Federal Court  Cour fédérale

Date: 20190903

Docket: IMM-4819-19

Citation: 2019 FC 1129

Vancouver, British Columbia, September 3, 2019

PRESENT: Mr. Justice Diner

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

OTHMAN AYED HAMDAN

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This application judicially reviews an order made by the Immigration Division [ID] releasing Mr. Hamdan from detention. Mr. Hamdan has been detained for approximately four years – the two most recent years pursuant to immigration legislation and, previously, on the basis of criminal charges. The Minister argues for Mr. Hamdan's continued detention on the ground that he poses a danger to the public.

II. Background

A. *Mr. Hamdan's Immigration History in Canada*

[2] The Respondent, Mr. Hamdan, is a 38-year-old citizen of Jordan who was born in the United Arab Emirates. He entered the United States in September 1999 on a student visa. Mr. Hamdan states he converted from Islam to Christianity and, heeding a lawyer's advice that he would have a better chance of successfully claiming asylum north of the border, he entered Canada on July 14, 2002. The Refugee Protection Division [RPD] found him to be a Convention refugee on August 30, 2004, based on his fear of persecution due to his religious conversion.

[3] On August 14, 2008, Mr. Hamdan's application to become a permanent resident of Canada was refused as abandoned after Citizenship and Immigration Canada made repeated unsuccessful attempts to contact him.

[4] Following two deadly terrorist attacks carried out in Canada in 2014 in alleged support of the Islamic State, the Royal Canadian Mounted Police [RCMP] conducted a review of social media to identify potential threats to Canadian national security. Mr. Hamdan was identified and charged with four terrorism counts due to inflammatory Facebook posts he made on multiple pages and profiles between September 2014 and July 2015. He was charged with four terrorism-based counts, the first three for counselling murder, assault, and mischief, and the fourth for knowingly instructing any person to carry out a terrorist activity. The fourth charge required a finding of one of the underlying three offenses to proceed.

[5] In September 2017, the RCMP prepared a threat evaluation of Mr. Hamdan, finding a high risk that he will continue to post on the internet for the purposes of inciting others to commit terrorist acts and that he appears to have the knowledge and ability to carry out an attack himself. The RCMP also noted in the same threat evaluation that its assessment was not a prediction.

[6] On September 22, 2017, Justice Butler of the Supreme Court of British Columbia, in a 70-page, comprehensive decision, reviewed 85 impugned posts of Mr. Hamdan in detail, only finding the elements of *actus reus* under one of the charged offenses (counselling terrorism) with respect to one of the 85 social media posts. However, the judge found an absence of *mens rea* for that post. The Court thus acquitted Mr. Hamdan of the four terrorism charges: *R v Hamdan*, 2017 BCSC 1770. Upon his release, Mr. Hamdan was immediately transferred into immigration detention.

[7] On May 8, 2018, the RPD dismissed the Minister's application to vacate Mr. Hamdan's refugee protection. The Minister applied for judicial review of this decision. On October 18, 2018, the RPD granted the Minister's application to cease his refugee status on the ground that his reason for seeking refugee protection – namely, his conversion to Christianity – had ceased to exist.

[8] Also on October 18, 2018, the Immigration Division [ID] found Mr. Hamdan to be inadmissible for being a danger to the security of Canada and issued a deportation order against him after another lengthy decision, of some 57 pages.

[9] Mr. Hamdan applied for judicial review of both October 18 decisions. On November 21, 2018, this Court quashed the RPD's refusal to vacate Mr. Hamdan's refugee status, concluding that it was unreasonable to reach any conclusion other than Mr. Hamdan having been a Christian of convenience.

[10] Mr. Hamdan requested the deferral of his removal pending an assessment of the risk he would face and the outcome of his own applications for judicial review. On November 28, 2018, a Canada Border Services Agency [CBSA] inland enforcement officer refused to defer his removal. Mr. Hamdan applied for judicial review of this CBSA decision.

[11] On February 1, 2019, this Court dismissed Mr. Hamdan's request for leave to challenge the RPD's cessation decision and the ID's inadmissibility decision, but granted leave for judicial review challenging both (1) the constitutionality of the twelve-month Pre-Removal Risk Assessment [PRRA] bar in paragraph 112(2)(b.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and (2) the refusal to defer his removal. However, in response to an interlocutory motion, this Court subsequently granted a stay of his removal pending the outcome of the judicial review or until a PRRA officer duly conducted his risk assessment.

[12] On April 4, 2019, Immigration, Refugees and Citizenship Canada [IRCC] established a new public policy allowing, on a discretionary basis, the waiver of the PRRA bar for persons whose refugee status has been ceased under paragraph 108(1)(e) of IRPA. The following day, Mr. Hamdan was given the opportunity to submit a PRRA application, and subsequently did so.

He cannot be deported while this application remains pending as there is a regulatory stay of removal until either the application is rejected or, if allowed, until IRCC cancels the stay.

[13] On July 25, 2019, this Court dismissed Mr. Hamdan's remaining judicial review applications for mootness on the ground that he had submitted a PRRA application pursuant to the Minister's public policy.

B. *Prior Detention Reviews*

[14] Upon his acquittal from his criminal charges, as mentioned above, Mr. Hamdan went directly from criminal into immigration custody. On October 5, 2017, at Mr. Hamdan's first, 48-hour detention review, the ID member ordered his continued detention on the ground that he was a danger to the public. The member was satisfied that Mr. Hamdan would continue to be active online in a way that celebrated and encouraged acts of terrorism, and that such activity would put the Canadian public at risk.

[15] His seven-day detention review of October 12, 2017 resulted in continued detention, as did all such monthly reviews until August 2019. In other words, the ID continued to review Mr. Hamdan's detention every 30 days, as required under IRPA, and consistently ordered continued detention on the basis that he posed a danger to the public.

[16] At his July 18, 2019 detention review – the last before his August hearing which resulted in his release – the ID member granted a request to hold another detention review in less than 30 days to allow Mr. Hamdan's counsel to advance, for the first time, an alternative to detention. In

doing so, the member noted that any alternative to detention capable of supporting release would need to be "extremely comprehensive and robust and address all of the issues that are live in this case." That led to the next detention review some two weeks later, which for the first time in 27 such hearings, and after two years in detention, resulted in an order releasing Mr. Hamdan.

III. Decision under Review

[17] The August 2, 2019, the ID member [Member] ordered Mr. Hamdan's release subject to a comprehensive list of conditions. The Member concluded that, on a balance of probabilities, Mr. Hamdan does not pose a danger to the public if released with appropriate conditions.

[18] Specifically, the Member imposed 26 conditions of release, ten of which are mandatory conditions under section 250.1 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations]. The conditions include requirements that Mr. Hamdan reside with a bondsperson, abide by a curfew between midnight and 5:00 a.m., report by phone to CBSA every weekday, and refrain from accessing any device capable of connecting to the internet, driving a vehicle or accepting a ride from anyone without the approval of his bondsperson. See Annex A for a complete list of the release conditions.

[19] At the hearing, the Member heard testimony over the telephone from the proposed bondsperson regarding his relationship with Mr. Hamdan, his understanding of the situation, and his ability to ensure Mr. Hamdan's compliance with conditions.

[20] In his decision, the Member began by outlining several general principles that guide detention reviews, noting that Canadian law regards detention as an exceptional measure. He then acknowledged his responsibility to provide clear and compelling reasons for reaching a different conclusion from multiple prior decisions to continue detention.

[21] The Member highlighted two aspects that he believed differentiated his hearing from prior ones. First, he pointed to the fact that Mr. Hamdan's matters before this Court were dismissed as moot because he has been granted the opportunity to apply for a PRRA. Second, and more importantly, he noted that Mr. Hamdan's counsel had provided, for the first time, a "serious proposal for an alternative to detention," including a proposed bondsperson and specific conditions.

[22] The Member accepted that a "danger to the public" element is present in this case. However, he found that the risk posed by Mr. Hamdan is "much less" than that posed by individuals commonly before the ID, given that Mr. Hamdan had no established record of having committed violent criminal acts. He further noted that none of the factors listed in section 246 of the Regulations are present, and Mr. Hamdan has no convictions for any offence in Canada.

[23] Given his finding that a "level of danger to the public" exists, the Member proceeded to consider the factors required by section 248 of the Regulations. He found that the reason for detention – Mr. Hamdan's danger to the public – constituted a significant factor weighing in favour of continued detention.

[24] On the other hand, he found that the significant length of the almost two-year immigration-based detention, and the uncertainty regarding its future length, both weighed in favour of release. The Member did not find that any delay or lack of diligence was a determinative factor, and he dismissed as speculative the Minister's argument that the best interests of the bondsperson's children might be negatively affected by Mr. Hamdan's release into their home.

[25] Regarding the alternative to detention, the Member referred to the April 1, 2019 *Guidelines Issued by the Chairperson, Pursuant to paragraph 159(1)(h) of the Immigration and Refugee Protection Act* [Guidelines]. The Member found that the proposed conditions were sufficient to mitigate the risk posed by Mr. Hamdan and acknowledged that his release order relied significantly on the commitment of the bondsperson. The Member found him to be a suitable bondsperson, citing his "intimate knowledge" of Mr. Hamdan that stems from their decade-long close friendship and their having lived together for about 18 months. The Member accepted the bondsperson's testimony that a $2,000 bond represented a significant amount to him in light of his responsibilities running his own business and raising a family.

[26] The Member, referring to *Canada (Public Safety and Emergency Preparedness) v Lunyamila*, 2016 FC 1199, concluded that Mr. Hamdan's conditions would "virtually eliminate" any risk, because under them, Mr. Hamdan could not engage in any of the activities that led to the finding that he was a danger to the public – i.e. posting on the internet. Furthermore, he would be located in a rural, fairly remote location, with limited mobility.

[27] After oral and written submissions from counsel, including with respect to the proposed conditions for release, the Member rejected the Minister's request for more stringent conditions, such as house arrest or electronic monitoring, deeming such conditions excessive given the degree of risk posed and the fact that Mr. Hamdan had not "hurt anybody in the past."

[28] The Minister immediately filed a judicial review after that August 3, 2019 decision, as well as a stay application, before this Court. Both the stay and leave were granted on an expedited basis. A special sitting was convened, and took place in Vancouver on August 27, 2019. This provided sufficient time to hear from both parties, and decide the matter, which I will now proceed to do.

IV. Relevant Provisions

[29] The relevant provisions of IRPA and the Regulations are reproduced in Annex B.

V. Issues and Standard of Review

[30] In this judicial review application, the Minister argues that the Member erred in three ways: (i) by failing to provide clear and compelling reasons for departing from the prior decisions to detain; (ii) by failing to consider the reason for the detention; and (iii) by ordering release on terms and conditions that do not mitigate the danger to the public.

[31] The Minister contends that any or all of these three errors renders the decision unreasonable, which they note is the standard of review. That is, indeed, the appropriate

standard of review, as ID detention reviews are primarily fact-based decisions and are to be given deference (*Canada (Public Safety and Emergency Preparedness) v Ahmed*, 2019 FC 1006 at para 19). When operating under the reasonableness standard of review, the reviewing court must determine whether the ID member's reasons allow the court to understand why the member made a decision and whether the conclusion is within the range of acceptable outcomes (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[32] Before proceeding any further, I feel compelled to make the following remarks.

[33] Terrorism is not an easy subject matter for any tribunal or reviewing Court. The Board member reflected as much when he stated the following in his oral reasons:

> I wish this went without saying but I will go ahead and say this: My release decision is not in any way an endorsement or a vindication of Mr. Hamdan's ideology, his thinking or the views that he has expressed in the past in his online postings… I am not issuing this decision because of my personal feelings or any reaction to Mr. Hamdan as an individual. I am required to do the best I can to follow what's required by the law in light of the specific circumstances of the case and the principles that I have already articulated, and what ultimately counts in an assessment of danger to the public are Mr. Hamdan's actions.

[34] I would adopt the ID Member's remarks as my own. Suffice it to say that I find Mr. Hamdan's past conduct no less reprehensible than the Member did, and exceptionally difficult to digest. To disseminate news coming from the sources in question is one thing; to actively promote and champion that news – including terrorist actions against Canadians on home soil – descends to even further lows.

[35] That said, my role is not to sit in judgment of Mr. Hamdan. Nor is it to decide whether he should be released from detention – that is the ID's role. Rather, my role is simply to ensure that the ID made a reasonable decision based on the criteria set out in IRPA and the Regulations. In doing so, I must give appropriate deference to the ID, as it is the tribunal to which Parliament has entrusted the role of deciding immigration detention matters.

VI. Analysis

[36] Much of my analysis is devoted to discussing the third issue, namely, the reasonableness of the release conditions, as the suitability of conditions is a complex issue, and one that was particularly disputed both at the hearing and in submissions. However, this is not to diminish the first two issues raised, the analysis of which follows.

A. *Issue (i): Clear and compelling reasons*

[37] In *Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2004 FCA 4, Justice Rothstein (as he then was) explained that an ID member conducting a subsequent detention review must reach a fresh conclusion as to whether the person should continue to be detained. However, the member must consider previous decisions to detain and provide clear and compelling reasons for departing from such decisions (at para 10). Justice Rothstein added that while an express explanation for reaching a different conclusion is preferable, clear and compelling reasons for doing so may be implicit in the decision (at para 13).

[38] I must review whether those reasons were clear and compelling on a deferential standard. As recently explained by Justice Norris, "the requirement for clear and compelling reasons for departing from a previous decision of the ID should be seen not as a discrete ground for judicial review but, rather, as an application of the reasonableness standard" (*Canada (Public Safety and Emergency Preparedness) v Mohammed*, 2019 FC 451 at para 23).

[39] In Mr. Hamdan's Decision, the ID clearly explained why it was diverging from the outcome of the prior decision, and indeed, approximately two dozen ID decisions prior to that. The Member stated in his oral decision that this was the first "serious proposal for an alternative to detention, including a proposed bondsperson and specific conditions," with the bondsperson having testified at the hearing about his prospective supervision of Mr. Hamdan, his knowledge of Mr. Hamdan, and motivation to ensure compliance, both in terms of his ties to Mr. Hamdan and financial commitment through the surety tendered. The Member emphasized that at prior reviews, the degree of risk was unmitigated by any restrictive conditions of release, and thus higher than under the alternative.

[40] Given the mitigated risk, the Member also noted that the length of time spent in detention under section 248(b) of the Regulations weighed considerably in favour of release. Justice Mosley has held that clear and compelling reasons to depart from a prior detention decisions can include the proposal of an acceptable alternative to detention, as well as changes in circumstances that could lead the ID to find that the factors set out in section 58 of IRPA are no longer present (*Kippax v Canada (Citizenship and Immigration)*, 2014 FC 429 at para 20).

[41] Indeed, Justice Abella noted in her dissent in *Canada (Public Safety and Emergency Preparedness) v Chhina*, 2019 SCC 29 [*Chhina*] (which was not contradicted by the majority), that "[i]t is not enough for the Minister to rely on previous [ID] decisions to satisfy the [ID] on the s. 58 and s. 248 inquiry. The integrity of the IRPA process is dependent on a fulsome review of the lawfulness of detention, including its Charter compliance, at every review hearing" (at para 127); see also Justice Grammond's decision in *Canada (Public Safety and Emergency Preparedness) v Baniashkar*, 2019 FC 729 [*Baniashkar*] at paras 12–14 and 20).

[42] In addition to the primary factors noted above regarding alternatives to detention, the Member also noted other changes. These included the change in the situation with Mr. Hamdan's challenge to the constitutionality of the PRRA bar, given this Court's dismissal of that application for mootness. Indeed, the reason for this decision was that the Minister changed the policy and invited Mr. Hamdan to submit a "restricted" PRRA under subsection 112(3) of IRPA, ending any claim to *Charter* violations for being unable to obtain a risk assessment. As it turned out in evidence that became available between the time of the Member's Decision and this judicial review, Mr. Hamdan's first stage of his restricted PRRA has been approved, and the timing for the next stage of the risk assessment, according to the new information provided, is approximately one year. Even if the second stage decision occurs sooner than that, the restricted PRRA is nonetheless a long and complicated process (see *Kanagaratnam v Canada (Citizenship and Immigration*, 2015 CF 885 at paras 12-15 for a description of the steps involved).

[43] As I have concluded in a previous case with over two years of immigration detention and where there was also no resolution in the foreseeable future, the ID is entitled to weigh that

concern heavily among the various statutory factors considered (*Canada (Public Safety and Emergency Preparedness) v Rooney*, 2016 FC 1097 at para 39).

[44] Finally, I note that the conclusion on this first issue is consistent with the one prior consideration of the Member's Decision – namely Justice Gascon's August 13, 2019 Order temporarily staying Mr. Hamdan's release such that he has remained in detention pending this decision. In that stay Order, Justice Gascon found serious issues "regarding at least the second and third grounds identified by the Minister." This, in my view, implicitly signalled that the first ground was not a strong suit for the Minister on the elevated threshold that Justice Gascon applied to the serious issue test (although I certainly will not tread into whether the serious issue threshold should or should not be elevated, a topic which was also mentioned at the judicial review hearing, and which has also been the subject of recent commentary of this Court – see, for instance, *Canada (Public Safety and Emergency Preparedness) v Asante*, 2019 FC 905 at paras 18 and following).

[45] In sum, I find that the ID provided clear and compelling reasons for departing from the prior decisions to detain. The Member clearly explained where his decision departed from those that had preceded his, and given Mr. Hamdan's liberty interests, acted in accordance with section 7 *Charter* principles (*Rooney* at para 19; *Ahmed v Canada (Citizenship and Immigration)*, 2015 FC 792 at para 19).

[46] The fact that the Minister does not agree that the various changes that emerged during this, the 27th detention review, were sufficient to justify Mr. Hamdan's release, are ultimately no

more than an invitation for this Court to reweigh the evidence (*Canada (Citizenship and Immigration) v B072*, 2012 FC 563 at para 29). Clearly, to do so would be an inappropriate exercise in a reasonableness review, given the explanation of that standard provided above.

B. *Issue (ii): Consideration of danger*

[47] The Member clearly acknowledged Mr. Hamdan's danger, noting that he was detained as a result of having been found to be danger to the public under section 58(1)(b) of IRPA. The Member also acknowledged the earlier decision of the ID, finding Mr. Hamdan to be inadmissible under section 34(1)(d) of IRPA. The Member noted various distinctions between an inadmissibility assessment and a release from detention, including the focus on the evidence and the different standards applied to the relevant legislative provisions. The Member also commented on Mr. Hamdan's profile in light of the danger finding, all given the backdrop of his past internet activity. This included his lack of any criminal convictions, lack of evidence of violence, behaviour in prison, conduct at the hearing, and testimony provided.

[48] The Minister contends in his submissions that the "Member's reliance on the fact that the Respondent has not been the instigator of violence while in provincial correctional facilities shows a fundamental misapprehension of the risk the Respondent has been found to pose to the Canadian public. That he has not 'resorted to violence' in a supervised setting has no bearing on the risk that he will personally carry out a terrorist act in the future." Mr. Hamdan has not been found to be a danger due to a prior assault conviction, but due to his praise of "Lone Wolf" attacks, his promotion of ISIS, his dissemination of instructions on how to carry out attacks, his

identification of possible targets in Canada for terrorist activity, and his apparent fascination with the extreme violence of ISIS.

[49] However, the argument that the Member did not consider the reason for detention is at odds with his Decision. For instance, the Member held:

> Now, I recognize that, as I have already said, this is a forward-looking assessment. It's not entirely based on past behaviour or the absence of past behaviour, of course. I also recognize that although he was acquitted of all criminal charges, the court in dealing with those charges still found that he was prepared to commit violent jihad as part of his struggle, and he has been found repeatedly by this Division, including myself, to pose a danger to the public based on past social media posts that this Division found endorsed and encouraged terrorist attacks in Canada and abroad.
>
> Also I would say on a rather secondary level based on his own past statements expressing anger and threats of harm against various individuals and entities including Facebook staff when his accounts were removed, of a specific RCMP officer and an RCMP location and interpreters. Now, the Immigration Division including me has repeatedly concluded that he would likely incite others to commit violence by continuing to post similar views online and/or that he would commit violence himself if released.

The member went on to note:

> Of course, the Regulations direct me that even where it is determined that there are grounds for detention, I have to consider other factors before making a decision on detention or release, so it's not enough for me to stop at a conclusion that Mr. Hamdan poses a danger to the public. I still have to consider other factors and these are articulated in Regulation 248. The reason for detention, of course, [sic] danger to the public. I recognize the points raised as reflected in the jurisprudence that this is a very significant ground that does justify continued detention and at times even lengthy detention.

[50] The Member makes it clear above, and in various other places in his reasons, that the danger element exists in Mr. Hamdan's case. However, the Member also notes that based on a holistic view of the evidence, on the spectrum of 'danger to the public' that the ID routinely deals with, Mr. Hamdan finds himself towards the low end, because he never committed violent criminal acts. The Member also makes clear that the imposition of various conditions will mean that, on a balance of probabilities, Mr. Hamdan will not meet that threshold going forward, such that his ongoing detention would not be justified.

[51] The Member notes that the standard of proof on detention review is markedly different from the "very low threshold of reasonable grounds to believe," the standard used for admissibility decisions. He notes that a further distinction in assessing danger to the public for the purpose of ongoing detention is that the question is whether the person constitutes a present and future danger to the public, whereas the focus in the other proceedings is backward looking. Thus, while a person's past behaviour is helpful in assessing present and future risk, the Member notes that immigration detention is not intended to punish someone for what they have said or done in the past, as much as it is preventative for the future. On that note, the Member finds that:

> Parliament did write in Regulation 246 specific factors that are to be considered in assessing whether a person is a danger to the public. Of course, as the parties agree and as this Division well knows, those specifically listed factors are not exhaustive and this Division can consider anything else that might also be relevant, but it is still worth noting and emphasizing that in Mr. Hamdan's case none of those Regulation 246 factors are present. Some of them aren't even relevant. …not only does Mr. Hamdan not have any of those types of convictions in Canada, he doesn't have any convictions at all in Canada. He has a clean criminal record here.
>
> He has been charged of course, as has been discussed so extensively in these proceedings, but he has been acquitted of the criminal charges, so that is a significant factor in my view that makes him different than most of the people that this Division

> deals with on the ground of danger to the public. He has no history of committing violent criminal offences in Canada. He has no history of directly harming anyone in Canada in a manner that would justify continued detention if those elements were present.

[52] The Member, apart from these comments on the lack of any evidence of a violent or criminal past, also notes Mr. Hamdan's good conduct despite the lengthy incarceration. He remarks that "although immigration detention is stressful – he has been held in provincial institutions, not an immigration holding centre – and this Division has seen many examples of individuals held in those environments who engage in significant violent activity within the institutions even though they're in a controlled environment. That's not the case for Mr. Hamdan."

[53] I note that the Member based this assessment in part on new evidence before him from the August 2019 hearing, which included two years of correctional records concerning Mr. Hamdan's behaviour during detention, spanning 50 pages of logs between April 2017 and April 2019 (approximately five months of which in 2017 related to non-immigration detention). The Member pointed out that his behaviour over that period showed no evidence of violence. Rather, these logs indicate that Mr. Hamdan was usually respectful and often displayed good conduct while in detention. The member also noted Mr. Hamdan's willingness not to post. He ruled:

> At this point in time I think it's somewhat speculative to argue or to maintain on a balance of probabilities that Mr. Harndan's future postings, if any, would on a balance of probabilities likely motivate anyone in Canada to carry out that type of attack. There is no evidence that his past postings motivated anyone to actually carry out some type of action of this kind, so overall in consideration of all of these issues I accept -- I continue to accept that there is a level of danger to the public that exist, but again I repeat that on

> the spectrum of the kind of cases that this Division routinely deals with, I conclude it's much less of a danger than we see with those individuals who have established records of criminal violence.
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> Mr. Hamdan has no such history of violent behaviour in Canada and with appropriate conditions of release I conclude that he is not a danger to the public on a balance of probabilities.

[54] The Member thus focused his findings on forward looking danger as based on Mr. Hamdan's conduct in the years since posting his social media messages, i.e. while incarcerated, as well as his conduct during the hearing itself. This was open to the Member.

[55] The fact that the ID had found Mr. Hamdan to be a danger to the public in the context of its admissibility decision the previous year, did not require the ID to reach a similar conclusion in the detention context, as these adjudicate different issues under different sections of IRPA, with different *Charter* considerations at play. They are also made according to different standards of proof, namely, a balance of probability in the detention context, as opposed to the lower standard of reasonable grounds to believe in inadmissibility proceedings, where the focus is what the individual has done in the past, rather than the forward-looking detention context of what will happen if s/he is released.

[56] In an analogous situation, while still on this Court Justice de Montigny explained in *Canada* (*Public Safety and Emergency Preparedness) v Sall*, 2011 FC 682, when addressing a ID member's decision to release in spite of an existing danger opinion from the Minister:

> [39] Moreover, the Member was entitled to disagree with the assessment made by the Minister, not only because he relied on other factors to measure the danger (the workshops taken by Mr. Sall, his cooperation with the CBSA, the passage of time and his marriage), but also because this danger opinion was issued in a

> very specific context (to determine whether he should be removed from Canada), which is distinct from the purposes of a detention review. As pointed out by the Federal Court of Appeal in *Williams v Canada (Minister of Citizenship and Immigration)*, [1997] 2 FC 646, what the Minister or his delegate must focus on in the exercise of his discretion under paragraph 115(2)(*a*) of the IRPA is to determine whether an individual who has committed one or more serious crimes in the past creates an unacceptable risk to the public. Such an assessment necessarily involves "political considerations not inappropriate for a minister" (*Williams*, at paragraph 29), but which are certainly not relevant for the ID in a detention review.

[57] Finally, the Minister argues that the Member had insufficient information concerning Mr. Hamdan's mental health diagnosis, treatment, and prognosis to properly assess his risk to the public, in that he has been seeing a psychologist twice each week and has been prescribed medication. Yet, there is no independent evidence as to the nature of the symptoms or medication.

[58] In a previous detention review, in June, 2019, when Mr. Hamdan explained he was seeking to obtain his medical records through access requests but had not received them, and even requested an order from the Board for production of these records, the Minister argued the Board did not have the authority to order this and that the Board could not make any findings with respect to Mr. Hamdan's mental health (which he argued was being negatively impacted by his lengthy imprisonment). The Minister has not established that there is any non-speculative basis for further concern based on the fact that Mr. Hamdan has received counselling and takes medication prescribed by his physician, in particular given that this is an ongoing condition of his release.

[59] First, I note that Mr. Hamdan and his counsel have been attempting to obtain health records from his institution, which they have been unable to get to date. Second, the ID remarked that Mr. Hamdan required two breaks, and took it upon himself to leave the room "to calm himself down and deal with his emotions." The Member went on to note that it is:

> understandable that someone in Mr. Hamdan's position would be experiencing strong emotions and have strong, visceral reactions to what is said about him and the implication that that has for him and his future, especially when he has been in detention for so long, but he did not lose control of his behaviour. He requested to be excused and he managed those difficult emotions in a perfectly civilized and appropriate manner…
>
> [W]hatever Mr. Hamdan's mental health difficulties that he may be suffering from, in his everyday living situation which is a stressful one and in which violence is not uncommon in a provincial institution, he's keeping it together in a peaceful fashion and hasn't engaged in violent behaviour, and I consider that very significant and again something that distinguishes him from many of the other danger to the public cases that this Division routinely sees.

[60] As the Member was aware of the lack of medical documentation before him, which Mr. Hamdan described as including a Post-Traumatic Stress Disorder diagnosis, that Member clearly took this into account in the decision as above. He included a condition that Mr. Hamdan be assessed for, and participate fully in, counselling or medical treatment for mental health, including compliance with any prescribed medicine. And that segues into the third and last issue in today's judicial review – whether the Member's terms and conditions for Mr. Hamdan's release mitigate his danger to the public.

C. *Issue (iii): Conditions mitigate danger to the public*

[61] Given that I find that the Minister's first two issues do not raise reviewable errors, and the Member both provided clear and compelling reasons to depart from prior ID decisions, and did so with the Minister's reason for the detention in mind, I now turn to the Minister's third issue, which attracted focused discussion in oral and written submissions first before the Board, and then before this Court.

[62] My conclusion on this third issue, like the first two, is that the outcome and rationale were both open to the Member, in that he turned his mind to the 25 enumerated conditions in his Order for Release (see Annex A) in a systematic manner. While his analysis may have not covered every possibility that may arise from the bondsperson's oversight, the financial pledge, and other tools implemented to secure compliance, perfection is not the standard on reasonableness review (see, for instance, Justice Evans' dissent at para 163 of *Public Service Alliance of Canada v Canada Post Corporation*, 2010 FCA 56, as relied on by the Supreme Court in allowing the appeal (2011 SCC 57 at para 1).

[63] Rather, I find that the Member implemented what he could with his available toolkit to follow the judicial guidance in "virtually eliminating" the risk posed by Mr. Hamdan's danger. The fact that other members might have decided not to release – and indeed had not released on many occasions in this case – does not render the decision unreasonable.

[64] Before reviewing the law, jurisprudence and policy on conditions, I note that the principal conditions that the Minister argues are unreasonable concern the "unsuitable and inappropriate" bondsperson, his modest financial surety, his ability to control the Mr. Hamdan, and the fact that others live with the bondsperson.

(1) Conditions mitigating the risk

[65] As already discussed above, particularly in the context of the first issue, particular importance is placed on the ID's requirement to consider alternatives to detention under the legislation (section 248 of the Regulations), the jurisprudence, and policy. And any decision to release someone who has been found to pose a danger will necessarily require carefully considered conditions.

[66] The Member noted in his Decision that the Guidelines state "[r]elease conditions imposed must be tailored to the specific circumstances of the case. They should be linked to risk and be effective in adequately mitigating those risk factors." Indeed, a guiding objective and principle contained in section 1.1.3 of the Guidelines states that Canadian law regards detention as an exceptional measure, as enshrined in numerous instruments including the *Charter*, International Covenant on Civil and Political Rights, and Convention on the Rights of the Child.

[67] In emphasizing that availability, effectiveness and appropriateness of alternatives to detention must be adequately assessed in each case, the Guidelines state that conditions should only be required where necessary (i.e. in situations of heightened risk) given that they are a restriction on liberty. But, if imposed, they must be both tailored to the individual's

circumstances so that they are attainable and proportionate to the level of risk. Thus, each condition must have a rational connection to the circumstances of the case and the specific ground of detention, which the Board member should explain in the reasons.

[68] The Guidelines, of course, take into account the guidance provided by the law and jurisprudence that has come out of it, which require the ID to be vigilant when a danger has been found.

[69] Here, the Member was alive to the 'danger' evidence. The Decision includes direct reference to the RCMP's 2017 *Threat Assessment* concerning Mr. Hamdan, dated September 7, 2017. In fact, the Member began his assessment of the alternative to detention by explicitly considering the 2017 RCMP Threat Evaluation Report:

> I will note though that even the more recent threat evaluation report in 2017 in C-2 at Tab 5 also states explicitly and took pains to note that it was not predictive of Mr. Hamdan's future behaviour. Rather, it's an identification of factors that would put him at risk of committing or inciting acts of ideologically-motivated violence.
>
> The analogy used in the threat assessment itself is a cardiologist who may not be able to predict whether a specific individual will have a heart attack, but can cite a host of lifestyle and other factors that put someone at increased risk, and so the report -- the threat evaluation report found that there was a significant risk that Mr. Hamdan would continue to post online the views that he had expressed in the past and incite ten-mist violence.
>
> However, it also found that some but not all of the risk factors were actually present in his case and it also said that if released, and this was the situation at that point in time, Mr. Hamdan would have no known place to live, no employment, no money, no family in Canada other than a second cousin and that there was nothing to indicate that he'd changed his mindset. Those are all factors in my view that would logically increase the risk that Mr. Hamdan might

> pose and they are also factors that are significantly addressed by the alternative to detention that's available today.

[70] Of course, two years later, those facts have changed with the advent of the bondsperson and a home with friends, and with possible work for Mr. Hamdan to look forward to (given the evidence that he did well and kept busy working in prison).

[71] Additionally, the Member heard testimony from Mr. Hamdan, who committed not to posting to social media, and admitted to wrongdoing in the past. The Member noted that while Mr. Hamdan has lacked credibility in the past, he found this statement "significant" given that Mr. Hamdan understood that relapsing into this activity would result in further detention. This would "also be a significant motivation for his compliance regardless of what he actually believes or feels at this point in time."

[72] The Member remarked that there was no indication of violence either in the record, or in Mr. Hamdan's past conduct. He also noted that Mr. Hamdan testified that he would channel his anger at the authorities not by carrying through on prior threats, but rather by writing about his experiences in a 'tell-all book', and continue with his civil law suit.

[73] The Chief Justice recently held that when an individual in detention is deemed a danger to the public, the conditions of release must be "sufficiently robust" to ensure that the general public will not be exposed to any material risk of harm, and they must provide a reasonable degree of certainty that the individual will report for removal from Canada if and when required to do so (*Canada (Public Safety and Emergency Preparedness) v Ali*, 2018 FC 552 [*Ali]* at

para 47). Chief Justice Crampton ultimately upheld the ID order imposing various conditions on Mr. Ali's release.

[74] In fact, *Ali* shares certain interesting similarities to this case, despite the fact that all such detention cases, given their nature and the conditions imposed, are necessarily unique and highly contextual. Nonetheless, a few points of comparison are apposite.

[75] Mr. Ali, at the time of his release order, was a long-standing refugee in Canada of over 15 years, and was found inadmissible by the Board – in Mr. Ali's case, due to serious criminality after having been charged with attempted murder and discharging a firearm with intent to wound. Mr. Ali was ultimately convicted of the lesser included offence of aggravated assault, and of discharging a firearm with intent to wound.

[76] In addition, and unlike in the present case, the Minister had found Mr. Ali to be a danger under section 115(2) of the IRPA just before he was released on statutory parole. After having been transferred directly to immigration detention, he was first ordered released by the ID at his 48-hour detention review, to be later confirmed, with additional conditions, by the ID at his 7-day detention review.

[77] Despite these earlier danger decisions, and specifically addressing the Danger Opinion of the Minister, the Chief Justice held that it was not unreasonable for the member to conclude that the forward-looking risk posed by Mr. Ali was significantly less than the risk identified in the Danger Opinion. This is exactly the conclusion that the Member came to in this decision

regarding Mr. Hamdan (although vis-à-vis an inadmissibility determination, which Mr. Ali also had).

[78] Finally, I would note that both ID members in Mr. Ali's case observed that he had not engaged in criminal behaviour for 9 years, including for over four years when he was free on bail, and that there was no evidence of violence during his time in jail, during which time he made significant progress in his behaviour.

[79] There are, in these observations, echoes of what the Member observed of Mr. Hamdan since his misconduct. In *Ali*, after a review of the conditions, Chief Justice Crampton concluded that it was not unreasonable for the member "to implicitly conclude that the terms and conditions of release that he imposed on Mr. Ali would collectively ensure that he would not pose a meaningful risk to the public" (*Ali*, above at para 84).

[80] Similarly, in this case, the terms and conditions directly imposed by the Member address the kind of danger that Mr. Hamdan had presented in his past, namely his online threat. These include: not to own, possess, or access any computers, cell phones, tablets, or other devices capable of accessing the internet, including any publicly-available computers at libraries; upon examination, any cell phone found to have internet access to be immediately forfeited; not to create, maintain, comment on, or post to, any social media account, "including but not limited to Facebook, lnstagram, or Twitter."

[81] The conditions also impose strict limits on Mr. Hamdan's association with terrorist or criminal elements – namely to have no contact or communication with any person associated with or supportive of, or view any material produced by, a terrorist group as defined in section 83.01 of the *Criminal Code*, including the Islamic State (other than old materials that formed part of his court proceedings or future disclosure).

[82] There are also the standard requirements to keep the peace and maintain good conduct; not to possess, own or carry any weapon; and to confirm presence to any peace officer at his residence door. In addition, the ID imposed strict limits on Mr. Hamdan's mobility, including conditions that he reside at all times with his bondsperson and abide by a nightly curfew. He may not drive any vehicle himself, or accept a ride from any person, except with the specific approval of his bondsperson. And as mentioned above, he must address and be treated for any mental health issues.

[83] In addition, the Member required regular monitoring by the authorities, including daily telephone reporting to CBSA, and had to provide travel or identity documents for copying. Mr Hamdan must also provide CBSA with any address and employment updates, as well as news of any plans to leave Canada, and any criminal charge. Mr. Hamdan must also appear before any legal proceeding required as well as cooperate with any removal proceedings.

[84] Ultimately, the conditions must be responsive to the identified risk. In *Canada (Public Safety and Emergency Preparedness) v Lunyamila*, 2018 FC 211 at para 97, Justice Leblanc felt that the Board had not done so because the danger and flight risk were not adequately addressed

by the extent of the restrictions contained in the conditions. Here, that is simply not the case; the conditions are responsive to the identified risk.

(2) The bondsperson

[85] Conditions and bondspersons may certainly be found to be unreasonable in some cases; however, I do not view the stringent conditions imposed here to be unreasonable in light of the jurisprudence, as described below. I will begin with the bondsperson and the amount of the bond in this case.

[86] A bond, without the failure to carry out an analysis of the suitability of a bondsperson, the amount of the bond, and the influence of that bondsperson over the detainee, would be unreasonable. This Court has found that "there must be a meaningful analysis by the Member of whether such financial incentive is more likely than not to achieve the desired 'control'. If the Member does not review the source of the funds, I cannot see that this obligation is met" (*Canada (Citizenship and Immigration) v B001*, 2012 FC 523 at paras 25, 30; see also *Canada (Minister of Citizenship and Immigration) v Zhang*, 2001 FCT 521 at paras 19, 22)

[87] There must also be a meaningful analysis by the member of whether the financial incentive of the bond is more likely than not to achieve the desired "control" (*Canada (Citizenship and Immigration) v B072*, 2012 FC 563 at para 30). The amount of a bondsperson's income may be considered in determining whether the amount of bond posted is substantial; ignoring the bondsperson's capacity to have the detainee respect the conditions of release may be a reversible error on review (*Sall*, above at paras 46–47).

[88] Regarding bondspersons, the April 2019 Guidelines also specify that where an appropriate bondsperson is found, the bond should be proportionate to the identified risk (section 3.3.1). The length of the relationship should be considered (section 3.3.5), as should the bondsperson's past encouragement to comply with the law where they have been aware of the criminal activities, and their motivation to ensure compliance going forward (section 3.3.6). The reliability of the bondsperson is also an important factor, and whether s/he will be able to exert influence and provide supervision (section 3.3.7).

[89] Finally, section 3.3.9 of the Guidelines states that in assessing the adequacy of the bondsperson, the factors as set out in the Regulations need to be considered and assessed against the objective of ensuring compliance by the person concerned, including the proportionality of the bond to the financial capacity of the bondsperson and the impact of forfeiture on the bondsperson.

[90] Here, the member heard testimony of the bondsperson and recognized the relatively low amount of the bond ($2,000). However, this amount was pledged in the context of representing half of the bondsperson's monthly income from his business and taking into account the five others he was supporting (his wife, their baby, and three sons from a prior marriage).

[91] In terms of suitability of the bondsperson, the Court has identified relevant factors that should be considered, including the bondsperson's degree of influence and understanding of the detainee's circumstances (*Canada (Citizenship and Immigration) v B147*, 2012 FC 655 at para 51). The ID thoroughly canvassed the bondsperson's long history with Mr. Hamdan, his

knowledge of his wrongdoing (including dissemination of terrorist propaganda), his understanding of the incarceration that followed, his familiarity of the consequences for Mr. Hamdan (including from an immigration standpoint), and the need to be vigilant in closely monitoring and controlling Mr. Hamdan's activity going forward. The bondsperson understood the prohibition of internet use, including accessing computers at public places such as the library.

[92] Given his long history, the context of the friendship, and fact that they lived together in the past, the Member accepted the appropriateness of the bondsperson as someone who would have moral suasion and a strong motivation to supervise Mr. Hamdan's behaviour. The financial incentive would be another form of control, given its significance to the bondsperson.

(3) Conditions not implemented by the Member

[93] The Member considered electronic monitoring for location-based tracking. However, he decided that as Mr. Hamdan had to report, the Minister will know where he is. Mr. Hamdan does not have a history of non-compliance with conditions, including through the investigation stage prior to his arrest. In any event, it was established during the detention review that Mr. Hamdan would not have the capacity to set this up this monitoring, and therefore ordering it would have been tantamount to ordering his continued detention.

[94] Another potential condition that the Member considered was pre-approval of all visitors by CBSA, or the vetting of all adult occupants of the bondsperson's home for criminality or national security risks. However, given the profile of the Bondsperson and his family, the Member decided that there was no indication that the bondsperson or anybody in his household

have any background or inclinations that would raise the spectre of risk. The Member thus decided these two options were in excess of what was required under the circumstances.

[95] Finally, the Member also decided not to include among the 25 conditions that peace officers be allowed access to the home at any time, given the combination of the curfew requirement and the condition that Mr. Hamdan had to present himself at the door if officers should come during those curfew hours.

[96] As a general principle, the Member's approach respected principles not only of a 'rejuvenated' approach to the detention regime (*Arook* at para 19), but also those enunciated in the unanimous decision in *R v Penunsi*, 2019 SCC 39 with respect to the 'ladder' principle in preventative restrictions, i.e. moving up the conditions "ladder" only if cause can be shown why more stringent release conditions are needed (*Penunsi* at para. 77). *Penunsi* at paragraph 68 also quoted *R v Hall*, 2002 SCC 64 at para 47 in addressing liberty interests, which is also relevant to the context of immigration detention:

> [68] Given the unique circumstances of the peace bond defendant as a person accused of no crime, it is the responsibility of every justice system participant to guard against the deprivation of the defendant's liberty unless absolutely necessary. In the words of Iacobucci J., writing in dissent:
>
> At the heart of a free and democratic society is the liberty of its subjects. Liberty lost is never regained and can never be fully compensated for; therefore, where the potential exists for the loss of freedom for even a day, we, as a free and democratic society, must place the highest emphasis on ensuring that our system of justice minimizes the chances of an unwarranted denial of liberty.

[97] Some final comments are in order regarding the specifics of the 25 conditions. First, there could of course have been more safeguards placed within them in a perfect world. But as pointed out above, perfection is not the standard to be attained in a reasonableness review, and thus alternatives to detention need not be perfect (*Canada (Public Safety and Emergency Preparedness) v Berisha*, 2012 FC 1100 at para 85). Rather, they need only be proportionate and attainable, which these conditions were.

[98] In addition, the concerns raised by the Minister about compliance and potential breaches are certainly valid. But, as Justice de Montigny held in *Sall* at paragraph 47, "the applicant's submissions do not point to any errors in the Member's reasoning but rather reveal a disagreement with his assessment of the conditions capable of providing a detention alternative. In that regard, I must bear in mind that the Member can claim greater experience in this matter than this Court and that he had the benefit of hearing Ms. Kanyanyeri's testimony." And I note that in *Sall*, the amount of the bond was also $2,000, a significant part of the bondsperson's income.

[99] Related to this point, in the newest ID disclosure package provided at the hearing of this judicial review (intended for the next hearing, but which both parties encouraged me to review, in particular regarding the timeline for the stage 2 restricted PRRA processing), the Minister disclosed concerns with respect to the resources available in or near Enderby, the bondsperson's town, including in Vernon, the closest (small) city.

[100] These resource constraints appear to affect both the ability for police to respond quickly and to monitor Mr. Hamdan. They also concern the lack of counselling and mental health services. Yet, as the Member pointed out on more than one occasion, there are mechanisms to seek variance of the conditions "if there is some new material that counsel thinks is relevant," and which the ID would consider "regardless of which party they come from." Indeed, the ID provides both the process and venue for addressing these concerns, and is a more appropriate forum to address conditions' gaps and issues than this Court.

VII. Conclusion

[101] Having provided reasons why none of the three legal issues raised by the Minister reach the threshold of unreasonableness, I am left with only two observations in closing.

[102] First, as pointed out in its internal audit, the ID need not be self-referential in relying on its previous decisions, particularly in the face of new evidence and changed circumstances, as *Chhina* pointed out (at paragraphs 62 and 127). Here, the ID, after some 26 refusals to release, including on two occasions where the presiding Member had himself continued detention, changed its course. The Tribunal, and that Member, should 'not be faulted' for doing so (*Baniashkar* at para 20).

[103] The *Charter* requires that each and every review must be meaningful and robust, taking into account the context and circumstances of the individual, such that there is a meaningful opportunity to challenge detention. The concerns raised by the impingement on fundamental

rights to liberty are heightened when the detention is lengthy or the prospect of removal has become remote.

[104] In Mr. Hamdan's case, given the clear and compelling changes, along with strict release conditions, the Member was entitled to find that the danger was mitigated, and the situation militated toward release after about four years of detention, with no conviction and no prospect for removal, at least for another year.

[105] With the new evidence presented, including of good conduct from prison, testimony from the detainee and his bondsperson, and the prospect of many months of continued detention, many of these key objectives and principles were met for the Member. Quite apart from the lack of violence, Mr. Hamdan was found not to raise any of the other concerns so often confronted by the ID, namely regarding flight and identity risks. As a result, when the Decision is viewed as whole, and in its entire context, this Court does not have a basis to interfere under the deferential standard of review that applies.

[106] Essentially, this case is a study in the ID breathing life into a regime that had often been considered to be deficient, both by the Supreme Court and, prior to that, by its own audit. The ID, in my view, was justified in taking *Chhina*, along with the new Guidelines, very much to heart, in declaring that detention is an exceptional measure, and finding that the danger had been sufficiently managed through the strict conditions to warrant release. The onus lay with the Minister to justify the continued detention. Based on the mitigating conditions, it was open to the ID to decide that detention was no longer acceptable. And this Court, like in *Canada (Public*

Safety and Emergency Preparedness) v Arook, 2019 FC 1130 [*Arook*] – and as is now standard practice – avoided the delay and mootness decried in *Chhina* at paragraph 66 (see *Arook* at para 43).

[107] Considering all of past the circumstances, and the mitigation of danger looking forward, I find that the Member's Decision to release Mr. Hamdan was reasonable. The application will accordingly be dismissed.

[108] I would like to thank counsel on both sides for the very able submissions, prepared within the constraints of the expedited time frame mentioned above, and for invaluably assisting me in the challenging task of making a tremendously voluminous record digestible.

JUDGMENT in IMM-4819-19

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. There is no award as to costs.

3. No questions for certification were argued, and none arise.

"Alan S. Diner"
Judge

Annex A

Immigration and Refugee Board
Immigration Division

Commission de l'immigration et du statut de réfugié
Section de l'immigration

Immigration Division file: **B7-00771**

Client ID Number: **5189-8239**

ORDER FOR RELEASE

In the matter of the Minister of Public Safety and Emergency Preparedness and

HAMDAN, Othman Ayed

before Geoff Rempel, Member of the Immigration Division

Pursuant to the *Immigration and Refugee Protection Act*, it is hereby ordered that the person concerned be released from detention subject to the following conditions.

Prior to release,

☒ [redacted] posts a deposit in the sum of $2,000.00 in the name of the Receiver General for Canada.

☒ **The person concerned shall:**

1. Reside at all times with [redacted];
2. Abide by a nightly curfew in your place of residence between 12:00 midnight and 5:00 am, and appear without delay at the door if required by a peace officer to confirm your presence;
3. Report by phone to the CBSA via their voice reporting program every weekday following your release.
4. Keep the peace and maintain good conduct;
5. Report as directed for the making of removal arrangements and removal from Canada;
6. Not possess, own or carry any weapon within the definition of section 2 of the Criminal Code including but not limited to any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or any imitation or replica of these items;
7. Not possess, own, or carry, any knives, clubs, anything designed for use as a weapon, or items capable of being used as a weapon except as may be necessary in the course of employment or food preparation;
8. Not own, possess, or access any computers, cell phones, tablets, or other devices capable of accessing the internet. This includes the publicly-available computers that provide access to the internet at the Enderby or Vernon public libraries;
9. If you are in possession of a cell phone you shall allow a peace officer to examine that phone to determine whether or not it is hooked up to the internet or has internet access; if so, that cell phone will be immediately forfeited;
10. Not drive any vehicle yourself, or accept a ride from any person except with the specific approval of your bondsperson;
11. Not, directly or indirectly, create, maintain, comment on, or post to, any social media account, including but not limited to Facebook, Instagram, or Twitter;
12. Have no contact directly or indirectly, or communicate in any way with any person who is or who you believe to be a member of, affiliated with, or associated with a "terrorist group" as defined in s. 83.01 of the Criminal Code, or with any person known to you who is involved in or who supports, promotes, or participates in terrorist activity as defined in s. 83.01 of the Criminal Code. Without restricting the generality of the foregoing, you shall have no such contact with any person who is or who you believe to be a member of, affiliated with, or associated with the group known as the Islamic State (also known as ISIS, ISIL, and Daesh);
13. Not access or view, or attempt to access or view, any written, photographic, or electronic materials that are produced by a "terrorist group" as defined in s. 83.01 of the Criminal Code or that promote, advocate, or support "terrorist group" or "terrorist activity as defined in s. 83.01 of the Criminal Code, including but not limited to Islamic State (also known as ISIS, ISIL, and Daesh), except for materials already in your

possession that form part of the existing official record of your Canadian immigration or court proceedings, or that are disclosed to you by Canadian public officials;

4. Be assessed for, and participate fully in, any counselling or medical treatment (including compliance with any prescribed medication) related to your mental health, as recommended by the Vernon Mental Health Centre and/or a physician;
15. inform the Canada Border Services Agency (CBSA) in writing of your address and, in advance, or any change in that address;
16. inform the CBSA in writing of your employer's name and the address of your place of employment and, in advance, of any change in that information;
17. present yourself at the time and place that an officer, the Immigration Division, the Minister or the Federal Court requires you to appear to comply with any obligation imposed on you under the Act;
18. produce to the CBSA without delay the original of any passport and travel and identity documents that you hold, or that you obtain, in order to permit the Agency to make copies of those documents;
19. if a removal order made against you comes into force, surrender to the CBSA without delay any passport and travel document that you hold;
20. if a removal order made against you comes into force and you do not hold a document that is required to remove you from Canada, take without delay any action that is necessary to ensure that the document is provided to the CBSA, such as by producing an application or producing evidence verifying your identity;
21. not commit an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
22. if you are charged with an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, inform the CBSA of that charge in writing and without delay;
23. if you are convicted of an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, inform the CBSA of that conviction in writing and without delay; and,
24. if you intend to leave Canada, inform the CBSA in writing of the date on which you intend to leave Canada.
25. Carry this document with you at all times outside of your residence and produce it upon demand or when questioned by any peace officer for any reason.

I fully understand and agree to abide by the conditions imposed.

Signature: (by telephone) Date: 02 August 2019

You may apply in writing to the Immigration Division to change any of these conditions.

If the person concerned is not released, the next detention review is scheduled for: 29 August 2019, at 10:00 am.

Signed on **02 August 2019** at Vancouver, B.C.

GRempel

Signature of Immigration Division Member Geoff Rempel

The information provided on this form is collected under the authority of the Immigration Act for the purpose of notifying you that a release or imposition of terms and condition order has been serviced to you. You have the right of access to it and to its protection under the Privacy Act.

Annex B

Immigration and Refugee Protection Act, SC 2001, c 27

Detention and Release	**Détention et mise en liberté**
Release — Immigration Division	**Mise en liberté par la Section de l'immigration**
58 (1) The Immigration Division shall order the release of a permanent resident or a foreign national unless it is satisfied, taking into account prescribed factors, that	**58 (1)** La section prononce la mise en liberté du résident permanent ou de l'étranger, sauf sur preuve, compte tenu des critères réglementaires, de tel des faits suivants :
(a) they are a danger to the public;	**a)** le résident permanent ou l'étranger constitue un danger pour la sécurité publique;
(b) they are unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2);	**b)** le résident permanent ou l'étranger se soustraira vraisemblablement au contrôle, à l'enquête ou au renvoi, ou à la procédure pouvant mener à la prise par le ministre d'une mesure de renvoi en vertu du paragraphe 44(2);
(c) the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality;	**c)** le ministre prend les mesures voulues pour enquêter sur les motifs raisonnables de soupçonner que le résident permanent ou l'étranger est interdit de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour grande criminalité, criminalité ou

	criminalité organisée;
(d) the Minister is of the opinion that the identity of the foreign national — other than a designated foreign national who was 16 years of age or older on the day of the arrival that is the subject of the designation in question — has not been, but may be, established and they have not reasonably cooperated with the Minister by providing relevant information for the purpose of establishing their identity or the Minister is making reasonable efforts to establish their identity; or	**d)** dans le cas où le ministre estime que l'identité de l'étranger — autre qu'un étranger désigné qui était âgé de seize ans ou plus à la date de l'arrivée visée par la désignation en cause — n'a pas été prouvée mais peut l'être, soit l'étranger n'a pas raisonnablement coopéré en fournissant au ministre des renseignements utiles à cette fin, soit ce dernier fait des efforts valables pour établir l'identité de l'étranger;
(e) the Minister is of the opinion that the identity of the foreign national who is a designated foreign national and who was 16 years of age or older on the day of the arrival that is the subject of the designation in question has not been established.	**e)** le ministre estime que l'identité de l'étranger qui est un étranger désigné et qui était âgé de seize ans ou plus à la date de l'arrivée visée par la désignation en cause n'a pas été prouvée.

Immigration and Refugee Protection Regulations, SOR/2002-227

Detention and Release	**Détention et mise en liberté**
Factors to be considered	**Critères**
244 For the purposes of Division 6 of Part 1 of the Act, the factors set out in this Part shall be taken into consideration when assessing whether a person	**244** Pour l'application de la section 6 de la partie 1 de la Loi, les critères prévus à la présente partie doivent être pris en compte lors de l'appréciation :
(a) is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection 44(2) of the Act;	**a)** du risque que l'intéressé se soustraie vraisemblablement au contrôle, à l'enquête, au renvoi ou à une procédure pouvant mener à la prise, par le ministre, d'une mesure de renvoi en vertu du paragraphe 44(2) de la Loi;
(b) is a danger to the public; or	**b)** du danger que constitue l'intéressé pour la sécurité publique;
(c) is a foreign national whose identity has not been established.	**c)** de la question de savoir si l'intéressé est un étranger dont l'identité n'a pas été prouvée.
246 For the purposes of paragraph 244(b), the factors are the following:	**246** Pour l'application de l'alinéa 244b), les critères sont les suivants :
(a) the fact that the person constitutes, in the opinion of the Minister, a danger to the public in Canada or a danger to the security of Canada under	**a)** le fait que l'intéressé constitue, de l'avis du ministre aux termes de l'alinéa 101(2)b), des sous-alinéas 113d)(i) ou (ii) ou des alinéas 115(2)a) ou b) de la

paragraph 101(2)(b), subparagraph 113(d)(i) or (ii) or paragraph 115(2)(a) or (b) of the Act;

Loi, un danger pour le public au Canada ou pour la sécurité du Canada;

(b) association with a criminal organization within the meaning of subsection 121(2) of the Act;

b) l'association à une organisation criminelle au sens du paragraphe 121(2) de la Loi;

(c) engagement in people smuggling or trafficking in persons;

c) le fait de s'être livré au passage de clandestins ou le trafic de personnes;

(d) conviction in Canada under an Act of Parliament for

d) la déclaration de culpabilité au Canada, en vertu d'une loi fédérale, quant à l'une des infractions suivantes :

(i) a sexual offence, or

(i) infraction d'ordre sexuel,

(ii) an offence involving violence or weapons;

(ii) infraction commise avec violence ou des armes;

(e) conviction for an offence in Canada under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,

e) la déclaration de culpabilité au Canada quant à une infraction visée à l'une des dispositions suivantes de la *Loi réglementant certaines drogues et autres substances*:

(i) section 5 (trafficking),

(i) article 5 (trafic),

(ii) section 6 (importing and exporting), and

(ii) article 6 (importation et exportation),

(iii) section 7 (production);

(iii) article 7 (production);

(f) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament for

f) la déclaration de culpabilité ou l'existence d'accusations criminelles en instance à l'étranger, quant à l'une des infractions ci-après qui, si elle était commise au Canada, constituerait une infraction à une loi fédérale :

(i) a sexual offence, or

(i) infraction d'ordre sexuel,

(ii) an offence involving violence or weapons;

(ii) infraction commise avec violence ou des armes;

(g) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,

g) la déclaration de culpabilité ou l'existence d'accusations criminelles en instance à l'étranger, quant à l'une des infractions ci-après qui, si elle était commise au Canada, constituerait une infraction à l'une des dispositions ci-après de la *Loi réglementant certaines drogues et autres substances* :

(i) section 5 (trafficking),

(i) article 5 (trafic),

(ii) section 6 (importing and exporting), and

(ii) article 6 (importation et exportation),

(iii) section 7 (production);

(iii) article 7 (production);

(h) conviction for an offence in Canada under any of the following provisions of the *Cannabis Act*, namely,

h) la déclaration de culpabilité au Canada quant à une infraction visée à l'une des dispositions suivantes de la *Loi sur le cannabis* :

(i) section 9 (distribution),

(i) article 9 (distribution),

(ii) section 10 (selling),

(ii) article 10 (vente),

(iii) section 11 (importing and exporting), and

(iii) article 11 (importation et exportation),

(iv) section 12 (production); and

(iv) article 12 (production);

(i) conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the *Cannabis Act*, namely,

i) la déclaration de culpabilité ou l'existence d'accusations criminelles en instance à l'étranger, quant à l'une des infractions ci-après qui, si elle était commise au Canada, constituerait une infraction à l'une des dispositions ci-après de la *Loi sur le cannabis* :

(i) section 9 (distribution),

(i) article 9 (distribution),

(ii) section 10 (selling),

(ii) article 10 (vente),

(iii) section 11 (importing and

(iii) article 11 (importation et

exporting), and

(iv) section 12 (production).

exportation),

(iv) article 12 (production).

Other factors

248 If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release:

(a) the reason for detention;

(b) the length of time in detention;

(c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;

(d) any unexplained delays or unexplained lack of diligence caused by the Department, the Canada Border Services Agency or the person concerned;

(e) the existence of alternatives to detention; and

(f) the best interests of a directly affected child who is under 18 years of age.

Autres critères

248 S'il est constaté qu'il existe des motifs de détention, les critères ci-après doivent être pris en compte avant qu'une décision ne soit prise quant à la détention ou la mise en liberté :

a) le motif de la détention;

b) la durée de la détention;

c) l'existence d'éléments permettant l'évaluation de la durée probable de la détention et, dans l'affirmative, cette période de temps;

d) les retards inexpliqués ou le manque inexpliqué de diligence de la part du ministère, de l'Agence des services frontaliers du Canada ou de l'intéressé;

e) l'existence de solutions de rechange à la détention;

f) l'intérêt supérieur de tout enfant de moins de dix-huit ans directement touché.

Prescribed Conditions

Inadmissibility on grounds of security — conditions

250.1 For the purposes of subsections 44(4), 56(3), 58(5), 58.1(4), 77.1(1) and 82(6) of the Act, the conditions that must be imposed on a foreign national or permanent resident are the following:

(a) to inform the Canada Border Services Agency in writing of their address and, in advance, of any change in that address;

(b) to inform the Canada Border Services Agency in writing of their employer's name and the address of their place of employment and, in advance, of any change in that information;

(c) unless they are otherwise required to report to the Canada Border Services Agency because of a condition imposed under subsection 44(3), 56(1), 58(3) or 58.1(3) or paragraph 82(5)(b) of the Act, to report once each month to the Agency;

(d) to present

Conditions réglementaires

Interdiction de territoire pour raison de sécurité — conditions

250.1 Pour l'application des paragraphes 44(4), 56(3), 58(5), 58.1(4), 77.1(1) ou 82(6) de la Loi, les conditions qui sont imposées à l'étranger ou au résident permanent sont les suivantes :

a) informer par écrit l'Agence des services frontaliers du Canada de son adresse ainsi que, au préalable, de tout changement à celle-ci;

b) informer par écrit l'Agence des services frontaliers du Canada du nom de son employeur et de l'adresse de son lieu de travail ainsi que, au préalable, de tout changement à ces renseignements;

c) s'il n'est pas assujetti à une obligation de se rapporter à l'Agence des services frontaliers du Canada imposée en vertu des paragraphes 44(3), 56(1), 58(3) ou 58.1(3) ou de l'alinéa 82(5)b) de la Loi, se rapporter à l'Agence une fois par mois;

d) se présenter aux

themselves at the time and place that an officer, the Immigration Division, the Minister or the Federal Court requires them to appear to comply with any obligation imposed on them under the Act;

date, heure et lieu que lui ont indiqués un agent, la Section de l'immigration, le ministre ou la Cour fédérale pour se conformer à toute obligation qui lui est imposée en vertu de la Loi;

(e) to produce to the Canada Border Services Agency without delay the original of any passport and travel and identity documents that they hold, or that they obtain, in order to permit the Agency to make copies of those documents;

e) produire sans délai, auprès de l'Agence des services frontaliers du Canada, l'original de tout passeport, de tout titre de voyage et de toute pièce d'identité qu'il détient ou qu'il obtient afin que l'Agence en fasse une copie;

(f) if a removal order made against them comes into force, to surrender to the Canada Border Services Agency without delay any passport and travel document that they hold;

f) si une mesure de renvoi à son égard prend effet, céder sans délai à l'Agence des services frontaliers du Canada tout passeport ou titre de voyage qu'il détient;

(g) if a removal order made against them comes into force and they do not hold a document that is required to remove them from Canada, to take without delay any action that is necessary to ensure that the document is provided to the Canada Border Services Agency, such

g) si une mesure de renvoi à son égard prend effet et qu'un document est requis afin de le renvoyer du Canada mais qu'il ne détient pas ce document, prendre sans délai toute action nécessaire afin d'assurer que le document soit fourni à l'Agence, y compris la

as by producing an application or producing evidence verifying their identity;

production de toute demande ou de tout élément prouvant son identité;

(h) to not commit an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;

h) ne pas commettre d'infraction à une loi fédérale ou d'infraction qui, commise au Canada, constituerait une infraction à une loi fédérale;

(i) if they are charged with an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the Canada Border Services Agency of that charge in writing and without delay;

i) informer par écrit et sans délai l'Agence des services frontaliers du Canada de toute accusation portée contre lui pour une infraction à une loi fédérale ou pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale;

(j) if they are convicted of an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the Canada Border Services Agency of that conviction in writing and without delay; and

j) informer par écrit et sans délai l'Agence des services frontaliers du Canada s'il est déclaré coupable d'une infraction à une loi fédérale ou d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale;

(k) if they intend to leave Canada, to inform the Canada Border Services Agency in writing of the date on which they

k) informer par écrit l'Agence des services frontaliers du Canada, le cas échéant, de son intention de quitter le Canada et de la date à

intend to leave Canada.	laquelle il entend le faire.

FEDERAL COURT

SOLICITORS OF RECORD

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