Federal Court  Cour fédérale

Date: 20160720

Docket: DES-7-08

Citation: 2016 FC 808

Ottawa, Ontario, July 20, 2016

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

IN THE MATTER OF a certificate signed pursuant to section 77(1) of *the Immigration and Refugee Protection Act* (*IRPA*);

AND IN THE MATTER OF the referral of a certificate to the Federal Court pursuant to section 77(1) of the *IRPA*;

AND IN THE MATTER OF Mohamed Zeki MAHJOUB

ORDER AND REASONS

I. Nature of the Matter

[1] This is a motion by Mr. Mohamed Zeki Mahjoub [the Applicant] for an Order removing all but the usual conditions of release currently imposed on him pursuant to subsection 82(4) and paragraph 82(5)(b) of the *Immigration and Refugee Protection Act* SC 2001, c 27 (*IRPA*). In his Notice of Motion and a Notice of Constitutional Question, the Applicant also asked for leave to argue at some later and unspecified date, that ss. 79, 82(5)(a), (b) and 82.3 in conjunction with

sections 33 and 77 to 85.6 of the *IRPA* violate sections 2(b), 7, 8, 9, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (*Charter*). However, the Applicant proposed that his constitutional arguments should only be argued and decided if the Court did not accept his submissions to remove all but the usual conditions of his release from detention.

A. *Summary of disposition*

[2] I am relaxing a number of the conditions of the Applicant's release from detention though not to the extent the Applicant requested. The principle changes are that the Applicant may now have access to social media such as Facebook and Twitter, Skype and other websites and without Court approved sureties being present; he may have a laptop computer instead of a desktop at his residence; he may now have a cell phone with Internet capability; and he is now entitled to have 24 hours' notice before CBSA may search his computer or cell phone. In addition, he may change residence inside the GTA on 3 days' notice, not the current 10, and he may travel outside the GTA on 5 days' notice, instead of 7. The specifics of the Applicant's conditions of release from detention are set out in Schedule "A" attached to this Order and Reasons. I should add that these changes were offered by the Ministers before the hearing.

[3] As noted, I am not relaxing conditions of the Applicant's release from detention to the extent he requested. In light of the danger I find him to be having regard to the *IRPA*, it would not be responsible or prudent to remove all but the usual conditions at this time. The conditions that remain are in the Court's view, necessary under paragraph 85(2)(b) of *IRPA* to neutralize the danger I find the Applicant still presents. In my view, these conditions are proportionate and reasonable in the circumstances, and take into account his evolving circumstances including the

fact that CSIS no longer considers him to be a threat to national security and has so advised domestic and international agencies and requested them to take appropriate action.

[4] I consider it very important that he not delete Internet tracking information from either his cell phone or computer; while not part of my Order, the Ministers are at liberty to apply to vary these conditions of release, and perhaps others as required, if there is evidence of non-compliance by the Applicant in this regard. For the same reasons, namely ensuring compliance, I have not acceded to his request to visit internet cafes.

[5] I found no merit in his request to be allowed to visit gun stores, i.e., retail establishments whose primary function is to sell firearms or weapons or which can be characterized as a 'shooting range' or 'shooting club' gun shop. I say this because of the danger element, noting his testimony at the hearing that he does not want to purchase firearms but also having regard to his army training in Egypt including training in the use of automatic weapons. This request was wholly inappropriate.

[6] My reasons follow.

B. *Procedural Matters*

[7] After a motion management meeting, and at the Applicant’s request, I allowed the Applicant’s informal motion and by direction dated May 31, 2016, ordered that a witness from the Canadian Security and Intelligence Service (CSIS) attend the hearing to give evidence. I also granted the Respondents’ informal request to cross-examine the Applicant on his affidavit filed

in support of his motion. Subsequently and at the Respondents' request. I ordered that the name of the CSIS witness be confidential, and did so by Order dated June 3, 2016. Thereafter, the Applicant advised he no longer wished to examine the CSIS witness; accordingly I revoked that part of the motion management direction by Order dated June 7, 2007.

[8] The hearing of the motion took place over two days. The first day was devoted to the cross-examination of the Applicant (he not wishing direct examination rather, relying on his affidavit for that), and re-direct examination of the Applicant by Applicant's counsel. The second day dealt with argument concerning conditions of release.

[9] These Reasons do not report classified information. Where previous decisions of the Court are cited with redactions, those redactions are in the previous decisions. I have reviewed the classified information underlying the public disclosure that I ordered June 6, 2016, and that ordered released by Justice Noël in January, 2016, and in addition the Reasonableness Decision of Justice Blanchard 2013 FC 1092 (Reasonableness Decision). At the hearing I agreed that to the extent I relied on classified information I would engage the Special Advocates, one of which was present at the public hearing. I also heard submissions from both the Special Advocates and the Ministers *in camera* at a special sitting of the Court on July 13, 2016, including submissions related to the confidential documents summarized by the Court on January 14, 2016 and June 6, 2016, and the unredacted Reasonableness Decision of Justice Blanchard.

C. *Argument of Constitutional Issues*

[10] The Applicant did not wish to argue constitutional issues at the June hearing, as would normally have been the case; I granted the Applicant's request to split his arguments between conditions of release, and his constitutional issues. I heard only condition of release arguments on June 9 and 10, 2016.

[11] However, I rejected the Applicant's request that he be allowed to d argue the constitutional points *only if* he did not succeed in removing all but the usual conditions. At the opening of the hearing on June 9, 2016, I directed that the parties consult with one another and provide the Court with timelines for the filing of material to enable a relatively early resolution of the Applicant's constitutional questions.

[12] At the hearing I also canvassed the timelines for hearing the constitutional arguments, and suggested filings in a timely way and a hearing in July. Applicant's counsel said they lack funding for aspects of such a challenge, and further advised they would not be available in August. It was left they would revert to the Court with written submissions. That was on June 10, 2016. On June 30, 2016, Applicant's counsel advised they still had not obtained funding and proposed a schedule of filing, assuming funding, that would see the matter argued in September, 2016. But once again the Applicant proposed to split his arguments, such that only the issues concerning the threshold and burden of proof (points 15, 16 i) to iv) of the Notice of Constitutional Question) would be argued in September. The remainder of his arguments including those on the certification process would be argued subsequent to my ruling on his first tranche of constitutional arguments - but only "if necessary".

[13] I should note the Applicant has had since October 30, 2015, the date of the last review of his conditions of release, to prepare for the present motion, yet is to this date still unprepared to do so.

[14] By email July 5, 2016, the Ministers oppose what they describe as proceeding in a "piecemeal" fashion, and instead propose proceeding on written filings with a hearing if needed sometime later in September. They propose that all matters be decided at once.

[15] I am not prepared to proceed in the piecemeal fragmented multi-step manner suggested by the Applicant. While the Applicant filed a motion to secure funding on July 20, 2016, the motion had not yet been argued, nor of course has a decision been made. In fact, the Applicant has no real timetable at all, because even the fragmented timetable suggested depends on raising necessary funds which he has not done. His counsel writes of a hearing in September, but it could very well be later, perhaps even after the date at which the Applicant might, if he chooses, initiate a new request to review his conditions of release (which appears he can do in November, 2016).

[16] The motion to review conditions of release from detention is dated May 12, 2016, while the Notice of Constitutional Questions is dated May 25, 2016. I am not prepared to issue directions for filing submissions in the abstract; I will deal with that issue if as and when the Applicant comes to this Court with a proper and concrete plan for necessary filings that will see all his constitutional issues dealt with in one set of filings and in one set of reasons, with or without one set of hearings. Before doing so I reiterate that his counsel consult with counsel for

the Ministers to narrow their differences if it is possible before coming back to this Court for directions.

[17] I am certainly not prepared to delay a decision on his conditions of release into the mid to late Fall of 2016; in my view, these motions should proceed reasonably expeditiously and within the framework of the Court's usual Rules except where exceptions are warranted.

[18] Therefore I am issuing my decision on the conditions of release from detention today.

(1) Brief History of Proceedings

[19] The Applicant is the subject of a security certificate signed pursuant to subsection 77(1) of the IRPA on February 22, 2008, by the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration. The security certificate states:

> We hereby certify that we were of the opinion, based on a Security Intelligence Report received and considered by us, that Mohamed Zeki Mahjoub, a foreign national, is inadmissible on grounds of security for the reasons described in sections 34(1)(b), 34 (1)(c), 34(1)(d) and 34(1)(f) of the *Immigration and Refugee Protection Act.*

[20] For reference, the relevant provisions of section 34 of *IRPA* provided at that time:

Security	Sécurité
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants
(a) engaging in an act of espionage or an act of subversion against a	a) être l'auteur de tout acte d'espionnage dirigé contre le Canada ou

democratic government, institution or process as they are understood in Canada;	contraire aux intérêts du Canada;
[…]	[…]
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(c) engaging in terrorism;	c) se livrer au terrorisme;
(d) being a danger to the security of Canada;	d) constituer un danger pour la sécurité du Canada
(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada; or	e) être l'auteur de tout acte de violence susceptible de mettre en danger la vie ou la sécurité d'autrui au Canada;
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

[21] The Applicant has a long history with this Court. In addition, the relevant legislation has evolved over time. Important aspects of his original detention, subsequent release on conditions, the many subsequent reviews of his conditions of release, together with the evolving statutory framework are well summarized by Justice Noël at paras 5 to 20 in *Mahjoub (Re),* 2015 FC 1232 (Conditions of Release decision, October 30, 2015). This decision is the most recent review of the Applicant's many reviews of his conditions of release.

[22] The Applicant is an Egyptian national, born in April 1960. He came to Toronto, Canada, in the last days of December 1995, having arrived here on a false Saudi Arabian passport. He claimed refugee status, which the Immigration and Refugee Board granted in1996. He became a subject of interest to the Canadian Security Intelligence Service [“CSIS”] sometime in 1996. As a result of this investigation, he became the named person in a certificate issued by the Ministers in June 2000 and was arrested on June 26, 2000. He was in detention from 2000 to 2007; he was released in February 2007, under stringent conditions.

[23] Justice Nadon of the Federal Court of Canada (as he was then) determined that certificate to be reasonable on October 5, 2001. In the Reasons for Order, Justice Nadon noted that the Applicant admitted he had perjured himself by not admitting that he knew a certain individual. Justice Nadon concluded that he did not believe the Applicant’s explanation for lying and added that the Applicant had lied before his Court on a number of occasions (see *Canada (Minister of Citizenship and Immigration) v Mahjoub*, 2001 FCT 1095, at paragraphs 57, 58, 68 and 70 (Nadon Decision).

[24] After the original security certificate regime was held to infringe *Charter* rights in 2007 (see *Charkaoui v Canada (Minister of Citizenship and Immigration),* 2007 SCC 9, [*Charkaoui I*]), a new statutory system was implemented which the Supreme Court of Canada subsequently upheld [*Canada (Minister of Citizenship and Immigration) v Harkat*, [2014] 2 SCR 33].

[25] The Applicant began filing for conditions of release reviews under this new system in 2008.

[26] The new legislation also provides for security certificates that may be challenged in this Court on the basis of reasonableness. Such a certificate was issued against the Applicant. After very lengthy proceedings spanning several years, the late Justice Blanchard held the Applicant's security certificate was reasonable in October, 2013 (see *Mahjoub (Re)*, 2013 FC 1092 (Reasonableness Decision). The Applicant has appealed that decision to the Federal Court of Appeal, which appeal has not yet been heard.

[27] Justice Blanchard found that there were reasonable grounds to believe that the Applicant was a member of the Al Jihad and its splinter or sub-group, the Vanguards of Conquest, and that the Applicant posed a danger to the security of Canada given his contacts with many known or suspected terrorists in Canada and abroad. Justice Blanchard found that Al Jihad and the Vanguards of Conquest are important terrorist groups that were active in Egypt and had direct links and relationships with Osama Bin Laden and Al Qaeda.

[28] Thereafter, on December 17, 2013, after hearing an application by the Applicant to be released from all his conditions of release of detention except for a few, the late Justice Blanchard concluded:

> I am satisfied that Mr. Mahjoub poses a threat to the security of Canada as described in my Reasons for Order dated January 7, 2013.

[29] Justice Blanchard also held that the Applicant's conditions of release should not change except for small adaptations regarding the use of calling cards, and that the Applicant was in technical breach of his conditions of release by not informing CBSA that he had acquired a mobile phone, but it was not a significant breach because the Applicant had not used it. He also

found that when the Applicant opted to cut off the GPS bracelet himself instead of letting CBSA remove it without destroying it, the Applicant did not breach any conditions but that his unilateral conduct indicated an "unwillingness" to cooperate with the CBSA (see *Mahjoub (Re)*, 2013 FC 1257, at paragraphs 5, 6, 16, 17 and 18 [2013 Blanchard J. (December)]).

[30] In May 2014, Justice Noël ordered that the Applicant must give his computer password to the CBSA as the conditions of release granted CBSA access to it (see *Mahjoub (Re)*, 2014 FC 479 [2014 Noël J. (May)]). Justice Noël said the Applicant's attitude was indicative of a lack of collaboration and cooperation, and that his attitude did not help the CBSA fulfil its supervisory mandate as required by the Court's Order.

[31] In mid-2014 the Applicant filed another application to review the conditions of release. He essentially requested the same outcome as he had before Justice Blanchard, and as he does now, namely that all conditions be repealed except for a few usual ones to be of good behaviour and keep the peace. Justice Noël dismissed the Applicant's request in 2014 FC 720, concluding in part:

> [78] The danger to the security of Canada associated to Mr. Mahjoub now is certainly not comparable to the danger assessed in the past. But, is it such that it does not exist anymore? I am of the opinion that it has diminished through the years. But, since the January 2013 review of the conditions where it was found to have diminished "significantly", I do not find any major indicators that it has further diminished importantly. To come to this conclusion, as demonstrated above, I have reviewed the confidential and public evidence which shows the concerns that remained then still exist today. The danger to the security of Canada associated to Mr. Mahjoub has not evaporated; it remains latent, perceptible and factual. Mr. Mahjoub's conditions of release as they were conceptualized and amended by Justice Blanchard are working and did neutralize the danger then assessed. Lifting all conditions does

> not guarantee the danger Mr. Mahjoub poses will be appropriately neutralized. I am thus not ready to grant Mr. Mahjoub the relief he seeks except for what is said below.

[32] In 2015, the Applicant requested a further review of his conditions of release, which resulted in the Conditions of Release decision October 30, 2015, made by Justice Noël already referred to. The Court again rejected the Applicant's request that all but the usual conditions be removed. However, some conditions were relaxed, including:

a) The weekly reporting was reduced to bi-monthly;

b) The use of a mobile phone was permitted, with conditions; and

c) Mail interception was removed.

[33] As the result of these and other proceedings, the conditions of release currently in place are as set out in Schedule "A" attached to these Reasons: "SCHEDULE OF CONDITIONS RESPECTING THE RELEASE OF MR. MAHJOUB".

[34] The Ministers oppose this request, but consent to the following changes to the conditions of release:

- the Ministers are amenable to reducing the notice period for outings outside of the GTA from 7 to 5 business days;

- the Ministers propose that the Applicant be permitted to access social media, Skype and websites with conditions to allow supervision:

    - The Applicant may create only one account per social media website or application including, but not limited to Facebook and Twitter. The Applicant may create one account on Skype. He may create one account

on any other application or website that provides video chat and voice call services, subject to CBSA approval.

- The Applicant shall consent to CBSA, or any person designated by it, having access, without notice to all of such accounts.
- The Applicant must ensure that no one else, except for him and CBSA or agents of CBSA have access to these accounts.
- The Applicant shall provide CBSA with the login information and all passwords immediately upon setting up any account on any website or application, including but not limited to Facebook, Twitter, and Skype, and must immediately update CBSA of any changes to user names or passwords.
- Skype may only be accessed using a desktop application.
- Skype settings must be such that all chat and call history are set to be saved "forever".
- The Applicant must notify CBSA of the names and Skype addresses of individuals with whom he wishes to communicate, one month in advance of engaging in such communication.
- The Applicant shall not alter or delete records of communication or activity on social media website or application, websites or applications that provide video chat and voice call services, or any other website or other application, including, but not limited to, Facebook, Twitter, and Skype.

- The Ministers further propose:

  - The Applicant may possess one desktop or one laptop computer.

  - The Applicant may use a wi-fi network at his residence. The wi-fi network must be password-protected to ensure no one else can access it.

  - The Applicant's computer must remain, and only be used in his residence. Internet may only be accessed on his home network via a cable or wi-fi connection.

- CBSA will provide the Applicant with 24-hours' written notice prior to attending his residence to collect his computer for examination. The Applicant's confirmation of receipt of prior notice is not necessary.

- With respect to examination of the Applicant's mobile telephone the Ministers propose the following (which replicate the existing conditions regarding the desktop PC that he is now permitted):

  - CBSA shall give the Applicant 24-hours' written notice prior to examining his mobile phone. The Applicant's confirmation of the written notice is not required.

  - At any other time, with justification, CBSA may seek the order of a Designated Judge for access to the Applicant's computer without notice, for the purpose of ensuring that he is complying with the conditions of this Order.

  - Mr. Mahjoub shall not delete or clear any app data, app usage information, data usage information, wi-fi network logs, or any caches stored on his mobile phone at any time without prior approval from CBSA.

- The Ministers also agree to a reduction of the notice period for a change of residence from 10 days to 3 business days.

D. *Applicant's Arguments*

[35] The Applicant relies on Mr. Mahjoub's affidavit and the facts therein to argue that a complete removal of conditions of release, save for the usual "keep the peace" conditions, ought to be granted.

[36] He says he has been a peaceful and law-abiding person for many years. The conditions imposed on him are intrusive, and prevent him from living a meaningful life. The conditions

have caused the Applicant stress and anxiety in which regard he points to the report of Dr. Payne which addresses psychological reports released over the years.

[37] The Applicant argues there is no evidence of an existing threat, where no evidence was filed by the Minister of any threat posed by the Applicant since the last review. The Applicant also flags the summary of the CSIS classified report released by Justice Noël on January 18, 2016 referred to above, which states:

> Despite Mohamed Mahjoub's former leadership role and connections to high profile members within Al Jihad, CSIS has assessed that the threat posed by Mr. Mahjoub's activities has diminished since the 2011 Threat Assessment because the Service does not suspect anymore that his recent activities pose a threat to the security of Canada pursuant to the CSIS Act.

[38] The Applicant also relies on the fact that on June 6, 2016, pursuant to paragraph 83(1)(e) of the *IRPA*, I ordered the following disclosure:

> On January 27, 2016, CSIS notified each of the foreign agencies with which CSIS had shared information concerning Mr. Mahjoub that CSIS investigation had led the Service to assess that Mr. Mahjoub's activities no longer pose a threat to security of Canada pursuant to the CSIS Act. CSIS requested the agencies to act accordingly based on this assessment.
>
> On March 7, 2016, CSIS notified domestic agencies, including CBSA that CSIS investigation had led the Service to assess that Mr. Mahjoub's activities no longer pose a threat to the security of Canada pursuant to the CSIS Act. CSIS requested the agencies to act accordingly based on this assessment.

[39] Moreover, the Applicant argues the January 2016 summary is based on an unfounded statement of fact already dismissed by this Court; this indicates Mr. Mahjoub's threat levels decreased even more than the summary threat assessment lets on. While the summary states Mr.

Mahjoub occupied a leadership role within Al Jihad, the Reasonableness Decision of Justice Blanchard *(Mahjoub (Re),* 2013 FC 1092) concluded there were no reasonable grounds to believe that he did. Therefore, the Applicant says the classified report may have been based on false premises which skewed the findings of the report.

[40] The Applicant argues that the harm resulting from the danger must be substantial where conditions of release imposed ought to neutralize this danger. The conditions and the potential harm ought to be proportional; if there is no identifiable harm, any condition of release is not justified.

[41] The Applicant further argues there were errors of law on the evidence and on the relevant threshold in the review of the conditions. This argument relies on the error of law stating that the wrong standard was applied by the Court, that is, the burden to meet is "balance of probabilities" and not "reasonable grounds to believe". Where each prior ruling was also based on the wrong standard of proof, i.e. "reasonable grounds", does not make the standard of proof the correct one.

[42] At any rate, the Ministers would not meet their initial burden on either standard, because no evidence has been adduced by the Ministers that the Applicant poses any current threat or danger to the national security of Canada. I will refer to this as the "burden of proof" issue and will deal with it shortly.

[43] The Applicant submits the existing conditions of release are disproportionate and have had a negative impact on the Applicant's mental and physical health conditions, which was recognized in previous rulings. These conditions amount to undue and cruel suffering.

[44] The passage of time also weighs in favour of the removal of all conditions of release. The threat has diminished and the Applicant's recent activities do not constitute a threat to Canadian security.

[45] The Applicant has a pending appeal of the reasonableness decision at the FCA, for which a date of hearing had not yet been but might be scheduled soon. This, he says, weighs in favour of removing all conditions of release as an interim remedy under subsection 24(1) of the *Charter* for the violation of his right to a fair trial. This appeal is based on various elements characteristic of an unfair trial under the Criminal Code and its judicial interim release pending appeal provisions.

[46] The Applicant also argues he is a Convention Refugee and the inability of the Canadian authorities to remove him to Egypt due to undeniable human rights abuses in that country are relevant to the present motion; in effect the Applicant will be subject to conditions of release for as long as the Applicant remains in Canada. The Applicant has been detained or subject to conditions of release for 16 years already; such treatment amounts to unreasonable and arbitrary detention and release condition's length.

[47] In sum, the Applicant would agree to abide by the usual conditions of release without more, which would be proportional to what he alleges is his very low risk.

E. *Ministers' Position*

[48] The Respondents allege the Applicant is a danger under paragraph 85(2)(a) of the *IRPA*, that conditions of release are needed to neutralize that danger, and that the absence of wrongful conduct by the Applicant is a result of the success of the existing conditions of release which continue to be necessary to continue to neutralize that danger.

[49] The Ministers in their submissions concede the following conditions should be relaxed, subject to the limitations noted above.

[50] The Ministers also asks the following provision should be added to the Conditions of Release, and as I saw no serious disagreement with it particularly since it mirrors the conditions already in place regarding the Applicant's computer, I will impose such a condition as it is both reasonable and proportionate. Indeed, I consider this and the conditions related to the computer and retention of Internet tracking information to be very important conditions of release from detention. The proposed additional condition is:

> Mr. Mahjoub shall not delete or clear any app data, app usage information, data usage information, wi-fi network logs, or any caches stored on his mobile phone at any time without prior approval from the CBSA.

[51] The Ministers argue the Applicant's history weighs in favour of maintaining the conditions of release. They point to Justice Blanchard's Reasonableness Decision. This decision, though on appeal, is final; the Court ought to rely on it.

[52] The Ministers further allege the Applicant's history of perjuring himself before the Court and of instances of non-compliance with the CBSA, with continued complaints about CBSA actions, indicates the Applicant cannot now be trusted by the Court to keep his promise to keep the peace.

[53] The Ministers argue the Applicant's arguments have already been dealt with by this Court, and continue to be without merit. First, this Court has previously found, correctly, that the applicable standard of proof is reasonable grounds to believe, as opposed to the Applicant's asserted “balance of probabilities”. Second, the Court is not sitting in appeal of its previous judgments where the Court is called upon to review the conditions of release. Third, the Applicant's future removal and conditions in Egypt are irrelevant because premature.

[54] The Ministers submit the history of the Applicant weighs against him, where the factors are as laid out in *Charkaoui I* at paras 110 et seq. and in *Harkat v Canada (Minister of Citizenship and Immigration)*, 2013 FC 795. These were further used by Justice Noël in his *Mahjoub (Re)*, 2014 FC 720 decision:

> [44] In order to make the proper determination in the present review of the conditions of release, it is the intention of this Court to proceed with its analysis by relying on the criteria established in *Harkat v Canada (Minister of Citizenship and Immigration)*, 2013 FC 795 at para 26, [2013] FCJ No 860, and in *Charkaoui v*

Canada (Minister of Citizenship and Immigration), 2007 SCC 9 at paras 110-121, [2007] SCJ No 9, which are as follows:

> A. Past decisions relating to the danger and the history of the procedures pertaining to reviews of detention, release from detention with conditions and the decisions made;
>
> B. The Court's assessment of the danger to the security of Canada associated with the Applicant in light of all the evidence presented;
>
> C. The decision, if any, on the reasonableness of the certificate;
>
> D. The elements of trust and credibility related to the behaviour of the Applicant after having been released with conditions and his compliance with them;
>
> E. The uncertain future as to the finality of the procedures;
>
> F. The passage of time (in itself, not a deciding factor – see *Harkat v Canada (Minister of Citizenship and Immigration)*, 2007 FC 416, at para 9, [2007] FCJ No 540);
>
> G. The impact of the conditions of release on the Applicant and his family and the proportionality between the danger posed by the Applicant and the conditions of release.

[55] The Ministers analyse each factor to conclude that the facts support relaxing some conditions, but does not warrant lifting all the conditions of release imposed on the Applicant.

[56] In their cross-examination of Mr. Mahjoub at the hearing, the Ministers elicited confirmation that Mr. Mahjoub did in fact use the alias "Shaker" while in the Sudan. This, they argued, would have altered Justice Blanchard's findings on whether there were reasonable

grounds to believe the Applicant had used this alias, thereby heightening the threat level finding by Justice Blanchard.

II. Facts

[57] The facts have been summarized in several other proceedings before the Court, including in Justice Noël's decision rendered in October 2015, *Mahjoub (Re)*, 2015 FC 1232:

> [5] Mr. Mahjoub, an Egyptian national, was born in April 1960. He came to Toronto, Canada, in the last days of December 1995. He travelled on a false Saudi Arabian passport and claimed refugee status, which the Immigration and Refugee Board granted on October 24, 1996. He became a subject of interest to the Canadian Security Intelligence Service ["CSIS"] sometime in 1996. As a result of this investigation, he became the named person in a certificate issued by the Ministers in June 2000 and was arrested on June 26, 2000.
>
> [6] Justice Nadon of the Federal Court of Canada (as he was then) determined that certificate to be reasonable[1] on October 5, 2001. In the Reasons for Order, the judge noted that Mr. Mahjoub admitted he had perjured himself by not admitting that he knew a certain individual. Justice Nadon wrote that he did not believe Mr. Mahjoub's explanation for lying and added that Mr. Mahjoub had lied on a number of counts (see *Canada (Minister of Citizenship and Immigration) v Mahjoub*, 2001 FCT 1095, at paragraphs 57, 58, 68 and 70 [2001 Nadon J. (October)]).
>
> [7] Justice Eleanor Dawson, now of the Federal Court of Appeal, twice dismissed (in 2003 and 2005) Mr. Mahjoub's applications to be released from detention. Justice Nadon's above-mentioned findings of untruthfulness were relied upon by Justice Dawson in her first decision (see *Canada (Minister of Citizenship and Immigration) v Mahjoub*, 2003 FC 928, at paragraph 76 [2003 Dawson J. (July)]). In her second review of detention, Justice Dawson refused to grant the release of detention because she did not think the conditions of release of detention could neutralize the danger. She added that the trust factor related to Mr. Mahjoub was not there and that she was not convinced he would abide by the conditions discussed at the time (see *Canada (Minister of Citizenship and Immigration) v Mahjoub*, 2005 FC 1596, at paragraph 101 [2005 Dawson J. (November)]).

[8] On February 15, 2007, Mr. Mahjoub was released from detention with stringent conditions which included GPS monitoring, house arrest, supervision, surety, no access to communications devices, etc. (*see Mahjoub v Canada (Minister of Citizenship and Immigration)*, 2007 FC 171 [2007 Mosley J. (February)]).

[9] On February 23, 2007, the Supreme Court of Canada declared the security certificate regime to be unconstitutional and suspended its declaration of invalidity for one (1) year to permit Parliament to amend the IRPA (see *Charkaoui v Canada (Minister of Citizenship and Immigration*), 2007 SCC 9, [2007] 1 SCR 350 ["Charkaoui n° 1"]).

[10] A new security certificate regime, involving special advocates among other matters, came into force in February 2008. A new security certificate was signed against Mr. Mahjoub by the Ministers on February 22, 2008.

[11] Justice Layden-Stevenson, the designated judge in charge of this new certificate proceeding prior to her appointment to the Federal Court of Appeal, rendered two (2) decisions on the conditions of release of detention in late December 2008 and March 2009. In her first decision, she modified a condition of release from an earlier Order (April 11, 2007). In her second decision, she noted that Mr. Mahjoub's insistence on strict adherence to the conditions of release in the literal sense hampered the CBSA's effort to accommodate his family (see *Canada (Minister of Citizenship and Immigration) v Mahjoub*, 2009 FC 248, at paragraph 150 [2009 Layden-Stevenson J. (March)]).

[12] About ten (10) days after the issuance of Justice Layden-Stevenson's Reasons for Order, two (2) of Mr. Mahjoub's sureties, his wife and stepson, renounced their role as sureties. As a result, Mr. Mahjoub consented to return to detention on March 18, 2009.

[13] He was then released from detention with conditions by Justice Blanchard, the new designated judge in charge of this second security certificate proceeding, on November 30, 2009 *(Mahjoub (Re)*, 2009 FC 1220 [2009 Blanchard J. (November)]).

[14] In a new application to dismiss the majority of the conditions of release of detention, Justice Blanchard amended the conditions such as eliminating the requirement for GPS tracking (see *Mahjoub (Re),* 2011 FC 506 [2011 Blanchard J. (May)]).

[15] In two successive sets of Reasons for Order dated February 1, 2012, and January 7, 2013, Justice Blanchard again lifted some conditions and considerably modified others as he found the threat Mr. Mahjoub posed had diminished (see *Mahjoub (Re)*, 2012 FC 125, at paragraphs 66, 90-93; and *Mahjoub (Re*), 2013 FC 10) [2012 Blanchard (February)] [2013 Blanchard J. (January)]). In this last decision, at paragraph 47, Justice Blanchard expressed concerns about ensuring Mr. Mahjoub does not communicate with terrorists and re-acquire terrorist contacts.

[16] On October 25, 2013, Justice Blanchard issued his Reasons for Judgment and Judgment on the reasonableness of the security certificate (see *Mahjoub (Re)*, 2013 FC 1092 ["2013 Blanchard J. (October)" or "Reasonableness Decision"]). He found:

> [618] The following is a summary of my earlier findings relating to the credibility of Mr. Mahjoub's various accounts:
>
> > a. Mr. Mahjoub was not truthful when he denied knowing Mr. Marzouk, Mr. Khadr, Mr. Jaballah or their aliases. In particular, during his fourth interview in October 1998, he denied knowing Mr. Khadr despite having admitted to knowing him in an earlier interview. When confronted with the fact that he had resided with the Elsamnahs, Mr. Khadr's in-laws, another fact he did not disclose to the Canadian authorities, he then admitted knowing Mr. Khadr.
> >
> > b. Mr. Mahjoub was not truthful when he denied ever using an alias. I found Mr. Mahjoub's explanation of how he came to use the alias "Ibrahim" when he admitted to using it, not credible for the reasons expressed at paragraph 539 above.
> >
> > c. Mr. Mahjoub's explanation that he did not provide the names of individuals who knew him by the alias Ibrahim to the Service for fear that the Egyptian authorities would target him and these individuals was not credible as explained at paragraph 540 above.

> d. Mr. Mahjoub omitted to disclose to Canadian authorities the true nature of his occupation and his employer at the Damazine Farm while in Sudan, indicating only that he was employed as an agricultural engineer at the Farm. This omission further impugns his credibility.
>
> e. Mr. Mahjoub's explanation for leaving the Farm to buy and sell goods in the market was not credible, given the salary he was likely earning at the time in comparison to average wages in Sudan as explained at paragraphs 484-486 and 490 above.

[619] In my view, the above omissions and lies by Mr. Mahjoub are crafted and designed to consistently conceal any facts that could connect Mr. Mahjoub to known terrorists, terrorist activities or known terrorist related enterprises such as Althemar. The fact that Mr. Mahjoub would lie about the use of aliases is of particular concern. The use of aliases is well known in the terrorist milieu and serves to conceal the true identify of individuals involved.

[620] The above omissions and lies by Mr. Mahjoub in the circumstances lead me to conclude that his innocent account of events and activities in Sudan and in Canada is not credible. This finding lends support to the Ministers' allegations.

[…]

iii. The timing of Mr. Mahjoub's travels

[623] Mr. Mahjoub's travels to Sudan in September 1991 coincide with the movement of AJ and Al Qaeda elements to Sudan. Mr. Mahjoub's departure from Sudan to Canada also coincides with the exodus of those elements from Sudan to the West and other countries in the Muslim world. I accept that during this period terrorist organizations were intent on finding a base abroad and their membership scattered to places including Europe and North America. I find that the timing of Mr.

Mahjoub's travels supports the Ministers' allegation that Mr. Mahjoub was a member of the AJ.

iv. Mr. Mahjoub's terrorist contacts

[624] A number of Mr. Mahjoub's contacts are important players in the terrorist milieu. Mr. Mahjoub's contacts with Mr. Al Duri, Mr. Khadr and Mr. Marzouk have been close and enduring. A number of these individuals were still demonstrably active in the militant AJ and associated Al Qaeda milieu when Mr. Mahjoub was in contact with them. The frequent use of aliases, lies and omissions to conceal these relationships from the authorities is indicative of the terrorist nature of these contacts. I find that these contacts support the Minister's allegations of Mr. Mahjoub's membership in the AJ and the VOC. In addition, Mr. Mahjoub XXXXXXXXXXXXXXXXXXXXXXXXXXXXX contacted a telephone number associated with the VOC.

v. Mr. Mahjoub's security consciousness

[625] There is evidence that Mr. Mahjoub exhibited security consciousness related to terrorism on occasion while in Canada. For instance, anti-surveillance tactics when making phone calls or being followed by the Service, his use of aliases, and his lack of cooperation with Canadian authorities is consistent with an individual concerned with concealing his activities and contacts. I find that this behaviour supports the Ministers' allegations of Mr. Mahjoub's membership in the AJ and the VOC.

vi. The direct evidence affirming or denying that Mr. Mahjoub is a terrorist and member of the VOC Shura Council

[626] As indicated above, the direct evidence relating to the Ministers' allegations that Mr. Mahjoub is a member of the VOC and its Shura Council or a member of the AJ, consist of:

XXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXX

c. XXXXXXXXXXXXXXXX [certain classified evidence] and

d. an intercepted conversation.

I found that the [classified] reports XXXXXXXXXXXXX were not sufficiently persuasive to support the Minister's allegation of membership; however, I found that XXXXXXXXXXXXXXX [one piece of evidence indicating that Mr. Mahjoub was an AJ leader] and Mr. Mahjoub's self-identification as a "member" in the context of the Returnees of Albania Trial lends support to the allegation of membership.

c) Conclusion on membership

[627] Upon considering the evidence holistically, and on the basis of substantiated and reasonable inferences, I find that the Ministers have established reasonable grounds to believe that Mr. Mahjoub is a member of the AJ and its splinter or sub-group, the VOC.

[628] In so determining, I rely on my findings set out above which include:

> a. That the AJ and VOC existed as terrorist organizations at the relevant times;
>
> b. Mr. Mahjoub had contact in Canada and abroad with AJ and VOC terrorists;
>
> c. Mr. Mahjoub used aliases to conceal his terrorist contacts;
>
> d. Mr. Mahjoub was dishonest with Canadian authorities to conceal his terrorist contacts;
>
> e. Mr. Mahjoub worked in a top executive position in a Bin Laden enterprise alongside terrorists in Sudan at a time when key terrorist leaders were in Sudan;

f. Mr. Mahjoub was dishonest in concealing from Canadian authorities the nature of his position at Damazine Farm;

g. Mr. Mahjoub travelled to and from Sudan at the same time as AJ and Al Qaeda elements; and

h. XXXXXXXX [Some of the direct evidence] that Mr. Mahjoub was a member of the AJ and Mr. Mahjoub's intercepted conversation support the Minister's allegation.

[629] In my determination, I have also relied upon the following inferences relating to Mr. Mahjoub's travels and activities. These include:

a. Mr. Mahjoub's contacts were of a terrorist nature;

b. Mr. Mahjoub had a close and long-lasting relationship with a number of his terrorist contacts;

c. Mr. Mahjoub was trusted by Mr. Bin Laden on the basis of his ties to the Islamic extremist community;

d. Mr. Mahjoub was aware of and complicit in Al Qaeda weapons training occurring at Damazine Farm; and

e. Mr. Mahjoub's travels to and from Sudan at the same time as AJ elements were not coincidental.

[630] I am satisfied that even without the direct evidence XXXXXXX and from the intercepted conversation, my decision would not change.

[631] On the basis of the above findings, I am satisfied that Mr. Mahjoub had an institutional link with the AJ and knowingly participated in that organization. While there is a dearth of compelling and credible evidence explicitly linking Mr. Mahjoub with the VOC, I am satisfied that the

evidence establishes an institutional link and knowing participation in the faction of the AJ led by Dr. Al Zawahiri, which eventually aligned itself with Al Qaeda and continued to be militant after many members of the AJ had declared a ceasefire. I have found that this faction was likely known as the VOC, at least at some point in its history. Mr. Mahjoub was linked with this faction of the AJ and Al Qaeda through his employment at Althemar, his travels, and his terrorist contacts in Canada. This link was active and enduring for many years. He knowingly participated in this network through his involvement in the Damazine weapons training, whether passive or active, and in maintaining contact with individuals who were active terrorists who were connected to either Mr. Bin Laden or Dr. Al Zawahiri. Although actual format membership has not been established, which would require proof that Mr. Mahjoub swore allegiance to the group, such proof is not necessary in the context of a security certificate proceeding. I am satisfied that Mr. Mahjoub's links and participation fit within the unrestricted and broad interpretation of "member" for the purposes of paragraph 34(1)(f) of the IRPA.

[632] On the basis of the above evidence as reflected in my finding, applying the principles of law discussed in the legal framework section of these reasons, I find that the Ministers have established reasonable grounds to believe that Mr. Mahjoub was a member of the AJ and its splinter or sub-group the VOC. Consequently, the Ministers have satisfied the requirements of paragraph 34(1)(f) of the IRPA.

[633] Since the requirements provided for in section 34 of the *IRPA* are disjunctive, my above finding is determinative of the reasonableness of the certificate. I therefore find, on the basis of the above conclusion, that the security certificate issued against Mr. Mahjoub pursuant to subsection 77(1) of the IRPA is reasonable.

[…]

[668] During the 1996-1997 period, when terrorists associated with the groups at issue seemed to be

> accumulating in Canada, and during the 1998-2000 period after the AJ became a member of the Islamic Front with Al Qaeda and the fatwa against Americans and their allies was issued, Mr. Mahjoub maintained contact from Canada with established or suspected terrorists either in Canada or abroad: Mr. Khadr, Mr. Al Duri, Mr. Jaballah, and in particular Mr. Marzouk XXXXXXXXXX. Importantly, the contacts abroad, Mr. Khadr and Mr. Al Duri, were Canadian citizens. I have found that there are reasonable grounds to believe that all of these individuals with the exception of XXXXXXXXX Mr. Jaballah, including Mr. Mahjoub himself, were present in Canada or had free access to Canada and were involved with terrorist groups committed to killing US allies including Canadians. These facts establish that AJ members in Canada were a threat to Canadians.
>
> [669] I find that these facts establish reasonable grounds to believe that prior to his arrest, as a member of the AJ and its splinter or sub-group the VOC, Mr. Mahjoub was a danger to the security of Canada.

Note: The redactions are the ones appearing on the public reasons.

[17] As the above reference to the Reasons for Judgment and Judgment indicate, the AJ (Al Jihad) and VOC (Vanguards of Conquest) are described by Justice Blanchard as important terrorist groups which were active in Egypt and had direct links and relationships with Osama Bin Laden and Al Qaeda (see also paragraph 177 and following of the Reasonableness Decision).

[18] On December 17, 2013, as a result of an application filed by Mr. Mahjoub to remove all conditions of release of detention except for a few, Justice Blanchard concluded: “I am satisfied that Mr. Mahjoub poses a threat to the security of Canada as described in my Reasons for Order dated January 7, 2013” and concluded that the conditions of release should not change except for small adaptations towards the use of calling cards. He also took note that Mr. Mahjoub was in technical breach of his conditions of release by not informing CBSA that he had acquired a mobile phone, but it was not a significant breach as Mr. Mahjoub had not used it. He also found that when Mr. Mahjoub opted to cut off the GPS bracelet himself instead of letting CBSA remove it without destroying it, Mr. Mahjoub did not breach any conditions but

indicated an "unwillingness" to cooperate with the CBSA (see *Mahjoub (Re),* 2013 FC 1257, at paragraphs 5, 6, 16, 17 and 18 [2013 Blanchard J. (December)]).

[19] In May 2014, I stipulated that Mr. Mahjoub must give his computer password to the CBSA as the conditions of release granted CBSA access to it (see *Mahjoub (Re)*, 2014 FC 479 [2014 Noël J. (May)]). To this Court, it was evident that Mr. Mahjoub's attitude was indicative of a lack of collaboration and cooperation. His attitude does not help the CBSA fulfil its supervisory mandate as required by this Court's Order.

[20] A little more than six (6) months after Justice Blanchard's last set of reasons on the review of conditions of detention, Mr. Mahjoub filed another application to review the conditions of release. He essentially requested the same outcome, namely that all conditions be repealed except for a few usual ones. This Court then made the following findings (see *Mahjoub (Re)*, 2014 FC 720 [2014 Noël J. (July)]):

> *D. The elements of trust and credibility related to the behaviour of the Applicant after having being released with conditions and his compliance with them*
>
> **57** The behaviour of an individual with respect to the conditions of his release is an important factor to consider when considering amending them or some of them. In Harkat (Re), 2009 FC 241 at para 92, [2009] FCJ No 316, the Court had this to say on this factor:
>
> > **[92]** Credibility and trust are essential considerations in any judicial review of the appropriateness of conditions. When considering whether conditions will neutralize danger, the Court must consider the efficacy of the conditions. The credibility of and the trust the Court has in a person who is the subject of the conditions will likely govern what type of conditions are necessary.
>
> **58** Mr. Mahjoub's record regarding his most recent conditions of release has not been exemplary, as noted by the Court in its December 17, 2013 review of conditions order, when it concluded that Mr.

Mahjoub had breached his condition of release by not giving proper notice of the acquisition and use of the telephone and fax services. It was found that: "[...] Mr. Mahjoub cannot be relied upon to respect his conditions of release." (December 17, 2013 review of conditions order at para 18).

59 In that same decision, again as recently as December 2013, the Court also found that in relation to the cutting of the GPS bracelet and not permitting the CBSA to remove the bracelet without being damaged, Mr. Mahjoub's actions were: "[...] indicative of an unwillingness to cooperate with the CBSA." (see para. 17)

60 Mr. Mahjoub's recent attitude, action and behaviour are also indicative of an unwillingness to collaborate and cooperate with the supervision duty of the CBSA that the Court has imposed. Here are a few examples of this:

> A. January 2014 -- Mr. Mahjoub, although obligated to do so by section 7 of his conditions of release, did not give correct information to the CBSA concerning his travel from Toronto to Ottawa. Through counsel, the Applicant gave the wrong departure time which prevented the CBSA from assuming its supervisory role. The reasons given to explain this failure, to the effect that it was the error of counsel and that the CBSA should have informed Mr. Mahjoub of the discrepancy, are not accepted. Mr. Mahjoub was required by section 7 of his conditions of release to give accurate information when traveling, and it is not for the CBSA to compensate for a lack of accuracy. Still, because of that blatant failure by Mr. Mahjoub to provide accurate factual information, the CBSA was rendered unable to assume its supervisory role as the Court so required. This is another indication showing a lack of collaboration and cooperation on his part.
>
> B. Mr. Mahjoub has failed to provide the Startec toll records as requested by the

CBSA pursuant to paragraph 11(b) of the conditions of release for the period of use between January 31, 2014 and February 21, 2014, and he has yet to do so. This matter was submitted to the Court sometime in late spring 2014. Paragraph 11(b) of the conditions of release is clear: Mr. Mahjoub has the obligation to supply the Startec toll records for this three-week period. Again, this is another example of Mr. Mahjoub's lack of collaboration and cooperation. As for the Startec toll records for the year 2013, pursuant to paragraph 11(a) of the January 31, 2013 conditions of release, even though being asked to consent, Mr. Mahjoub still has not given consent. The reason he gives is that the CBSA should not gain retroactive access to these toll records. Furthermore, the Applicant has not given notice that he was using Startec as required by that condition of release. He argues that the CBSA knew of this account and should have asked them earlier. This argument does not relieve Mr. Mahjoub of his obligation to consent to the release of these toll records as required by the Court pursuant to paragraph 11(a) of his conditions of release. Again, this is not an attitude that shows collaboration and cooperation as the conditions of release so require. By acting in such a way again, Mr. Mahjoub decides that the CBSA will not assume its supervisory role as requested by the Court.

C. Pursuant to paragraph 10(f) of the 2014 conditions of release, Mr. Mahjoub must give full access to his computer to the CBSA without notice, which includes the hard drive and the peripheral memory, and the CBSA may seize the computer for such purpose. On April 24, 2014, when requested by the CBSA, Mr. Mahjoub did not give the immediate access. He had the CBSA representative wait at the door and, as he went back to his computer, he appeared to be seen for a period of two minutes to be doing something to his computer. The condition

> compels Mr. Mahjoub to give access and control to the CBSA without notice. He did not. He also objected to the taking of photographs by the CBSA, when the purpose of the picture is to wire the computer in the same way when it is brought back and to document any damage on the computer. This is standard procedure for the CBSA and an understandable policy to be followed. In addition, Mr. Mahjoub refused to provide any USB devices for inspection as required by paragraph 10(f) of his conditions of release which stipulates not only the examination of the computer but also all peripheral memory devices. This is very close to a breach of the condition if not a breach. Finally on this matter, Mr. Mahjoub objected to giving his password to access his computer. This Court wrote Reasons for Order and Order obligating Mr. Mahjoub to do so (see *Mahjoub (Re),* 2014 FC 479 and more specifically paragraph 21). To this Court, it was evident that the password had to be given for the purpose of examining the computer. What was evident to this Court, however, was not to Mr. Mahjoub. This type of attitude can only show a lack of collaboration and cooperation, and not only is this is not helpful to Mr. Mahjoub's interest, but it also complicates and possibly makes it impossible for the CBSA to assume its supervisory role as the Court requires in the *Conditions of Release* of both 2013 and 2014.

61 Mr. Mahjoub explains that his attitude is intended to ensure that his conditions of release are limited to what they are and that his privacy is respected. These are, to some degree, valid grounds, but they must not be used to the point of taking the essence of the conditions of release away from their purposes and preventing the supervision of the use of communication devices, computers and other modes of transmission of data, information and images. Without proper supervision by the CBSA, conditions of release become useless.

[58] The Applicant, the Respondents and the Special Advocates allege new facts in these proceedings, including the two summaries of classified information released January 14, 2016 and June 6, 2006, and the underlying confidential information contained therein. The Ministers filed the report on the inspection of Mr. Mahjoub's computer provided on May 31, 2016, and an affidavit filed by the Ministers concerning clearing mobile phone data.

[59] The Applicant filed an affidavit which explains the hardship he suffers from the conditions of release. He expresses depression and anxiety he feels from the constant surveillance and fear of possibly breaching his conditions of release, as well as the isolated life he is forced to live. The Applicant also describes his involvement in volunteer work trying to find lodgings for Syrian refugee families in the Greater Toronto Area. The Applicant argues his current conditions do not allow him to fulfill the duties he would otherwise be fulfilling, such as traveling outside Toronto to translate or to visit potential lodgings.

[60] The Applicant also notes there have been no new CSIS risk assessments since 2011, and the reasonableness of the Security Certificate as found by Justice Blanchard is not fully reflected in the contents of that risk assessment. CBSA did not file a risk assessment for this hearing.

[61] Of note also is the recent *Reference re subsection 77(1) of the Immigration and Refugee Protection Act (IRPA)*, 2016 FC 586 decision of Justice Hansen who found that the underlying Security Certificate in respect of Mr. Jaballah was not reasonable. This could mean that at least one person named in the Applicant's old risk assessment as a terrorist contact was not, reasonably, a terrorist.

[62] The Applicant was cross-examined by the Respondents at the hearing and re-examined by his counsel. Issues

[63] This matter raises the following issues:

1. What type of review should this Court conduct?
2. Has the Minister met its burden to show reasonable grounds to believe, if that is the correct test, that the Applicant continues to pose a serious risk to national security?
3. If so, what conditions of release meet the factors laid out in Charkaoui v Canada (Citizenship and Immigration), 2007 SCC 9 at paras 110-117 and the jurisprudence of this Court?

III. Relevant Provisions

[64] Section 82(5) of the IRPA states:

Immigration and Refugee Protection Act, SC 2001, c 27	*Loi sur l'immigration et la protection des réfugiés*, LC 2001, ch 27
82(5) On review, the judge:	82(5) Lors du contrôle, le juge:
(a) shall order the person's detention to be continued if the judge is satisfied that the person's release under conditions would be injurious to national security or endanger the safety of any person or that they would be unlikely to appear at a proceeding or for removal if they were released under	a) ordonne le maintien en détention s'il est convaincu que la mise en liberté sous condition de la personne constituera un danger pour la sécurité nationale ou la sécurité d'autrui ou qu'elle se soustraira vraisemblablement à la procédure ou au renvoi si elle est mise en liberté sous condition;

conditions; or	
(b) in any other case, shall order or confirm the person's release from detention and set any conditions that the judge considers appropriate.	b) dans les autres cas, ordonne ou confirme sa mise en liberté et assortit celle-ci des conditions qu'il estime indiquées.

IV. Analysis

[65] The first issue to be addressed is whether the Applicant is a danger. The parties agree that a danger finding is critical to the imposition of conditions of release from detention. The Applicant says that the fact CSIS no longer considers him a threat to the security of Canada pursuant to the *CSIS Act*, and that this means in effect that he is no longer a danger pursuant to the *IRPA*. His legal team puts his danger at negligible or zero. They argue there is no evidence to support a finding of danger. I disagree; the object and purposes of the two statutes (*CSIS Act* and *IRPA*) are manifestly different. Danger in the sense of endangering others is a requirement of the *IRPA*, and specifically of paragraph 85(2)(a) of *IRPA*. While a CSIS threat assessment may ground a finding of danger under the *IRPA*, the absence of a threat assessment under the *CSIS Act* does not preclude the Court from finding danger under the *IRPA*. In other words, danger under *IRPA* may be found in the absence of a finding that finding that a person is a threat to the security of Canada under the *CSIS Act*.

A. *What is danger, how is it defined?*

[66] I accept the definition of danger as it is defined by the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] SCJ No 3, in the context of the expression "danger to the security of Canada". To constitute danger, there

must be a serious threat, grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible said the Supreme Court of Canada:

> 90. […] a person constitutes a "danger to the security of Canada" if he or she poses a serious threat to the security of Canada, whether direct or indirect, and bearing in mind the fact that the security of one country is often dependent on the security of other nations. The threat must be "serious", in the sense that it must be grounded on objectively reasonable suspicion based on evidence and in the sense that the threatened harm must be substantial rather than negligible.

[67] Justice Noël in his Conditions of Release Decision, October 30, 2015, dealing with the same Applicant and same statutory scheme as in the case at bar, addressed the definition of danger and in my respectful view set out the appropriate legal tests and approach on a review of conditions of release, including burden of proof pressed by Applicant's counsel:

> [51] The definition of "danger to the security of Canada" was consistently followed by all judges of this Court for the purposes of reviewing detention, reviewing conditions of release, and determining the validity of the security certificate (see Dawson J. in Mahjoub, July 2003, *supra*; and in *Mahjoub (Re)*, November 2005, supra; see Noël J. in *Harkat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 628, [2006] FCJ No 770, at paragraphs 54-59; and in *Charkaoui (Re)*, 2005 FC 248, [2005] FCJ No 269, at paragraph 36; and in *Harkat (Re)*, supra, March 2009, at paragraphs 42-43; see Mosley J. in *Mahjoub (Re)*, supra, at paragraph 106; and in Almrei (Re), 2009 FC 3, [2009] FCJ No 1, at paragraphs 47-48; etc.).
>
> [52] The initial burden to establish the danger to the security of Canada, for the purpose of assessing danger in regards to release from detention, is on the Ministers (see *Charkaoui n° 1*, *supra*, at paragraph 100). The Supreme Court of Canada further noted, at paragraph 105 of that same decision, that detention pending deportation may be lengthy and indeterminate, or that release with onerous conditions may also be lengthy and indeterminate depending on the facts of each case.

[53] The facts alleged by both parties pertaining to the danger, or not, Mr. Mahjoub poses to the security of Canada are to be determined by facts that "[…] are grounded on an objectively reasonable suspicion […]" and are to be assessed on a standard of reasonable grounds to believe as clearly expressed *in Charkaoui n° 1*, at paragraph 39:

> **39.** […] The "reasonable grounds to believe" standard requires the judge to consider whether "there is an objective basis ... which is based on compelling and credible information": *Mugesera v. Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100, 2005 SCC 40, at para. 114. "Reasonable grounds to believe" is the appropriate standard for judges to apply when reviewing a continuation of detention under the certificate provisions of the *IRPA*. The *IRPA* therefore does not ask the designated judge to be deferential, but, rather, asks him or her to engage in a searching review.

The same approach and logic should be followed for reviews of conditions of release of detention. I do not read the teaching of the Supreme Court of Canada referred to above in *Suresh* and *Charkaoui n° 1* as suggesting a different approach. On the contrary, they both complement each other. The designated judge has to perform the searching review based on an objectively reasonable suspicion anchored on facts showing that harm resulting from the danger is substantial and not merely negligible. This searching review must be completed on the standard of "reasonable grounds to believe" as clearly mentioned in *Charkaoui n° 1*. This is the approach followed by Justice Blanchard in all of his reviews of conditions of release pertaining to Mr. Mahjoub (see *Mahjoub (Re), supra*, November 2009, at paragraphs 35-44; *Mahjoub (Re*), *supra*, May 2011, at paragraphs 17-23; *Mahjoub (Re), supra*, January 2013, at paragraphs 13-16).

[54] If a danger to the security of Canada is found through the process referred to in the preceding paragraphs, then the designated judge must determine if the said danger to the security of Canada is such that no release of detention conditions can neutralize the danger. If indeed, no conditions can neutralize the danger, detention is called for. If to the contrary, the designated judge considers that appropriate conditions may neutralize the danger to the security of Canada, the Court must ask itself what are conditions of release of detention that, on a proportionality basis with the danger assessed, will neutralize the assessed danger. The

> Court must ensure the release will not be injurious to national security, endanger the safety of any person, and that the conditions will also insure the presence of the named person at a proceeding or for removal if necessary (see *Charkaoui n° 1*, *supra*, at paragraphs 109, 111, 116, 117, 120, 122 and 123*; Harkat v Canada (Minister of Citizenship and Immigration)*, 2006 FC 628, 278 FTR 118; confirmed by the Federal Court of Appeal in *Harkat v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 259, 270 DLR (4th) 35, at paragraphs 37-46, 48).

[68] I must also consider the type of review required in determining appropriate conditions of release. One issue is of course, what has changed. But the law requires more. In *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 [*Charkaoui I*], the Supreme Court of Canada said:

> 117 In other words, there must be detention reviews on a regular basis, at which times the reviewing judge should be able to look at all factors relevant to the justice of continued detention, including the possibility of the *IRPA*'s detention provisions being misused or abused. Analogous principles apply to extended periods of release subject to onerous or restrictive conditions: these conditions must be subject to ongoing, regular review under a review process that takes into account all the above factors, including the existence of alternatives to the conditions.
>
> (…)
>
> 122 Reviewing judges have also developed a practice of periodic review in connection with release procedures: *Charkaoui (Re)*, 2005 FC 248, at para. 86. In the immigration context, such periodic reviews must be understood to be required by ss. 7 and 12 of the *Charter*. The Federal Court of Appeal has suggested that once a foreign national has brought an application for release under s. 84(2), he or she cannot bring a new application except on the basis of (i) new evidence or (ii) a material change in circumstances since the previous application: *Almrei*, 2005 FCA 54; see also, *Ahani*, at paras. 14-15. Such an interpretation would lead to a holding s. 84(2) is inconsistent with ss. 7 and 12; however, since s. 84(2) has already been found to infringe s. 9 and cannot be saved under s. 1, it is not necessary to decide this issue.

> 123 In summary, the *IRPA*, interpreted in conformity with the Charter, permits robust ongoing judicial review of the continued need for and justice of the detainee's detention pending deportation. On this basis, I conclude that extended periods of detention pending deportation under the certificate provisions of the *IRPA* do not violate s. 7 or s. 12 of the *Charter*, provided that reviewing courts adhere to the guidelines set out above. Thus, the *IRPA* procedure itself is not unconstitutional on this ground. However, this does not preclude the possibility of a judge concluding at a certain point that a particular detention constitutes cruel and unusual treatment or is inconsistent with the principles of fundamental justice, and therefore infringes the *Charter* in a manner that is remediable under s. 24(1) of the *Charter*.
>
> [emphasis added]

[69] In terms of what is required by this robust review, I accept what Justice Noël stated in his Conditions of Release Decision, October 30, 2015, where he explains that robust reviews demand a complete understanding of past reasons and their underlying motives, as well as findings of danger, findings of non-compliance or near non-compliance, and findings of an overall uncooperative attitude are factors to consider when determining whether to ease the conditions of release:

> [21] I have made a brief history of past Reasons for Order and Judgment and included extracts of those which I find pertinent for the present review. The Supreme Court of Canada calls for robust reviews. Part of meeting this obligation is met when the designated judge reviewing the application has a complete understanding of past reasons and their underlying motives. Robust review demands not only to consider factors favourable to the named person. All other factors associated to the named person, as found in previous decisions, must also be considered. Notably, findings of danger, findings of non-compliance or near non-compliance, and findings of an overall uncooperative attitude are factors that militate against easing conditions of release. For the purpose of reviews, the designated judge, equipped with such factual knowledge of the past and of the present, must assess the different legal issues and ultimately render a decision.

[70] Finally, in order to identify the exact conditions for the release of detention, the Court must perform its analysis by referring to the following criteria:

1. Past decisions relating to danger and the history of the proceedings pertaining to reviews of detention and release from detention with conditions.
2. The Court's assessment of the danger to the security of Canada associated to the Applicant in light of the evidence presented.
3. The decision, if any, on the reasonableness of the certificate.
4. The elements of trust and credibility related to the behaviour of the Applicant after having been released with conditions and his compliance with them.
5. The uncertain future as to the finality of the procedures.
6. The passage of time (in itself not a deciding factor).
7. The impact of the conditions of release on the Applicant and his family and the proportionality between the danger posed and the conditions of release.

See Conditions of Release Decision, October 30, 2015 at para. 55, *Harkat v Canada (Minister of Citizenship and Immigration)*, 2013 FC 795, [2013] FCJ No 860, at paragraph 26; and *Charkaoui n° 1, supra*, at paragraphs 110-121; and *Harkat v Canada (Minister of Citizenship and Immigration)*, 2007 FC 416, [2007] FCJ No 540, at paragraph 9.

[71] I now review each of these factors:

1. Past decisions relating to danger and the history of the proceedings pertaining to reviews of detention and release from detention with conditions.

[72] Justice Noël summarized the recent review of conditions of release in his decision of October 30, 2015, as follows:

> [80] We have already reviewed: the past decisions relating to the procedures, the reviews of detention, and the reviews of conditions of release of detention. For the purposes of the present review, we shall only reference the most recent certificate proceeding; save a reference to reasons dealing with a review of conditions of detention issued by Justice Mosley in February 2007.
>
> [81] In that February 2007 decision, Mr. Mahjoub was released from detention on stringent conditions akin to house arrest. Justice Mosley had assessed that Mr. Mahjoub did not demonstrate he no longer posed a danger to national security. In the following review of the conditions of release, Mr. Mahjoub did not challenge the findings of Justice Mosley nor the findings of Justice Layden-Stevenson, the following designated judge who initially dealt with the second certificate proceeding. Justice Layden-Stevenson reviewed all of the conditions of release and concluded that they were to be adapted to the ongoing situation (see Mahjoub, supra, March 2009).
>
> [82] As a result of his wife and stepson relinquishing their roles as supervising sureties, Mr. Mahjoub was once again put under detention until new conditions of release could be worked out.
>
> [83] In the reasons issued in November 2009, Justice Blanchard ordered Mr. Mahjoub's release upon conditions that became actualized in March 2010. In that decision, Justice Blanchard reviewed the evidence and concluded that, with the passage of time, and as a consequence of the lengthy detention, the danger associated to Mr. Mahjoub had lessened. That was the reason for relaxing the conditions of release. On May 2, 2011, Justice Blanchard issued another set of reasons concerning the review of the conditions of release. After determining that the danger found was neutralized by the conditions of release, the judge reviewed the conditions in favour of some form of relaxation. Mr. Mahjoub wanted all the conditions struck, but the conclusions were otherwise. The conditions were thus again adapted, not struck. Another review of the conditions of release was held in the later part of 2011 and reasons were issued in February 2012 (see Mahjoub (Re), 2012 FC 125).
>
> [84] The conditions of release of detention of January 2013 were significantly altered as the danger assessed then by Justice Blanchard was found to have diminished (see paragraph 35).

> [85] After issuing the Reasonableness Decision in October 2013, Justice Blanchard, as mentioned earlier, issued a new review of the conditions in December 2013. The danger was found to be the same as in the 2013 assessment. Findings of a breach to the conditions were such that Justice Blanchard wrote: "[…] Mr. Mahjoub cannot be relied upon to respect his conditions of release" (see paragraph 18). Furthermore, some of his actions were found "[…] to be indicative of an unwillingness to cooperate with the CBSA" (see paragraph 17).
>
> [86] In July 2014, the undersigned, after hearing the parties on the review of the conditions of release in early July, issued reasons which similarly assessed the danger associated to Mr. Mahjoub. The undersigned assessed the danger to be the same as the one assessed by Justice Blanchard in his Reasonableness Decision and in his review of the conditions of release of late December 2013. Counsel for Mr. Mahjoub argues that the last assessment of danger was wrongly performed as it relied on the assessment of danger of Justice Blanchard. Such was not the case, as can be seen from a reading of all of the reasons issued. As seen earlier, the conditions of release remained save for a few adaptations. The undersigned also issued another set of reasons in late spring 2014 which found that Mr. Mahjoub's record and attitude concerning his recent conditions of release were not exemplary and showed he was not cooperative, some of the same conclusions that Justice Blanchard had arrived at earlier.

[73] Justice Noël summarized the danger as of his October 30, 2015, Review of Conditions and determined that the danger to the security of Canada associated to Mr. Mahjoub has not evaporated and that his danger remained latent, perceptible and factual:

> [78] The danger to the security of Canada associated to Mr. Mahjoub now is certainly not comparable to the danger assessed in the past. But, is it such that it does not exist anymore? I am of the opinion that it has diminished through the years. But, since the January 2013 review of the conditions where it was found to have diminished "significantly", I do not find any major indicators that it has further diminished importantly. To come to this conclusion, as demonstrated above, I have reviewed the confidential and public evidence which shows the concerns that remained then still exist today. <u>The danger to the security of Canada associated to Mr. Mahjoub has not evaporated; it remains latent, perceptible and factual</u>. Mr. Mahjoub's conditions of release as they were

> conceptualized and amended by Justice Blanchard are working and did neutralize the danger then assessed. Lifting all conditions does not guarantee the danger Mr. Mahjoub poses will be appropriately neutralized. I am thus not ready to grant Mr. Mahjoub the relief he seeks except for what is said below. [emphasis added]

[74] I should add that every review by every Judge of the Applicant's detention and subsequent conditions of release from detention has determined that he is a danger. I have carefully reviewed these decisions. While not determinative, they weigh on my finding that the Applicant is a danger; most assuredly he was in the past and has continued to be considered a danger by this Court over its many reviews of his detention, and after his release, of his conditions of release. These findings certainly suggest the Applicant remains a danger. Therefore, a valid question remains: what if anything has changed to justify cancelling entirely or substantially modifying, or amending the existing conditions of release. There is a second question also: if he is not a threat is it because the Applicant has changed over time, or is it because the conditions of release have succeeded in neutralizing what danger he presents?

2. The Court's assessment of the danger to the security of Canada or to other persons associated to the Applicant in light of the evidence presented.

[75] In this connection, the Ministers have the initial burden to establish danger. The facts must show that the danger is serious, grounded in an objectively reasonable suspicion, and that the potential harm resulting from the said danger is substantial rather than negligible as set out in *Suresh*. In my view, the Ministers have satisfied that burden.

[76] Weighing the evidence, if the burden is met, is to be performed on "reasonable grounds to believe", as set out in *Charkaoui No. 1*. In my view there are reasonable grounds to believe

and I find that the Applicant remains a danger to national security and to the safety of other persons as provided in the *IRPA*. Nothing suggests that he has changed in any material respect. While he may have been more respectful of his conditions of release, and somewhat less demanding of those charged with their administration, this does not mean that unsupervised he is no longer a danger. His danger is diminishing as it has in the past. In my view this is a result of the appropriate and balanced conditions of release in place not transformation on his part.

[77] In my view, his danger has not evaporated, gone to zero or become negligible as alleged by counsel. Instead his conditions of release have been effective. In my respectful view, this is not an argument to remove them; instead, their effectiveness militates strongly in favour of maintaining existing conditions with reasonable and proportionate adjustments as the evidence permits.

[78] I have considered the fact that CSIS has recently concluded that the Applicant is no longer a threat to the security of Canada so far as it is concerned, i.e., pursuant to the *CSIS Act*, upon which the Applicant places heavy reliance. I certainly count this in his favour. However, as noted above, CSIS opinions under the *CSIS Act* while obviously important are not necessary for a danger assessment under the *IRPA*. Their absence does not negative a danger finding by this Court under *IRPA*. This is one of the many factors that I must and will consider.

[79] I also have considered the fact that CBSA did not file a danger assessment. But again, at this stage in the Applicant's history with this Court such is not necessary. In my respectful view the danger presented by the Applicant may but by no means necessarily arises only out of recent

(as opposed to past) acts manifesting danger, disobedience, disrespect of authority or malfeasance. If that were the case, merely respecting conditions of release would eventually entitle any such person to be relieved of all conditions of release. To allow that is to ignore the reasonableness of the Ministers' decision to issue a security certificate in the first place, and its subsequent judicially review and approval as reasonable by this Court – a decision which has not been set aside. While I do not rely on it exclusively, neither may the Reasonableness Decision and the factual findings underlying it, be wished away as the Applicant asks.

[80] I appreciate that Justice Hansen recently held the security certificate against Mr. Jaballah was unreasonable in *Reference re subsection 77(1) of the Immigration and Refugee Protection Act (IRPA)*, 2016 FC 586. With respect however, that finding does not assist the Applicant for two reasons. First, any reasonableness decision is of necessity heavily fact-dependent. Second, and directly to the point, Justice Blanchard's Reasonableness Decision deliberately refrains from drawing conclusion on evidence concerning Mr. Jaballah at para 231:

> [231] Concerning the second allegation, upon reviewing all of the evidence on the record, I have determined that there is sufficient evidence to convince me that the security certificate is reasonable without deciding the issue of whether Mr. Jaballah was engaged in terrorism or a member of a terrorist organization. As this is the case, and as there is an ongoing security certificate proceeding against Mr. Jaballah, I shall therefore only lay out the evidence relevant to Mr. Jaballah's involvement in terrorism and terrorist organizations as it was presented to the Court and refrain from concluding on that evidence.
>
> [emphasis added]

[81] Therefore Justice Hansen's decision does not materially change matters affecting the Applicant.

[82] I also had the benefit of seeing and hearing the Applicant testify; he has not testified before this Court for almost 20 years. He did not testify before Justice Blanchard in the Reasonableness Decision hearing, nor did he testify on any previous reviews of his conditions of release so far as I can determine.

[83] I wish to note that during the Applicant's cross-examination by the Minister, I was asked to rule on the scope of a cross-examination on an applicant's affidavit filed in a review of his conditions of detention, and the use of previous answers given on prior examinations filed in proceedings in this Court. Regarding cross-examination on affidavits, I followed the decision of Justice Mosley in *Re Almrei* 2009 FC 3 at para 71:

> The jurisprudence is to the effect that cross-examination is not restricted to the "four corners" of the affidavit so long as it is relevant, fair and directed to an issue in the proceeding or to the credibility of the applicant. However, should an accused testify voluntarily in a previous proceeding, that testimony may be used by the Crown to cross-examine the accused in trial for all purposes [*R. v. Henry*, 2005 SCC 76, [2005] S.C.J. No. 76].

[84] Credibility is an issue in this proceeding. Justice Mosley concluded his analysis at paragraph 75:

> In the present context, questions as to whether as to whether Mr. Almrei constitutes a danger to Canada's national security and his credibility remain live issues in the detention review. Accordingly, should he testify or submit his affidavit, I concluded that the Ministers are entitled to cross-examine Mr. Almrei with regard to these issues and on the basis of his prior statements and testimony subject to the constraints of relevance and fairness.

[85] Also regarding cross-examination on prior testimony, I followed Justice Dawson (as she then was) in *Re Jaballah*, 2010 FC 224, who stated at paragraph 93:

> For this reason, if Mr. Jaballah chooses to testify in this proceeding, the Ministers may cross-examine him upon any prior statement made in previous security certificate proceedings.

[86] And I note that the statements at issue before Justice Dawson were made under the regime that was subsequently declared unconstitutional according to the Charter in *Charkaoui I*. Justice Blanchard in a related proceeding involving the Applicant, adopted "… Justice Dawson's findings relating to any and all legal determinations in the Reasons for Order and Order, dated February 26, 2010", to which I have just referred.

[87] Frankly, I was not impressed with the Applicant's evidence and attach little weight to it. His strategy, as implemented by his counsel, was to repeatedly interrupt Ministers' counsel during his cross-examination. Each interruption, some of which not even framed as objections, had the effect of buying time for the Applicant to reply and sheltering him from legitimate cross-examination. At various times his counsel's many interruptions bordered on suggesting strategies and even answers to the Applicant.

[88] These interruptions were continued notwithstanding the wide scope afforded to a cross-examiner, the stringent limits that are placed on interruptions during cross-examination, and even the Court's admonitions.

[89] Eventually the Applicant through counsel moved from interruptions that were expressly not objections to interruptions framed as objections, and did so repeatedly. These interruptions intensified as the Ministers' counsel moved into each new area. In my view, most if not almost all of the Applicant's objections were without merit.

[90] I also note the Applicant testified through a translator, although he quite frequently answered in English, and in what I consider very good English.

[91] In my view, multitudinous meritless interruptions during cross-examination and being led in re-direct had the cumulative effect of greatly diminishing the Applicant's credibility. These strategies made it difficult for the Court to find and assess the real Mr. Mahjoub before it. Justice Noël at one point observed that the Applicant might have 'something to hide'. The Applicant's testimony at the hearing taken as a whole also had the effect of again hiding the Applicant from the Court; my concerns about his being a danger were not tempered in any way.

[92] In his factum the Applicant specifically asked to be allowed to visit gun stores. When cross-examined, his answers were defensive and argumentative. He betrayed a profound misunderstanding of his reality. He asked to be treated like any other person in Canada. However he is not like any other person ("any other citizen" according to his counsel): he is not a Canadian citizen, he is a foreign national who is inadmissible under the *IRPA*. He is a person against whom a security certificate has been issued, which security certificate was issued under legislation found constitutional by the Supreme Court of Canada. And his security certificate was upheld as reasonable after a very lengthy review conducted by Justice Blanchard which stands unless and until it is contradicted on appeal.

[93] Further, when questioned about his admitted lying before Justice Nadon (as he then was), the Applicant forcefully took the position that he had a good reason to lie to this Court, i.e., he lied to protect someone else. The Applicant does not accept that lying is not allowed. He showed

no real remorse. His answers show he does not fully accept his duties as a witness. In my respectful opinion his testimony confirmed he would perjure himself again if he thought he had a good reason to do so; the Applicant mistakenly sees himself as the arbiter of when he may lie and when he tells the truth to this Court. That is a disturbing flaw in his relationship with this Court which casts further doubt on his credibility.

[94] The Applicant also admitted in cross-examination that he used the alias Shaker in connection with the activities discussed in Justice Blanchard's Reasonableness Decision. On multiple occasions prior to that decision, the Applicant had denied using the alias Shaker in CSIS interviews, and disputed that point before Justice Blanchard. In the end, Justice Blanchard concluded there was "insufficient evidence to establish that Mr. Mahjoub used the alias Shaker". Justice Blanchard said of this finding that it was "critically important that no basis whatsoever is provided by [the Ministers] XXXXXXXXXXX for connecting Mr. Mahjoub with the alias Shaker", at para 248. We now know that the Applicant did use the alias Shaker. This admission was not made before Justice Blanchard. In my view, based on the public record, this admission supports the allegation that the Applicant was at the very least a Mujahideen fighter. In my view this admission, had it been before Justice Blanchard, could have made a significant difference to the Reasonableness Decision: Justice Blanchard himself ruled that his inability to find the Applicant used the Shaker alias was "critically important."

[95] The evidence leads me to conclude not that the Applicant has ceased to be a danger, but that the danger remains. His danger to the extent it has been reduced came about not by any transformation on his part, but by the conditions of his release. That is not an argument to do

away with those conditions but instead, and in my respectful view, is an argument to maintain them to neutralized the danger, as intended by section 85 of the *IRPA*.

3. The decision, if any, on the reasonableness of the certificate.

[96] I am entitled to look at but not to rely exclusively on the Reasonableness Decision of Justice Blanchard and do so now noting that his decision is the result of lengthy hearings and argument by counsel and the Special Advocates. It has not been overturned or varied in any way. While under appeal, the Applicant does not appear to be advancing his appeal – and it is his appeal to prosecute – with any great diligence; the Reasonableness Decision is now more than two and a half years old and his appeal was not yet set down for hearing at the time of the hearing.

[97] Justice Blanchard made the following findings in his Reasonableness Decision: see:

> *c) Conclusion on membership*
>
> [627] Upon considering the evidence holistically, and on the basis of substantiated and reasonable inferences, I find that the Ministers have established reasonable grounds to believe that Mr. Mahjoub is a member of the AJ and its splinter or sub-group, the VOC.
>
> [628] In so determining I rely on my findings set out above which include:
>
> a. That the AJ and VOC existed as terrorist organizations at the relevant times;
> b. Mr. Mahjoub had contact in Canada and abroad with AJ and VOC terrorists;
> c. Mr. Mahjoub used aliases to conceal his terrorist contacts;
> d. Mr. Mahjoub was dishonest with Canadian authorities to conceal his terrorist contacts;

e. Mr. Mahjoub worked in a top executive position in a Bin Laden enterprise alongside terrorists in Sudan at a time when key terrorist leaders were in Sudan;
f. Mr. Mahjoub was dishonest in concealing from Canadian authorities the nature of his position at Damazine Farm;
g. Mr. Mahjoub travelled to and from Sudan at the same time as AJ and Al Qaeda elements, and
h. XXXXXXXXXX [Some of the direct evidence] that Mr. Mahjoub was a member of the AJ and Mr. Mahjoub's intercepted conversation support the Ministers' allegation.

[629] In my determination, I have also relied upon the following inferences relating to Mr. Mahjoub's travels and activities. These include:

a. Mr. Mahjoub's contacts were of a terrorist nature;

b. Mr. Mahjoub had a close and long-lasting relationship with a number of his terrorist contacts;

c. Mr. Mahjoub was trusted by Mr. Bin Laden on the basis of his ties to the Islamic extremist community;

d. Mr. Mahjoub was aware of and complicit in Al Qaeda weapons training occurring at Damazine Farm, and

e. Mr. Mahjoub's travels to and from Sudan at the same time as AJ elements were not coincidental.

[630] I am satisfied that even without the direct evidence XXXXXXX and from the intercepted conversation, my decision would not change.

[631] On the basis of the above findings, I am satisfied that Mr. Mahjoub had an institutional link with the AJ and knowingly participated in that organization. While there is a dearth of compelling and credible evidence explicitly linking Mr. Mahjoub with the VOC, I am satisfied that the evidence establishes an institutional link and knowing participation in the faction of the AJ led by Dr. Al Zawahiri, which eventually aligned itself with Al Qaeda and continued to be militant after many members of the AJ had declared a ceasefire. I have found that this faction was likely known as the VOC, at least at some point in its history. Mr. Mahjoub was linked with this faction of the AJ and Al Qaeda through his employment at Althemar, his travels, and his terrorist contacts in Canada. This link was active and enduring for many years. He knowingly participated in this network through his involvement in the Damazine weapons training, whether passive or

> active, and in maintaining contact with individuals who were active terrorists who were connected to either Mr. Bin Laden or Dr. Al Zawahiri. Although actual formal membership has not been established, which would require proof that Mr. Mahjoub swore allegiance to the group, such proof is not necessary in the context of a security certificate proceeding. I am satisfied that Mr. Mahjoub's links and participation fit within the unrestricted and broad interpretation of "member" for the purposes of paragraph 34(1)(f) of the IRPA.
>
> [632] On the basis of the above evidence as reflected in my findings, applying the principles of law discussed in the legal framework section of these reasons, I find that the Ministers have established reasonable grounds to believe that Mr. Mahjoub was a member of the AJ and its splinter or sub-group the VOC. Consequently, the Ministers have satisfied the requirements of paragraph 34(1)(f) of the IRPA.
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> [redactions in original]

[98] Likewise, I have read and rely on the subsequent reviews by this Court of conditions of release all of which have concluded, as recently as October 30, 2015, that the Applicant is and remains a danger. I have quoted from Justice Blanchard's summary in his Reasonableness Decision. It stands until it is varied or set aside on appeal. The findings are powerful and are a significant factor against the Applicant and his request to be relieved of all by the usual conditions of release.

4. The elements of trust and credibility related to the behaviour of the Applicant after having been released with conditions and his compliance with them.

[99] The Applicant's credibility was challenged by this Court when he last appeared before it to give evidence almost 20 years ago in 1997. It also has been challenged in the intervening two

decades. In today's reasons, I found his evidence to be of little weight when he testified in June 2016. This must count against his wish to have all but the usual conditions set aside.

[100] Justice Noël summarized credibility issues facing the Applicant in his July 18, 2014 review of conditions of release from detention, 2014 FC 720; however much the Applicant wishes I am not able to pretend these concerns away:

> [57] The behaviour of an individual with respect to the conditions of his release is an important factor to consider when considering amending them or some of them. In *Harkat (Re)*, 2009 FC 241 at para 92, [2009] FCJ No 316, the Court had this to say on this factor:
>
> > [92] Credibility and trust are essential considerations in any judicial review of the appropriateness of conditions. When considering whether conditions will neutralize danger, the Court must consider the efficacy of the conditions. The credibility of and the trust the Court has in a person who is the subject of the conditions will likely govern what type of conditions are necessary.
>
> [58] Mr. Mahjoub's record regarding his most recent conditions of release has not been exemplary, as noted by the Court in its December 17, 2013 review of conditions order, when it concluded that Mr. Mahjoub had breached his condition of release by not giving proper notice of the acquisition and use of the telephone and fax services. It was found that: "[…] Mr. Mahjoub cannot be relied upon to respect his conditions of release." (December 17, 2013 review of conditions order at para 18).
>
> [59] In that same decision, again as recently as December 2013, the Court also found that in relation to the cutting of the GPS bracelet and not permitting the CBSA to remove the bracelet without being damaged, Mr. Mahjoub's actions were: "[…] indicative of an unwillingness to cooperate with the CBSA." (see para. 17)
>
> [60] Mr. Mahjoub's recent attitude, action and behaviour are also indicative of an unwillingness to collaborate and cooperate with the supervision duty of the CBSA that the Court has imposed. Here are a few examples of this:

January 2014 – Mr. Mahjoub, although obligated to do so by section 7 of his conditions of release, did not give correct information to the CBSA concerning his travel from Toronto to Ottawa. Through counsel, the Applicant gave the wrong departure time which prevented the CBSA from assuming its supervisory role. The reasons given to explain this failure, to the effect that it was the error of counsel and that the CBSA should have informed Mr. Mahjoub of the discrepancy, are not accepted. Mr. Mahjoub was required by section 7 of his conditions of release to give accurate information when traveling, and it is not for the CBSA to compensate for a lack of accuracy. Still, because of that blatant failure by Mr. Mahjoub to provide accurate factual information, the CBSA was rendered unable to assume its supervisory role as the Court so required. This is another indication showing a lack of collaboration and cooperation on his part.

Mr. Mahjoub has failed to provide the Startec toll records as requested by the CBSA pursuant to paragraph 11(b) of the conditions of release for the period of use between January 31, 2014 and February 21, 2014, and he has yet to do so. This matter was submitted to the Court sometime in late spring 2014. Paragraph 11(b) of the conditions of release is clear: Mr. Mahjoub has the obligation to supply the Startec toll records for this three-week period. Again, this is another example of Mr. Mahjoub's lack of collaboration and cooperation. As for the Startec toll records for the year 2013, pursuant to paragraph 11(a) of the January 31, 2013 conditions of release, even though being asked to consent, Mr. Mahjoub still has not given consent. The reason he gives is that the CBSA should not gain retroactive access to these toll records. Furthermore, the Applicant has not given notice that he was using Startec as required by that condition of release. He argues that the CBSA knew of this account and should have asked them earlier. This argument does not relieve Mr. Mahjoub of his obligation to consent to the release of these toll records as required by the Court pursuant to paragraph 11(a) of his conditions of release. Again, this is not an attitude that shows collaboration and

cooperation as the conditions of release so require. By acting in such a way again, Mr. Mahjoub decides that the CBSA will not assume its supervisory role as requested by the Court.

Pursuant to paragraph 10(f) of the 2014 conditions of release, Mr. Mahjoub must give full access to his computer to the CBSA without notice, which includes the hard drive and the peripheral memory, and the CBSA may seize the computer for such purpose. On April 24, 2014, when requested by the CBSA, Mr. Mahjoub did not give the immediate access. He had the CBSA representative wait at the door and, as he went back to his computer, he appeared to be seen for a period of two minutes to be doing something to his computer. The condition compels Mr. Mahjoub to give access and control to the CBSA without notice. He did not. He also objected to the taking of photographs by the CBSA, when the purpose of the picture is to wire the computer in the same way when it is brought back and to document any damage on the computer. This is standard procedure for the CBSA and an understandable policy to be followed. In addition, Mr. Mahjoub refused to provide any USB devices for inspection as required by paragraph 10(f) of his conditions of release which stipulates not only the examination of the computer but also all peripheral memory devices. This is very close to a breach of the condition if not a breach. Finally on this matter, Mr. Mahjoub objected to giving his password to access his computer. This Court wrote Reasons for Order and Order obligating Mr. Mahjoub to do so (see *Mahjoub (Re)*, 2014 FC 479 and more specifically paragraph 21). To this Court, it was evident that the password had to be given for the purpose of examining the computer. What was evident to this Court, however, was not to Mr. Mahjoub. This type of attitude can only show a lack of collaboration and cooperation, and not only is this is not helpful to Mr. Mahjoub's interest, but it also complicates and possibly makes it impossible for the CBSA to assume its supervisory role as the Court requires in the Conditions of Release of both 2013 and 2014.

> [61] Mr. Mahjoub explains that his attitude is intended to ensure that his conditions of release are limited to what they are and that his privacy is respected. These are, to some degree, valid grounds, but they must not be used to the point of taking the essence of the conditions of release away from their purposes and preventing the supervision of the use of communication devices, computers and other modes of transmission of data, information and images. Without proper supervision by the CBSA, conditions of release become useless.
>
> [62] Through his behaviour, Mr. Mahjoub may give to a neutral observer of this situation an impression that he has something to hide. This is not only hurtful to the condition of release but it also impacts negatively on Mr. Mahjoub, should his intention be to eventually have the least conditions of release possible imposed on him. The trust and credibility components related to the behaviour of the Applicant when dealing with conditions of release are factors to be considered. It is in the interest of Mr. Mahjoub that he collaborates and cooperates in making sure that the conditions of release are complied with and that the supervisory role of the CBSA confirms the compliance.

[101] In his review of conditions for release from detention of October 30, 2015, Justice Noël repeated what he had found the previous year, adding further:

> [92] Again, in order to prevent duplication, I have already dealt with this factor in the reasons issued July 2014, at paragraphs 57-62, and I consider them still applicable to the present review.
>
> [93] I find it important to repeat what was said at paragraph 62 of that decision: Mr. Mahjoub does not accept the conditions of release of detention and that is perfectly acceptable. Having said that, it does not give him the latitude to contest them by not cooperating with the CBSA. This attitude creates an impression that he has something to hide and does not at all enhance his credibility and trustworthiness. Again, these components can work in his favour if he wants them to.
>
> [94] For the purposes of this review of conditions of release, Mr. Mahjoub, in his affidavit, at paragraphs 34-37, maintains that he is hiding the names of persons he meets because disclosing such names would make them subject to government scrutiny. Regarding these comments, the Court refers to the public summary of information issued in July 2015 but also to the confidential

information supporting it. The conditions as they exist require the CBSA to assume a supervisory role in order to ensure Mr. Mahjoub does not re-establish contacts with terrorist associates. Such secretive behaviour does not help Mr. Mahjoub; it is counter-productive to his aim of obtaining release or dismissal of his conditions of release.

[95] Another example that indicates an overly critical attitude towards the CBSA is the covering or not of shoes when officials of the CBSA visited his residence. Last year, in 2014, Mr. Mahjoub complained that the officials wore plastic bags over their shoes and that by doing so they gave observers the impression that his home was a crime scene or was contaminated. For the purposes of this review, at paragraph 28 of his affidavit, Mr. Mahjoub complained that the officers of the CBSA kept their shoes on while in his house and "[…] failed to wear shoe coverings to protect the cleanliness of my floors". No logical explanation was given to explain such a blatant contradiction. Said attitude again does not help his cause.

[96] Mr. Mahjoub criticizes the supervisory role of the CBSA concerning mail delivery, notably complaining that his Startec and Rogers invoices were not delivered. This Court has reviewed the evidence filed by both parties on this matter. It is not the role of the undersigned to become an investigator and to find a guilty party. Past decisions have determined that this condition of supervising mail was important to ensure that no illicit communication could occur. Mr. Mahjoub does not accept the existence of this condition as clearly reflected here. The CBSA filed evidence of logs and other documents that indicate the flow of mail; there are no indicators that some of the mail has been extremely slowly transmitted. To this Court, the way to solve this issue would be for Mr. Mahjoub to call the officers of the CBSA when mail does not arrive. Invoices could also be forwarded via the internet. This Court does not accept the response of Mr. Mahjoub that online billing is not acceptable to him. Recently, another issue arose concerning mail from ODPS not arriving. The Ministers responded that the CBSA was not to be blamed. Again, this Court will not become an investigator; such is not its role. Mr. Mahjoub should speak to ODPS, inquire about the issue, inform the CBSA and arrive at a solution. As it will be shown, these mail-related conditions will not be maintained going forward.

[97] There is no doubt that the supervision of the conditions cannot be perfect; there are bound to be some mishaps. When they occur, Mr. Mahjoub should deal with the officers of the CBSA and not let the issue become an insurmountable problem. Dialogue and

> finding solutions are keys to potentially further modifying the conditions.
>
> [98] Ultimately regarding this factor, the Court would like to re-emphasize that the trust and the credibility of Mr. Mahjoub, like for any other named person under the certificate scheme, are important. These components must be concretely considered and applied.

[102] Set against these matters, in the current review, the Ministers had little to complain of in terms of the Applicant's very recent behaviour. They noted he was overly critical concerning the fixing of his computer's power supply, which while damaged by CBSA was fixed in a day. That said, in my view this confirms that the present conditions of release from detention are working.

[103] At the hearing the Applicant interrupted his cross-examination to raise an irrelevant issue; I did not allow him to do so but he was given that opportunity in re-direct at which time he spoke forcefully about what was said in certain government emails concerning his decision to cut off his ankle bracelet, even though this Court has already ruled that did not breach his conditions of release. His point seemed to be that his credibility is not accepted, government officials are not criticized for allegedly misleading emails. This is an irrelevant issue for two reasons. First, there is no connection between the Applicant's credibility and the conduct of government officials; his obligation to be truthful is absolute and not conditional on what others may say or do; he is mistaken to suggest otherwise. Secondly, his public cutting off of his ankle bracelet has already been considered and adjudicated upon.

[104] This Court has said that matters of trust, credibility and compliance may work in the Applicant's favour, and that it is up to the Applicant to do more in these respects. While he did

not accomplish that in his oral testimony, the evidence of his conduct since the last review including the classified evidence, warrants further relaxation of the conditions.

5. The uncertain future as to the finality of the procedures.

[105] Justice Noël commented on this in his July 2014 review of conditions of release from detention:

> [63] As long as there are robust, periodic reviews of detention or of conditions of release, long periods of detention or of release with conditions that impact on the life and rights of an individual do not constitute violations of the *Charter* (see *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 123, [2007] SCJ No 9).
>
> [64] The Court has rendered the Reasonableness Decision as well as other decisions concerning the Applicant, including on the abuse of process and a permanent stay of the proceedings. The procedures have now been moved in good part to the appeal level, and the Federal Court of Appeal will be dealing eventually with any issues arising from the Notice of Appeal or from the appeal itself. The Applicant is benefiting from the appeal procedure and time has to be reserved for such process.
>
> [65] There have been and continues to be ongoing reviews of the conditions of release of Mr. Mahjoub. Reviews of the conditions of release were held and decisions were rendered in January 2013, December 2013 and January 2014 and in the summer 2014 (the current decision). Over a period of a little more than 18 months, Mr. Mahjoub has had three hearings dealing with reviews of the conditions of release and three decisions.
>
> [66] Undertaking robust reviews of the conditions of release from detention does not necessarily mean granting Mr. Mahjoub what he wants. It requires a careful examination of the conditions of release and their necessity, i.e. ensuring not only that they are required to neutralize the assessed danger but that they impact minimally on the rights and freedom of the Applicant. In order to go along with less invasive conditions, it must be shown (1) that the danger has diminished and (2) that the conditions neutralize the lessened danger. In this regard, the Applicant has a strong interest in collaborating and cooperating so that the supervision of the

> conditions shows that they are respected. With such evidence, then it can be argued that the conditions are not necessary. This is what a robust review is all about.

[106] In his Conditions of Release Decision, October 30, 2015, Justice Noël repeated these comments, adding:

> [100] Counsel for Mr. Mahjoub argues that the conditions existing in Egypt which may subject him to torture or other inhumane treatment renders non enforceable the removal order issued against him as a result of the certificate being found reasonable. As a result, the conditions of release should be lifted for being unreasonable and arbitrary.
>
> [101] The appeal process is unfolding as it should and no final, determinative decision has been rendered. This argument may perhaps be relied upon in the future, but it is not appropriate at this stage; it therefore cannot be retained.

[107] I agree that this aspect of the analysis is not appropriate at this stage and therefore does not count for or against the Applicant.

6. The passage of time.

[108] This is not a deciding feature, but it is always relevant. In my view, the passage of time counts in the Applicant's favour in terms of lessening the conditions of his release from detention.

7. The impact of the conditions of release on the Applicant and his family and the proportionality between the danger posed and the conditions of release.

[109] In previous decisions, the Court has underscored the rationale for restricting and monitoring the Applicant's activities as set out in many of the conditions including communications and travel. An underlying concern has been to prevent the Applicant from acquiring or re-acquiring terrorist contacts: *Mahjoub (Re)*, 2013 FC 10 at para 47; *Mahjoub (Re)*, 2014 FC 720 at para 76; *Mahjoub (Re)*, 2015 FC 1232 at paras 94, 113. This is also part of the objective in designing appropriate and balanced conditions in the current review. It is a reality from which the Applicant may not yet be free.

[110] I accept the need to prevent the Applicant from acquiring or re-acquiring terrorist contacts. As such I agree with the Ministers' submission that it is important that the Court continue to provide CBSA with a supervisory role to ensure that the Applicant's activities are monitored particularly his communications but more generally as well.

[111] Balanced against this and on the personal level, the Applicant raises his health concerns on this review as he did at previous reviews, as reported by Justice Noël in his Conditions of Release Decision, October 30, 2015:

> [103] In this section, I intend to comment on the perceived impact of the conditions of release of detention on Mr. Mahjoub. I shall also address the proportionality between the danger posed by Mr. Mahjoub and the conditions of release, therefore attempting to minimize the encroachment on his privacy but at the same time keeping in perspective the goal of neutralizing the said danger.
>
> [104] Going back to his first period of detention and up to now, Mr. Mahjoub's health has often been a factor that designated judges dealt with. Whether it was a short period of detention, a long period of detention, release from detention with conditions as strict as house arrest, or conditions that have lessened with time and as the danger evolved, the matter of the health of Mr. Mahjoub and the impact of the detention or the conditions of release of detention had on his overall well-being was constantly assessed as

past decisions have shown (see *Mahjoub* – November 2005, supra, at paragraphs 11, 37; *Mahjoub* – February 2007, supra, at paragraphs 76-82; *Mahjoub (Re)* – November 2009, supra, at paragraphs 115 and following; *Mahjoub (Re)* – January 2013, supra, at paragraphs 22-28; *Mahjoub (Re)* – December 2013, supra, at paragraph 11; *Mahjoub (Re)* – July 2014, supra, at 70-72).

[105] The last set of Reasons for Order of July 2014 was shown to Dr. Donald Payne for his most recent report of May 14, 2015, which is part of the evidence of Mr. Mahjoub for the present review. The reasons disqualifying his last report, as noted in July 2014 at paragraphs 70 to 72, will not be reproduced, but are referred to because Dr. Payne replies to them in his new report. For the purposes of the May 2015 report, Dr. Payne saw Mr. Mahjoub once for one hour and 45 minutes; no specific tests were done.

[106] In response to the comments made on his prior reports filed for the past reviews, Dr. Payne explains that the purpose of his reports is "[…] to show the degree of his [Mr. Mahjoub's] frustrations and demoralization around the limitation in his life" and he says that: "[...] I cannot make any comment on the factuality of his concerns".

[107] I do agree with Dr. Payne when he expresses how Mr. Mahjoub describes himself in his way of dealing with the conditions during his daily life and the frustrations that he gets from their actualization. As for the diagnosis made, this Court had taken them in consideration at the earlier review.

[108] There is no doubt the daily life of Mr. Mahjoub is affected by the actualization of the conditions of release of detention; it is easily understandable. That being said, first, the undersigned simply does not understand the doctor's writings where Mr. Mahjoub related that he considers his conditions of release of detention "worse" than the ones when he was "[…] in house arrest". The conditions of release being reviewed are in no way comparable to the "house arrest" of 2007. Second, Dr. Payne's comments recognize that Mr. Mahjoub has approached the conditions of release and their supervision by the CBSA with a "[…] longstanding adversarial relationship with CBSA, with the conflicts around the conditions perpetuating the adversarial relationship". The doctor went on to say that this may "[…] lead to him being seen as uncooperative". This surely does not help Mr. Mahjoub's own situation and also does not make it any easier for everyone involved such as the CBSA and the designated judges that have been involved in these reviews. In the submissions of counsel for Mr. Mahjoub at paragraph 56, it is recognized that:

> "[…] The conditions imposed on Mr. Mahjoub have been significantly changed by the Federal Court […]". Surely this must also be taken in consideration by Mr. Mahjoub and should have been by Dr. Payne in his report. This important statement is not considered at all.
>
> [109] This last comment on being seen "uncooperative" is also reflected in past decisions and reviews, going back as early as 2009 and as recently as 2013-2014 (see *Mahjoub* – March 2009, supra, at paragraph 150; and *Mahjoub (Re)* – December 2013, supra, at paragraph 17; and *Mahjoub (Re)* – May 2014, at paragraphs 18-21).
>
> [110] If I were to follow what Dr. Payne proposes as a result of his diagnostic, but also as he reads Mr. Mahjoub, I would cancel all of the conditions of release of detention. No other proposition was made. But, where does such an approach leave the objective of identifying conditions that would help neutralize the danger as it is assessed? Surely, it cannot be that because of his health as the doctor perceives it to be, the danger as assessed is to be left aside. There must exist, in the medical field, tools that could alleviate health concerns while maintaining a balance with the societal issues and goals that are legislatively required to be taken into account. Contrary to what I have seen in other medical reports of a similar nature, this doctor's report does not prescribe, suggest, nor discuss any medical therapies that would be called for in such a situation. It would have been helpful.
>
> [111] Having defined the danger and analysed proportionality in light of it, the second step is to determine appropriate conditions of release. These conditions must proportionally address the said danger in such a way as to minimally intrude on the privacy of Mr. Mahjoub. I refer the reader to paragraphs 67-79 of this present review in regards to the danger as assessed and also to paragraphs 57-66 concerning proportionality of the concept of danger to conditions minimally impairing the right to privacy of Mr. Mahjoub.

[112] The Applicant filed no new evidence in this connection because he says funding was not obtained. He says in his affidavit he feels depressed, anxiety and has trouble sleeping. He says he lives a reclusive life because others who might associate with him fear they will fall under CBSA

or CSIS surveillance. He says that until the conditions are completely removed he will continue to live an emotionally precarious life and suffer loss of dignity and privacy.

[113] Notwithstanding these concerns, in his cross-examination he admitted to having gone on a cross-Canada fundraising and speaking tour in 2013, and attended other events including media interviews to publicize his case in 2013 and 2014. On balance I find that the Applicant is able to get out, travel and speak to supporters when he wants to, notwithstanding his feelings of being depressed and anxiety. I give this factor some weight to his health issues in the analysis of what is reasonable and proportionate in the circumstances.

8. Pending Appeal Has Merit.

[114] The Applicant raised the merits of his pending appeal as a factor the Court should consider. I agree there may be additional factors to consider. This is not the first time this has been raised. He has appealed to the Federal Court of Appeal against the Reasonableness Decision of Justice Blanchard. At the hearing, the Court was told the appeal had not yet been perfected notwithstanding a delay of some two and one half years or more. While it is clearly the Applicant's appeal to advance, I received no satisfactory explanation for why the Applicant has not advanced his appeal further over this long period of time.

[115] The Applicant asked the Court to consider the merits of his appeal (and others he has launched) as factors in favour of removing all but peace bond conditions. The Applicant argued by way of analogy to section 679(3)(a) of the *Criminal Code* which legislatively provides as a condition to the grant of judicial interim release (bail) pending an appeal to an appeal court in

criminal cases, that the appeal "is not frivolous". There is, however, no such provision in *IRPA*. I was also referred to authorities regarding civil stays including *RJR Macdonald Inc v Canada (Attorney General),* 1994] 1 S.C.R. 311 which sets out the well-known 'not frivolous' test as the first of three requirements for a stay of proceedings, which is often invokes in *IRPA* proceedings pending, for example, judicial review.

[116] I find no merit in these arguments. The resolution of his appeal rights is for the Federal Court of Appeal to determine, not this Court to do on a review of his release conditions. I do not see how a non-frivolous exercise of an appeal right in respect of the Reasonableness Decision gives the Applicant a right to have his conditions of release relaxed. There is no logic in the submission, and I respectfully decline to give it effect. It may be relevant under the Crimin*al Code,* but is irrelevant in *sui generis* immigration proceedings under the *IRPA* such as this.

B. *Review of Conditions*

[117] With the above in mind, I will review the conditions of release from detention in general terms. In going through these areas of conditions, I caution that I am dealing in summary or shorthand form only; the specific wording of each provision and conditions attached thereto forms part and parcel of this Order and are specifically detailed in Schedule "A" to this Order which must be read with this summary and it is the Order that sets out the actual conditions.

(1) *Agreement to comply with each of the conditions*

[118] This is not in dispute because the Applicant would likely be obliged to accept this condition even if he only had to be of good behaviour and keep the peace.

(2) *Sureties and performance in case of breach*

a. $20,000.00 paid in Court by three (3) individuals;

b. And performance bonds signed by six (6) individuals varying between $1,000.00 and $20,000.00 for a total amount of $46,000.00.

[119] Again in my view this is not contestable as similar conditions would be required in any case given the seriousness of the matter i.e. the danger he presents and its need for effective neutralization.

(3) *Reporting on a bi-weekly basis to the CBSA, Mississauga*

[120] This condition was reduced from weekly in October, 2015. It appears to be working little disadvantage to the Applicant. In my view it is balanced and proportionate and therefore will remain in place because a change is not warranted at this time.

(4) *Residence to be a dwelling house or an apartment unit without outside space*

[121] This did not seem to be a matter of contention; in any event it will remain to better enable compliance.

(5) *Outings without pre-approval by the CBSA in the GTA area but not visit the retail establishment store that has as primary function the supplying of internet access or the selling of firearms or weapons*

[122] The Applicant made specific requests to remove with these two conditions. In my view, neither should nor will they be changed.

[123] I see no rationale whatsoever to allow the Applicant to visit gun stores, and the ban on internet cafes is of obvious usefulness in terms of monitoring and compliance regarding use of his laptop and cell phone.

[124] More generally, I am mindful of the Applicant's volunteer efforts in connection with the arrival of refugees from Syria under programs offered by the Government of Canada. The Applicant may travel without CBSA approval throughout the entirety of the rather vast GTA to assist in this work; in my respectful view travel within the GTA affords the Applicant more than enough scope to pursue legitimate activities.

(6) *As for outings outside the GTA area only within Canada, a notice of seven (7) days be given to CBSA containing a detailed itinerary*

[125] This will be changed. This condition is useful to allow CBSA and other agencies to take necessary steps in terms of ensuring they have to ability to staff and make appropriate arrangements. But the notice period is shortened from 7 days to 5. This should entail less stress on the Applicant should he wish to resume his activities outside the GTA.

(7) *Physical surveillance by the CBSA of his residence or during outings can be done but conducted with the least intrusive manner possible*

[126] This continues to be necessary given the danger and the need to neutralize it through conditions.

> (8) *No communication with a person that Mr. Mahjoub knows he is a supporter of terrorism or violent jihad or a person that has a criminal record*

[127] I am unable to see any reason why this should be amended, nor why the Applicant would want to engage in such conversations in the first place. It will not be changed. It is reasonable and proportionate.

> (9) *Mr. Mahjoub can use a desk computer with internet connection at his residence as long as he provides information about the internet provider but cannot use wireless connection but may use skype communication with the CBSA's consent and in the presence of a supervising surety*

[128] This will be changed. Given the Applicant's recent history of compliance with conditions and his somewhat less hostile approach to those responsible for their administration, and provided he does not erase Internet tracking information from it, it is appropriate to allow the Applicant the option of desktop or (new) a laptop computer. In addition the Ministers have agreed that the presence of Court approved supervising sureties is not needed at this time, and I agree.

[129] In this manner the Applicant will have access to social medial such as Facebook and Twitter, and also to Skype, in addition to websites. This is a significant relaxation in conditions. He may not delete Internet tracking information as more fully detailed in Schedule "A". As with all these conditions, the details are set out in the attached Order at Schedule "A".

(10) *Mr. Mahjoub may use conventional land-based telephone and facsimile transmissions but shall give to the CBSA all pertinent information for inspection purposes. He may also have a mobile phone with voice capability and voice mail only, subject to pertinent information given to the CBSA for inspection and supervision*

[130] This will change; the Applicant is now given the option of having a laptop computer with Internet, social media, Skype and website access, with conditions. For the same reasons he should have access to a cell phone with the same accesses, provided and I consider this of very great importance, that he not delete Internet tracking information as more fully detailed in Schedule "A".

(11) *Mr. Mahjoub may use other landline, telephone or mobile phone for emergency if required*

[131] This is reasonable and proportionate given the above and will therefore continue.

(12) *Incoming and outgoing mail shall be intercepted by the CBSA*

(13) *A mail box shall be used by the CBSA to return the intercepted mail*

[132] These two conditions were previously removed.

(14) *On reasonable grounds only that the conditions had been breached, the CBSA may enter and search Mr. Mahjoub's residence*

[133] This is reasonable and proportionate and will continue given my findings.

(15) *No video of the CBSA shall be done by Mr. Mahjoub or his representative when assuming their responsibilities pursuant to the conditions of release*

(16) *Any photographs or information gathered pursuant to the conditions by the CBSA are to be safeguarded and not be returned to third parties*

[134] These two conditions are reasonable and proportionate and will continue to protect the identities of those charged with administering the conditions, and in the latter case, they protect the Applicant and his privacy rights.

(17) *His passport and travel documents shall remain with the CBSA but Mr. Mahjoub may travel across Canada, as long as a notice is given*

[135] This is an ordinary condition regarding travel documents and is both reasonable and proportionate. In terms of travel across Canada, however, this will change. The Applicant may now travel outside the GTA on only 5 days' notice instead of the 7 days' now required. This will give the Applicant more freedom while maintaining an ability to ensure compliance with these conditions.

(18) *Mr. Mahjoub shall report if ordered to be removed from Canada*

(19) *Mr. Mahjoub shall not possess any weapons and keep the peace and be of good conduct*

(20) *If Mr. Mahjoub breaches any conditions, he may be arrested and brought in front of a designated judge*

[136] I would consider these to be normal and usual conditions even in a peace bond for a person in the Applicant's position; the provisions respecting arrest and appearance are reasonable

and proportionate given that these conditions are made under the sui generis IRPA and its provisions.

(21) *If Mr. Mahjoub changes residence, a prior-notice must be given*

[137] This will change. Currently he must give 10 days' notice of change of residence, which is now reduced to 3 days' notice. This will make moving more normalized and reduce stress and delay; it is also balanced and proportionate.

(22) *A breach of the conditions shall constitute an offence within the meaning of section 127 of the Criminal Code, RSC 1985, c C-45 and an offence pursuant to paragraph 124(1)(a) of the IRPA*

[138] This is self-evident and is both reasonable and proportionate. It will continue.

(23) *The conditions can be amended by a designated judge*

[139] This is for clarity and the benefit of both parties and is both proportionate and reasonable.

V. Certification of Questions

[140] As discussed at the outset, the Applicant raised constitutional questions in this proceeding. I take those to be the questions to certify. The Applicant could of course have argued the constitutional questions in June. And as noted above, it was at the Applicant's request that I deferred hearing argument on those points in June when they would normally and perhaps in hindsight should have been argued. Given the absence of a schedule, the reality is that the

Applicant of his own choosing has not dealt with these points, and it is clear they cannot and are not dealt with at this time. If and when the Applicant is in a position to argue the constitutional issues, I will deal with them and revisit the certification issue. I will not certify a question.

VI. Conclusion

[141] I have weighed the evidence and concluded that the Applicant remains a danger. The danger has diminished as a consequence of the effectiveness of the conditions of release from detention previously imposed, and to a lesser extent due to the Applicant's conduct. I have concluded that the existing conditions of release may be relaxed as outlined in the summary at the beginning of these Reasons and as detailed in Schedule "A" to this Order. However I have also concluded that they may not be relaxed further at this time. I have also concluded that the conditions of the Applicant's release from detention set out in Schedule "A", proposed by the Ministers, are reasonable and proportionate and take into account both the needs of Canadian society, the interests of the Applicant, and the intent of Parliament.

[142] Therefore, the terms of the Applicant's release from detention are as set out in Schedule "A".

ORDER

THIS COURT ORDERS that:

1. The Applicant's motion is granted to the extent that his conditions of release from detention are varied to those set out in Schedule “A”: SCHEDULE A CONDITIONS RESPECTING THE RELEASE OF MR. MAHJOUB effective July 20, 2016, attached to this Order and Reasons.

2. The Applicant's request to argue the matters outlined in his Notice of Constitutional Question is dismissed. with leave to the Applicant to apply for a hearing for that purpose if as and when he has a concrete proposal to place before the Court and has consulted with counsel for the Respondents on such concrete proposal.

3. No question is certified.

“Henry S. Brown”
Judge

SCHEDULE "A"
CONDITIONS RESPECTING THE RELEASE OF MR. MAHJOUB

July 20, 2016

I. Agreement to Comply

A. Mr. Mahjoub shall comply and agree to comply with each of the conditions set out in this Order.

II. Sureties and Performance Bonds

A. The following sureties are maintained:

The sum of $20,000.00 is to be paid into Court pursuant to Rule 149 of the *Federal Courts Rules*, SOR/98-106. In the event that any term or condition of the Order releasing Mr. Mahjoub is breached, an Order may be sought by the Ministers that the full amount, plus any accrued interest, be paid to the Attorney General of Canada. The following individuals have collectively paid the sum into Court:

1) Rizwan Wanchoo;

2) John Valleau; and

3) Russell Silverstein.

III. The conditions on each of the performance bonds applicable to the sureties shall be the same terms and conditions of guarantees and acknowledgements in writing already provided to the Court, namely:

A. The following individuals shall execute performance bonds by which they agree to be bound to Her Majesty the Queen in Right of Canada in the amounts as specified below. The condition of each performance bond shall be that if Mr. Mahjoub breaches any term or condition contained in the Order of Release as it may be amended from time to time the sums guaranteed by the performance bonds shall be forfeited to Her Majesty. The terms and conditions of the performance bonds shall be provided to counsel for Mr. Mahjoub by counsel for the Ministers and shall be in accordance with the terms and conditions of guarantees provided pursuant to section 56 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (*IRPA*), and Part 4 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, dealing with deposits and guarantees. Each surety shall acknowledge in writing having reviewed the terms and conditions contained in this Order, and shall indicate in particular their understanding with respect to this condition:

1) El Sayed Ahmed $5,000.00;
2) Murray Lumley $5,000.00;
3) Maggie Panter $10,000.00;
4) Elizabeth Block $1,000.00;
5) Dwyer Sullivan $20,000.00; and
6) John Valleau $5,000.00

IV. Reporting

A. Mr. Mahjoub shall report to the CBSA in person on the second and fourth Wednesday of every month. He shall report at the Enforcement and Intelligence Operations Division, Canada Border Services Agency, 6900 Airport Road, Entrance 93, Mississauga, Ontario, between the hours of 8 a.m. and 4 p.m. When traveling outside of the GTA, Mr. Mahjoub may fulfill his reporting obligation by reporting in person to a place and at a time to be agreed to in writing by the CBSA. If Mr. Mahjoub's scheduled reporting date falls on a statutory holiday or on a date that Mr. Mahjoub is scheduled to be in Federal Court, the parties may agree on an alternate reporting date and provide notice to the Court.

V. Residence

A. The term "residence" as used in these conditions refers exclusively to the dwelling house or apartment unit and does not include any outside space associated with it.

VI. Outings within the GTA

A. Mr. Mahjoub may leave his residence and travel within the Greater Toronto Area (GTA) without pre-approval by the CBSA. These outings are referred to as "Outings within the GTA" and are subject to the following conditions:

1) When Mr. Mahjoub leaves the residence for an outing, he shall remain within the GTA, which for the purpose of these Conditions, shall include

the municipalities of Toronto, Mississauga, Oakville, Brampton, Vaughan, Richmond Hill, Markham, Pickering and Ajax;

2) When Mr. Mahjoub leaves the residence, he shall not attend a retail establishment:

a) whose primary function is to provide internet access; or

b) whose primary function is to sell fire arms or weapons or which can be characterized as a "shooting range" or "shooting club".

VII. Other Outings

A. Mr. Mahjoub may travel outside of the geographic boundary set out in condition VI(A)(1) without approval by the CBSA subject to the following conditions:

1) Mr. Mahjoub must remain within Canada;

2) Mr. Mahjoub must provide the CBSA with at least five (5) business days' written notice of any such outing. He must also provide the CBSA with a detailed trip itinerary, which should include his proposed destinations, travel routes, mode of transportation and locations where he will be staying or visiting. Should Mr. Mahjoub require a change to his itinerary in any way, he must contact the CBSA immediately and advise of the proposed changes; and

3) Condition VI(A)(2), applicable to outings within the GTA, will also apply to other outings.

VIII. Physical Surveillance

A. Any physical surveillance conducted by the CBSA of the exterior of the residence or of Mr. Mahjoub during outings will be subject to CBSA Operations Policies and Procedures. For clarity, CBSA is authorized to perform random physical surveillance of the exterior of the residence or of Mr. Mahjoub during outings. The surveillance, if any, is to be conducted in the least intrusive manner possible.

IX. Prohibited Communications

A. Mr. Mahjoub shall not, at any time, or in any way, communicate directly or indirectly with:

1) any person whom Mr. Mahjoub knows, or ought to know, supports terrorism or violent Jihad or who attended any training camp or guest house operated by any entity that supports terrorism or violent Jihad; and

2) any person Mr. Mahjoub knows, or ought to know, has a criminal record. This restriction does not apply to communications with counsel in Egypt for the purposes of obtaining legal advice or a legal proceeding in that

country involving Mr. Mahjoub, or to communications with Mr. Mahjoub's family members, namely his parents, siblings, spouse or children.

X. Equipment Capable of Communication and Internet Access

A. Mr. Mahjoub may use one (1) desktop or one (1) laptop computer with an Internet connection at his residence. No other computer with Internet access shall be allowed in the residence. Should he elect to obtain or use such a computer, the following conditions apply:

1) Mr. Mahjoub may use either a cable or Wi-Fi connection to obtain and access the Internet at his residence;

2) Mr. Mahjoub must provide the CBSA with the name of his Internet service provider;

3) Mr. Mahjoub may obtain one electronic mail (email) account under the following conditions:

a) The email account must be web-based;

b) Mr. Mahjoub shall not access his email through a web browser. He shall only access his email through an email client such as Outlook or Thunderbird, set up on his home computer;

c) Mr. Mahjoub shall provide the email address, username, and password, and any updates thereof, to CBSA immediately upon setting up the email account;

d) Mr. Mahjoub shall consent to CBSA, or any person designated by it, having access, without notice, to his email account;

e) Mr. Mahjoub must ensure that no one else, except for him and CBSA or agents of CBSA, have access to his account;

f) Mr. Mahjoub shall not alter or modify any sent or received emails and he shall not delete any sent, received, or drafted emails;

g) Mr. Mahjoub shall not participate in any email communication over which he can claim solicitor-client or litigation privilege;

4) Mr. Mahjoub may access social media websites or applications, such as Facebook and Twitter, and websites or applications that facilitate online video chat, such as Skype, subject to the following conditions:

a) Mr. Mahjoub may obtain only one (1) account per respective website or application;

b) Mr. Mahjoub must obtain CBSA approval before creating an account on any websites or applications that facilitate online video chat, other than Skype;

c) Mr. Mahjoub shall provide the username, and password, and any updates thereof, to CBSA immediately upon setting up an account;

d) Mr. Mahjoub shall consent to CBSA, or any person designated by it, having access, without notice, to his accounts;

e) Mr. Mahjoub must ensure that no one else, except for him and CBSA or agents of CBSA, have access to his accounts;

f) Mr. Mahjoub shall not alter or delete records of activity or records of communication on any websites or applications;

g) Mr. Mahjoub may only access Skype using the desktop application;

h) Mr. Mahjoub must ensure that Skype settings are such that all chat and call history are set to be saved "forever";

i) Mr. Mahjoub must notify the CBSA of the names and Skype addresses of individuals with whom he wishes to communicate, one month in advance of engaging in such communication;

j) Mr. Mahjoub shall not participate in any communication over these websites or applications over which he can claim solicitor-client or litigation privilege;

5) Mr. Mahjoub, or anyone on his behalf, shall not alter or delete from his computer any Internet tracking information, including, but not limited to, internet browsing history and cookies;

6) Mr. Mahjoub may delete Internet tracking information only on consent of the CBSA, which consent shall not be unreasonably withheld and be dealt with expeditiously following a request from Mr. Mahjoub;

7) Mr. Mahjoub shall not use the private browsing feature of any Internet browser application including, but not limited to, Internet Explorer, Firefox, or Chrome;

8) The CBSA, or any person designated by it may contact the Internet service provider(s) to obtain a report on Mr. Mahjoub's Internet activity. Mr. Mahjoub shall consent to the CBSA or any person designated by the Agency, obtaining these records from the service provider(s);

9) Mr. Mahjoub shall permit any employee of the CBSA or any person designated by it, to examine his modem, his router, and his computer, including the hard drive and the peripheral memory and to seize the computer, modem, router, and any peripheral memory devices for such examination, subject to the following conditions:

   a) CBSA shall provide Mr. Mahjoub with 24 hours' written notice prior to attending his residence for the purpose of examining his computer;

   b) Mr. Mahjoub's confirmation of receipt of prior written notice is not required;

c) At any other time, with justification, CBSA may seek the Order of a Designated Judge to examine Mr. Mahjoub's modem, router, computer, hard drive and peripheral memory, without notice, for the purpose of ensuring that he is complying with the conditions of this Order.

10) Mr. Mahjoub may not store on his computer any material over which he may claim solicitor-client or litigation privilege;

11) Mr. Mahjoub's use of the computer must be subject to supervision. Mr. Mahjoub must ensure that any programs or websites that he accesses permit supervision by CBSA or any person designated by it. If necessary, prior to using a program or website, Mr. Mahjoub may seek CBSA's advice; and

12) Mr. Mahjoub shall provide any and all passwords to the CBSA immediately upon request.

B. Mr. Mahjoub may use one (1) conventional land-based telephone line located in his residence (telephone line) for both voice and facsimile transmissions and one (1) mobile telephone. The following conditions apply:

1) Mr. Mahjoub shall provide to the CBSA the applicable telephone number(s) and service provider(s) including any changes thereafter to his telephone number(s) and service provider(s);

2) The CBSA, or any person designated by the Agency may obtain and monitor the telephone toll records from the service provider(s) of Mr. Mahjoub's personal mobile and/or landline telephone service. Mr. Mahjoub shall consent to the CBSA or any person designated by it, obtaining these records from the service provider(s);

3) Mr. Mahjoub is only permitted to use call forwarding features to forward calls from his landline telephone to his mobile telephone and from his mobile telephone to his landline telephone. He is not permitted to use call forwarding features to forward calls from his landline telephone or mobile telephone to any other telephone line;

4) Should Mr. Mahjoub choose to acquire a mobile telephone, the following additional conditions apply:

    a) Mr. Mahjoub may obtain a SIM Card mobile telephone based on a make and model number previously approved by CBSA;

    b) The mobile telephone may have voice capability and voicemail, but all other features must be disabled subject to these Conditions, and the CBSA must verify that these features are disabled before Mr. Mahjoub may use the mobile telephone;

    c) The mobile telephone may have text messaging features enabled only on terms and conditions consented to by the CBSA, whereby

CBSA is able to verify the records of communications to and from Mr. Mahjoub. CBSA's consent shall not be unreasonably withheld;

d) Mr. Mahjoub shall permit any employee of the CBSA, or any person designated by it, to inspect his mobile phone at the CBSA's office;

e) CBSA shall provide Mr. Mahjoub with 24 hours' written notice prior to attending his residence for the purpose of obtaining and examining his mobile phone;

f) Mr. Mahjoub's confirmation of receipt of prior written notice is not required;

g) At any other time, with justification, CBSA may seek the Order of a Designated Judge for access to Mr. Mahjoub's mobile telephone without notice, for the purpose of ensuring that he is complying with the conditions of this Order;

h) When the CBSA obtains and inspects the mobile phone, it will return the mobile phone to Mr. Mahjoub as soon as possible and otherwise exercise this inspection authority reasonably;

i) For clarity, when inspecting Mr. Mahjoub's mobile telephone, CBSA may not make outgoing calls or answer incoming calls. CBSA may, among other methods, access, image, and store the

entire contents of Mr. Mahjoub's mobile telephone, but may not read the contents of his communications;

j) Upon request, Mr. Mahjoub shall provide the CBSA with all passwords required to access any part of the mobile telephone; any Personal Identification Number (PIN) required to access his account information; and to add CBSA as an authorized user on the account for the sole purpose of CBSA obtaining information on the use of the mobile telephone;

k) Mr. Mahjoub shall permit the CBSA to place a seal over the SIM card once activated and inserted into the mobile telephone. Mr. Mahjoub shall not use any SIM card in the mobile telephone other than that which is associated with his monitored account;

l) Mr. Mahjoub shall not use any internet features on his mobile telephone. Internet data shall be blocked through the mobile telephone provider. For greater certainty, this includes no use of web browsing or email functions and no use or installation of any applications. Mr. Mahjoub shall make best efforts to ensure that any Wi-Fi function remains turned off. If, despite Mr. Mahjoub's best efforts, the Wi-Fi function becomes enabled, Mr. Mahjoub must immediately notify the CBSA;

m) Mr. Mahjoub shall agree to pay the service provider a fee, if necessary, to include data blocking;

n) Mr. Mahjoub may not use any applications that come pre-installed on the mobile telephone without prior approval of the CBSA. Such approval shall not be unreasonably withheld;

o) Mr. Mahjoub shall not use any external memory devices with his mobile telephone. If Mr. Mahjoub's mobile telephone has a memory expansion slot, Mr. Mahjoub shall permit the CBSA to place a seal over the slot;

p) If Mr. Mahjoub's mobile telephone has near field exchange (NFC) and/or S-Beam functions, and or Bluetooth functions, he shall make best efforts to ensure that these functions remain turned off. If enabled, Mr. Mahjoub must immediately notify the CBSA;

q) If Mr. Mahjoub's mobile telephone has a screen mirroring function, he shall make best efforts to ensure that this function remains turned off. If, despite Mr. Mahjoub's best efforts, the screen mirroring function becomes enabled, Mr. Mahjoub must immediately notify the CBSA;

r) Mr. Mahjoub shall not update the mobile telephone's firmware or operating system without prior approval from the CBSA. For

further clarification, Mr. Mahjoub shall also make best efforts to ensure that any software auto-update feature is turned off. If, despite Mr. Mahjoub's best efforts, the auto-update function becomes enabled, Mr. Mahjoub must immediately notify the CBSA;

s) Mr. Mahjoub shall not permit any other person to use his mobile telephone;

t) Mr. Mahjoub, or anyone on his behalf, shall not alter or delete from his mobile telephone system information including, though not limited to, application data, application usage information, data usage information, Wi-Fi network logs, or any other cached information;

u) Mr. Mahjoub may delete from his mobile telephone system information only on consent of the CBSA, which consent shall not be unreasonably withheld and be dealt with expeditiously following a request from Mr. Mahjoub; and,

v) Mr. Mahjoub may not store on his mobile telephone any material over which he may claim solicitor-client or litigation privilege.

5) Mr. Mahjoub may use calling cards to make long distance telephone calls subject to the following conditions:

a) the calling card be must be reloadable;

b) Mr. Mahjoub must provide the serial number and Personal Identification Number (PIN) on such card to the CBSA prior to making use of the calling card;

c) that the service provider selected by Mr. Mahjoub be capable of providing telephone toll records to the CBSA in a reasonably timely manner on request by the CBSA;

d) that Mr. Mahjoub consents on an ongoing basis to the CBSA obtaining toll records from the service provider; and

e) the issuance of an Order, on consent, a draft of which is to be prepared jointly by the parties, providing for the delivery of the toll records to the CBSA.

6) Mr. Mahjoub is not to use any other mobile or landline telephone, except in the event of an emergency, where he cannot reasonably access his mobile or landline telephone. He is to inform the CBSA of the use of a mobile or landline telephone, other than his own, as soon as reasonably practicable and to provide the CBSA with the telephone number and service provider, on consent of the third party.

C. For clarity, except for one (1) internet router that has Wi-Fi capability at his residence, one (1) desktop or one (1) laptop computer with an Internet connection at his residence, as all defined in condition X(A), one (1) conventional land-based telephone line located in his residence, and one (1) personal mobile phone, as both defined in X(B), Mr. Mahjoub may not, directly or indirectly, use any other device that is capable of connecting to the Internet or sending wireless signals, including, but not limited to, any radio or radio device with transmission capability or any communication equipment or equipment capable of connecting to the Internet or any component thereof, including any mobile telephone that is capable of connecting to the Internet; any hand-held device, such as a BlackBerry or iPhone; any gaming system, such as a Wii or PlayStation, that is capable of accessing the Internet; any pager; any public telephone; any telephone other than the landline at his residence or his mobile telephone; or any internet facility.

XI. CBSA's Right to Enter and Search

A. The CBSA, any person designated by the CBSA, or any peace officer may enter and search Mr. Mahjoub's residence where there are reasonable grounds to suspect that Mr. Mahjoub has breached the terms and conditions or his release. Any item removed over which solicitor-client privilege is asserted must be kept sealed until such time as it can be reviewed by the Court.

XII. Audio and Video Recording

A. Neither Mr. Mahjoub nor any person in his residence shall make a recording of CBSA officers, by video or audio device, while the officers are carrying out their duties in monitoring compliance with the terms and conditions of this Order.

XIII. Photographs Taken and Information Collected by the CBSA

A. Any photographs taken by the CBSA in the course of carrying out their duties in relation to Mr. Mahjoub are to be safeguarded and shall not be released to any other entity unless a photograph depicts an activity that is relevant to a threat there are reasonable grounds to suspect is posed by Mr. Mahjoub or to a breach of any condition of release there are reasonable grounds to suspect has occurred.

B. Any personal information collected by or on behalf of the CBSA in accordance with this Order is to be safeguarded. No such information shall be released to any other entity unless it contains information that is relevant to a threat posed by Mr. Mahjoub to national security or to the safety of any person, or to a breach by Mr. Mahjoub of any of his conditions of release.

XIV. Passport and Travel Documents

A. Mr. Mahjoub's passport and all travel documents, if any, shall remain surrendered to the CBSA. Without the prior approval of the CBSA, Mr. Mahjoub is prohibited from applying for, obtaining or possessing any passport or travel document. For

clarity, this shall not prevent Mr. Mahjoub from traveling within Canada, as long as proper notice is given to the CBSA pursuant to condition VII.

XV. Removal Order

A. If Mr. Mahjoub is ordered to be removed from Canada, he shall report as directed for removal. He shall also report to the Court as it from time to time may require.

XVI. Weapons

A. Mr. Mahjoub shall not possess any weapon, imitation weapon, noxious substance or explosive, or any component thereof.

XVII. Conduct

A. Mr. Mahjoub shall keep the peace and be of good conduct.

XVIII. Arrest and Detention

A. Any officer of the CBSA or any peace officer, who has reasonable grounds to believe that any term or condition of this Order has been breached, may arrest Mr. Mahjoub without warrant and cause him to be detained:

1) Within 48 hours of such detention a Judge of this Court, designated by the Chief Justice, shall forthwith determine whether there has been a breach,

whether the terms of this Order should he amended and whether Mr. Mahjoub should be detained in custody; and

2) If Mr. Mahjoub does not strictly observe each of the terms and conditions of this order, he will be liable to detention upon further order by this Court.

XIX. Change of Residence

A. Mr. Mahjoub must provide the CBSA with 3 business days' prior written notice of any change of residence. His residence must be within the GTA, as defined in condition VI(A)(1). Should Mr. Mahjoub wish to reside outside of the GTA, he may apply to this Court for a variation of these conditions of release.

XX. Offence

A. A breach of this Order shall constitute an offence within the meaning of section 127 of the Criminal Code and shall constitute an offence pursuant to paragraph 124(1)(a) of the *IRPA.*

XXI. Amendment of Order

A. The terms and conditions of this Order may be amended at any time by the Court upon the request of any party or upon the Court's own motion with notice to the parties.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	DES-7-08
STYLE OF CAUSE:	**IN THE MATTER OF** a certificate signed pursuant to subsection 77(1) of the *Immigration and Refugee Protection Act* (*IRPA*); **AND IN THE MATTER OF** the referral of a certificate to the Federal Court of Canada pursuant to subsection 77(1) of the *IRPA*; **AND IN THE MATTER OF** the conditions of release of Mohamed Zeki MAHJOUB ["Mr. Mahjoub"]
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JUNE 8-9, 2016
ORDER AND REASONS:	BROWN J.
DATED:	JULY 20, 2016

APPEARANCES:

Johanne Doyon Paul Slansky	FOR THE APPLICANT (MOHAMED ZEKI MAHJOUB)
John Provart Mahan Keramati Christopher Ezrin Christopher Crighton	FOR THE RESPONDENTS (THE MINISTER OF CITIZENSHIP AND THE IMMIGRATION AND MINISTER OF PUBLIC SAFETY)
Anil Kapoor	FOR THE SPECIAL ADVOCATES

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