detention

[54] *Charkaoui* posits that detention is justified in cases of a continuing threat to the safety of any person. The more serious the threat, the greater the justification for detention will be.[104] Mr. Deng's detention is grounded in the speculation that he is unlikely to appear for removal and that he continues to pose a danger to the public due to his criminal record. He has consistently

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[99] *Ibid* at para 90.
[100] *Charkaoui*, *supra* note 27 at para 109.
[101] *Chhina*, *supra* note 40 at para 133.
[102] *Canada (Public Safety and Emergency Preparedness) v Lunyamila*, 2016 FCC 1199 at para 66 [*Lunyamila*].
[103] *Chhina*, *supra* note 40 at para 133.
[104] *Charkaoui*, *supra* note 27 at para 111.

cooperated with all of the CBSA's efforts to confirm his identity and to facilitate his removal. There has been no indication that he will be unlikely to appear for removal upon his release.

[55] Mr. Deng has been subjected to at least 14 detention reviews and, at each sitting, he is classified as a danger to the public despite having already served his time for his convictions. Although the Appellant agrees that Mr. Deng had violent tendencies in the past, many of his criminal offences were withdrawn and his actions were largely due to intoxication, homelessness, and mental health concerns. These issues are a direct result of the hardships he suffered in a refugee camp and the delays in the Canadian immigration process which have made him feel hopeless and desperate.[105] It is unclear if or when the Minister will stop classifying Mr. Deng as a danger. However, without access to proper rehabilitative support, detention is not only ineffective but also exacerbates the issues that contributed to Mr. Deng's past behaviour.

(b) The Length of Time in Detention

[56] Prolonged detention without a clear timeline for removal is inconsistent with the purposes of the *IRPA*.[106] *Charkaoui* sets out that "the imminence of danger to the public may decline with the passage of time."[107] Mr. Deng was held in the Maplehurst Correctional Complex for at least a year without a foreseeable end. During his detention, there was no evidence of Mr. Deng engaging in delinquent activity that would lead the Minister to conclude that he continues to be a danger to the public. If his detention continues, he will spend a longer time in immigration detention than the time he served for his criminal conviction in 2022.

(c) Elements in determining the length of time that detention is likely to continue

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[105] *Deng* IRB, *supra* note 4 at para 4.
[106] *Chhina*, *supra* note 40 at para 5.
[107] *Charkaoui*, *supra* note 27 at para 112.

[57] *Charkaoui* holds that if the length of future detention time cannot be predicted, this factor will weigh in favor of release.[108] The continuous refusal of South Sudanese officials to issue travel documents for Mr. Deng indicates that his detention may continue indefinitely. Without a change in diplomatic relations or policy, there is no basis to anticipate that removal will occur in the near future. Although the CBSA has located some of Mr. Deng's alleged distant family members, it is not guaranteed that South Sudanese officials will eventually accept any information received from them as proof of Mr. Deng's nationality. They maintain that they are not satisfied that Mr. Deng is a South Sudanese national.[109] The Minister's intention to continue sending similar or identical emails to the officials does not indicate a concrete or productive plan that will eventually result in Mr. Deng's release.

(d) Unexplained delays or lack of diligence

[58] Any removal delays have been due to South Sudanese officials' lack of cooperation and the ineffectiveness of the Minister's efforts, not by Mr. Deng's inaction. He has been consistently cooperative with the CBSA's efforts to establish his identity and to facilitate his removal. Further, the Minister has not made any discernible improvements in their plan to work with South Sudan to facilitate Mr. Deng's removal. The repeated use of nearly identical emails has proven ineffective, yet the Minister continues to rely on this approach moving forward as justification that removal remains possible.[110] Neither the delay nor the lack of diligence can be attributed to Mr. Deng.

(e) The existence of alternatives to detention

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[108] *Ibid* at para 115.
[109] *Deng* IRB, *supra* note 4 at para 9.
[110] *Ibid* at para 11.

[59] Incarceration is the most severe form of limitation on an individual's liberty. Alternatives to detention must be considered and should be proportionate in response to the concerns of a danger to the public.[111] *Lunyamila* states that alternatives, such as release conditions, must meet the standard of virtual elimination to address the concerns of danger to the public.[112] However, it can be impossible to meet this standard and would "foreclose release whenever a detainee is a danger to the public."[113] *Ali FC* qualifies *Lunyamila* by outlining that conditions of release must be "sufficiently robust" and exhaustive to prevent any "material risk of harm."[114]

[60] Release conditions can be imposed on Mr. Deng to mitigate any material risk of harm he would pose to the public. The following conditions would be sufficiently exhaustive to prevent Mr. Deng from re-offending:

(a) Release to a Community Case Management and Supervision Program (CCSM);[115]

(b) Supervision by a probation officer on a weekly basis;

(c) Cooperation with the CBSA in obtaining an identity or travel document;

(d) Full participation in a counselling program, as directed by the assigned supervisor of CCSM, in accordance with its terms and conditions; and,

(e) Full participation in an alcohol-addiction treatment program, as directed by the assigned supervisor of CCSM, in accordance with its terms and conditions.

These measures can adequately address any public safety concerns without relying on indefinite detention.

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[111] *Charkaoui*, *supra* note 27 at para 116.
[112] *Lunyamila*, *supra* note 102 at para 116.
[113] *Canada (Public Safety and Emergency Preparedness) v Mawut*, 2022 FC 415 at para 35.
[114] *Ali FC*, *supra* note 71 at para 47.
[115]Canada Border Services Agency, "Community Case Management and Supervision" (24 July 2018), online (website): <https://www.cbsa-asfc.gc.ca/security-securite/detent/ccms-gccs-eng.html>.

[61] S. 248 of the *Regulations* was enacted to ensure that detention remains constitutional and tied to immigration objectives.[116] In the matter at bar, a balancing of the factors shows that Mr. Deng's continued detention is disproportionate to the use of immigration detention powers. His detention is no longer lawful or justifiable and he should be released with appropriate conditions to address public safety concerns. The Minister's attempt to justify Mr. Deng's detention solely on public safety grounds contradicts the objectives of the *IRPA* and the jurisprudence. Immigration detention cannot be used as a tool to manage public safety concerns in the absence of a removal nexus. Mr. Deng has already served criminal sentences for the offences that the Minister relies on as the basis for his being a danger to the public.

Subissue 2(C): Detention under the IRPA is administrative in nature

Administrative detention is not punitive

[62] The purpose of immigration detention is administrative in nature and is meant to serve specific objectives tied to immigration processes.[117] It is not intended to be a punishment for crime and is distinguished from criminal detention in that it is not based on the grounds of committing a criminal offence.[118]

[63] The FC erred in determining that where removal is not the primary purpose, the gap is filled by the purpose of protecting the public safety and security of Canadians. To permit detention based solely on public safety grounds would conflate and compromise the two distinct roles of immigration detention and criminal incarceration. It would undermine the other objectives of the *IRPA*, especially s. 3(2)(e) and s. 3(3)(d). Detention based on danger to the public without a nexus

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[116] *Chhina*, *supra* note 40 at paras 122-124.
[117] Delphine Nakache, "The Human and Financial Cost of Detention of Asylum-Seekers in Canada" (December 2011), online (PDF) at 18: <https://www.unhcr.ca/wp-content/uploads/2014/10/RPT-2011-12-detention_assylum_seekers-e.pdf>.
[118] *Ibid.*

to removal shifts the purpose from administrative to punitive and treats immigration detention as a substitute for criminal incarceration.

[64] Immigration detention is meant to be temporary and is not intended to be the ultimate goal under the *IRPA*. To establish fair and efficient procedures that will maintain the integrity of the Canadian immigration system, removal is necessarily the goal for foreign nationals who have been rejected the right to reside in the country. When administrative proceedings are stalled due to a rejection from the receiving country, the *IRPA* cannot be used to detain individuals solely as a punishment for their prior criminality or for any anticipated future criminal wrongdoing. This is reflected in the principles underlying the CBSA's detention policy, which clearly outline the circumstances under which officers are authorized to detain individuals pursuant to the *IRPA.* The CBSA is instructed to treat immigration detention as administrative and to ensure that it refrains from being punitive in nature.[119] The CBSA must also determine whether there are alternatives to detention suitable to mitigate an individual's risk to the public.[120]

Using immigration detention to control criminality will overwhelm the immigration system

[65] Allowing s. 58(1) to exist as a standalone ground for detention exceeds the administrative purpose of immigration detention. It would lead to arbitrary indefinite detention, and the Canadian immigration system will become overwhelmed and overburdened. There are already limited government resources being used towards continuous detention-related efforts. Utilizing s. 58(1) for the sole purpose of controlling criminality will contravene the objective to "maintain, through the establishment of fair and efficient procedures, the integrity of the Canadian immigration

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[119] Canada Border Services Agency, *ENF 20: Detention* section 6.1 (2020) at 14-15 online: <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>.

[120] *Ibid* at 27.

system" [emphasis added] under s. 3(1)(f.1).[121] The system will be rendered inefficient and will result in the arbitrary and indefinite holding of foreign nationals. This would mean that any non-citizen who is not involved in immigration proceedings can be detained on the basis that they pose a danger to the public.[122]

[66] Mr. Deng's ongoing detention goes beyond the intended administrative function and is redundant to the criminal sentences he has already served. He would be subjected to incarceration in a provincial prison, where he would be treated in the same manner as other criminals. Mr. Deng would continue to be punished for his prior criminality under the immigration regime even when the criminal justice system has deemed that he sufficiently paid for the consequences of his actions when he fulfilled his sentences. There is no evidence to show that alternatives to detention would not adequately address any danger he may pose to the public.

[67] Mr. Deng should not be forced to complete an additional criminal sentence disguised under immigration law. Mr. Deng ought to be released with appropriate conditions as his detention has become punitive and the administrative function of removal has ceased to exist.

PART IV: ORDERS SOUGHT

[68] The Appellant seeks to have the FC's decision overturned and requests for the appeal to be allowed on both grounds:

(a) Detention of a foreign national or permanent resident under the *IRPA* is only valid when connected to an immigration nexus, and a nexus to removal is not sustained by the state making <u>any</u> efforts towards removal.

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[121] *IRPA*, *supra* note 1 at s 3(1)(f.1).

[122] Molly Joeck, "Taino v Canada: Has the Federal Court just endorsed the indefinite detention of noncitizens in Canada?" (13 May 2020), online (blog): <https://edelmann.ca/taino-v-canada-has-the-federal-court-just-endorsed-the-indefinite-detention-of-noncitizens-in-canada/#:~:text=The%20Taino%20decision%20turned%20largely,conditions%20in%20question%20provided%20sufficient>.

(b) Where there is no longer a nexus to removal, a foreign national or permanent resident of Canada cannot remain detained on the sole basis of danger to the public under s. 58(1)(a) of the *IRPA*.

[69] The Appellant requests that Mr. Deng be released on the following conditions:

(a) Release to a Community Case Management and Supervision Program (CCSM);

(b) Supervision by a probation officer on a weekly basis;

(c) Cooperation with the CBSA in obtaining an identity or travel document;

(d) Full participation in a counselling program, as directed by the assigned supervisor of CCSM, in accordance with its terms and conditions; and,

(e) Full participation in an alcohol-addiction treatment program, as directed by the assigned supervisor of CCSM, in accordance with its terms and conditions.

APPENDIX: LIST OF AUTHORITIES

Legislation

Canadian Charter of Rights and Freedoms, Part 1 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

Jurisprudence

Ali v Canada (Attorney General), 2017 ONSC 2660, 137 O.R (3d) 498.

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

Canada (Public Safety and Emergency Preparedness) v Ali, 2018 FC 552.

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

Canada (Minister of Citizenship and Immigration) v Li, 2009 FCA 85.

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

Canada (Public Safety and Emergency Preparedness) v Mawut, 2022 FC 415.

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

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

Chaudhary v Canada (Public Safety and Emergency Preparedness), 2015 ONCA 700.

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

Sahin v Canada (Minister of Citizenship and Immigration), 1994 CanLII 3521 (FC), [1995] 1 FC.

Secondary Materials

Canada Border Services Agency, "Community Case Management and Supervision" (24 July 2018), online (website); <https://www.cbsa-asfc.gc.ca/security-securite/detent/ccms-gccs-eng.html>

Canada Border Services Agency, *ENF 20: Detention* section 6.1 (2020) at 14-15 online: <https://www.canada.ca/content/dam/ircc/migration/ircc/english/resources/manuals/enf/enf20-det-en.pdf>.

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Delphine, Nakache, "The Human and Financial Cost of Detention of Asylum-Seekers in Canada" (December 2011), online (PDF) at 18: <https://www.unhcr.ca/wp-content/uploads/2014/10/RPT-2011-12-detention_assylum_seekers-e.pdf>.