

Federal Court



Cour fédérale

**Date: 20160317**

**Dockets: IMM-63-16  
IMM-502-16**

**Citation: 2016 FC 324**

**Ottawa, Ontario, March 17, 2016**

**PRESENT: The Honourable Mr. Justice Harrington**

**BETWEEN:**

**THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS**

**Applicant**

**and**

**JACOB DAMLANY LUNYAMILA**

**Respondent**

**ORDER AND REASONS**

[1] On March 3, 2016, I granted the Minister's applications for judicial review of the January and February decisions of the Immigration Division of the Immigration and Refugee Board to release Mr. Lunyamila from immigration detention (2016 FC 288) and ordered that Mr. Lunyamila remain in detention until further Court order. On March 7, 2016, I issued my reasons and gave Mr. Lunyamila the opportunity to propose a serious question of general importance to certify, and the Minister to reply should a question be proposed (2016 FC 289).

[2] Counsel for Mr. Lunyamila queried whether the Federal Court had jurisdiction to usurp the jurisdiction of the Immigration Division of the Immigration and Refugee Board of Canada to order the release of a detainee pursuant to the *Immigration and Refugee Protection Act* by ordering that the detainee remain in detention until further Court order.

[3] The Minister opposed the certification of a question on the basis that it must be a serious question of general importance which could be dispositive of an appeal (*Zazai v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 89). It was submitted that the proposed question would not be dispositive of the issues raised in the applications for leave and judicial review of the January 5, 2016 and February 2, 2016 detention release orders.

[4] I disagree. As I noted at paragraph 24 of my reasons for judgment, both Mr. Justice Shore in staying the January release, and Mr. Justice Simon Noël in staying the February release, stayed those releases until the outcome of the applications for leave and, if granted, the judicial review. The question is whether the ID can order the release of a person whose release has already been stayed by this Court, and not lifted by this Court, as contemplated by s 50(3) of the *Federal Courts Act*.

[5] In my opinion, the ID has no such power. If it did, Mr. Lunyamila would be walking the streets today.

[6] Consequently, with slight modifications, I shall certify Mr. Lunyamila's proposed question.

**ORDER**

**THIS COURT ORDERS** that the following serious question of general importance is certified:

Does the Federal Court have jurisdiction to usurp the jurisdiction of the Immigration Division of the Immigration and Refugee Board of Canada to order the release of the detainee pursuant to the *Immigration and Refugee Protection Act*, SC 2001, c 27, by ordering that the detainee shall remain in detention until further Court order?

[TRANSLATION]

La Cour fédérale est-elle habilitée à s’arroger la compétence dévolue à la Section d’immigration de la Commission de l’immigration et du statut du réfugié du Canada d’ordonner la libération du détenu en vertu de la *Loi sur l’immigration et la protection des réfugiés*, LC 2011, c 27, en ordonnant que le détenu soit maintenu en détention jusqu’à nouvel ordre de la Cour?

“Sean Harrington”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKETS:** IMM-63-16, IMM-502-16

**STYLE OF CAUSE:** THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS v JACOB DAMLAN Y  
LUNYAMILA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** MARCH 3, 2016

**ORDER AND REASONS** HARRINGTON J.

**DATED:** MARCH 17, 2016

**APPEARANCES:**

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