

Federal Court



Cour fédérale

Date: 20230221

Docket: IMM-2373-23

Citation: 2023 FC 255

Vancouver, British Columbia, February 21, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

JHONNY PRECIADO CORDOBA

Respondent

ORDER AND REASONS

I. Overview

[1] On February 20, 2023, a Member of the Immigration Division ordered the Respondent, Jhonny Preciado Cordoba (“Mr. Preciado Cordoba”), released from detention. I understand that according to the Release Order issued by the Immigration Division, a bond was required prior to release. By the close of the business day yesterday, February 20, 2023, the bond had not been posted, and Mr. Preciado Cordoba remained in detention. Yesterday, the Minister brought a motion for an interim stay of Mr. Preciado Cordoba’s release, asking for a special sitting to hear the motion for an interim stay. Mr. Preciado Cordoba does not appear to have counsel. The

Minister served the request for an interim stay at the detention facility where Mr. Preciado Cordoba remains detained. It is not clear to me whether Mr. Preciado Cordoba has received the Minister's request.

[2] I decided to proceed to hearing of the Minister's request in order to clarify the basis on which the Minister seeks a stay of Mr. Preciado Cordoba's release. At an *ex parte* hearing today, I heard from the Minister on its request for an interim stay. At the conclusion of the hearing, I advised the Minister that I would dismiss the motion. These are my reasons for doing so.

I. Background and Procedural History

[3] Mr. Preciado Cordoba is a citizen of Colombia. The Refugee Protection Division and the Refugee Appeal Division have dismissed his refugee claim. This Court denied leave challenging the negative determination of the Refugee Appeal Division. Mr. Preciado Cordoba's Pre-Removal Risk Assessment has also been refused. Mr. Preciado Cordoba is scheduled for removal from Canada on February 27, 2023.

[4] Mr. Preciado Cordoba was arrested and detained on February 13, 2023 at an interview with a Canada Border Services Agency [CBSA] Officer. As I understand it, the CBSA Officer was concerned that Mr. Preciado Cordoba would not show up for his removal given his comments in the removal interview expressing that deporting him was illegal, that he had to remain in Canada for a claim before the Workplace Safety and Insurance Board, as well as his refusal to sign the Direction to Report.

[5] The Immigration Division held a 48-hour detention review, beginning on February 15, 2023. I understand that the hearing was not concluded at that sitting. The hearing resumed after the weekend on February 20, 2023. The Immigration Division issued a Release Order on February 20, 2023.

II. Analysis

[6] In the motion for an interim stay, the serious issue raised by the Minister relates to the Member's determination that there was an appropriate alternative to detention, and specifically the Member's approach to the bondsperson. The Release Order provides that a deposit in the amount of \$1,500 is to be paid by Diego Fernando Rios Rios ("Mr. Rios Rios") and a guarantee in the amount of \$500 is to be posted by Mr. Rios Rios. Mr. Rios Rios was present at the hearing and was examined.

[7] The Minister has advised me that the \$1,500 was in fact not Mr. Rios Rios's money though he was listed as the person who would pay the deposit. The Minister advised that the money was in fact coming from a number of individuals: members of Mr. Preciado Cordoba's church, including (or in addition to) two individuals who had appeared at the first sitting of the detention review hearing as prospective bondspersons, but could not make it to the second day of hearing on February 20, 2023.

[8] The Minister raises two problems with source of the deposit. First, the Minister argues that the Member breached procedural fairness because the Minister could not examine at the detention review hearing the two individuals providing the funds for the deposit. The Minister

could only examine Mr. Rios Rios. The issue with this argument is that the sum of the deposit was provided not only by these two individuals but, as was articulated to me, a number of other people contributed to the collective amount. Moreover, Mr. Rios Rios was posting the guarantee amount as well. The Minister also argues that the decision is unreasonable because the rationale for posting a bond is to exert pressure on the bondsperson to ensure the person being released complies with their conditions; therefore, the source of funds is a key issue in determining whether the arrangement with the bondsperson is an appropriate alternative to detention.

[9] As I clarified at the hearing, the Minister is not arguing that the Member was not aware of the source of funds when they ordered release on these terms. The Member also did not only order release based on the deposit amount. Rather, the Member ordered that Mr. Rios Rios, who was present and was examined, provide a guarantee in the amount of \$500.

[10] The Minister further argued in relation to the source of funds that the Member's Release Order was not compliant with sections 47 and 49 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*]. The Minister's position seems to be that since the source of funds comes from a number of people, the Release Order cannot be in compliance with these sections of the *IRPR* that require an individual to post the deposit. The Minister's position would mean that deposits could not be accepted that are collected on behalf of a group in support of an individual. I cannot see a basis for this interpretation in sections 47 and 49 of the *IRPR* as relied upon by the Minister.

[11] I note that the more stringent requirements in sections 47-49 relate to the posting of a guarantee, not a deposit. The Minister first specifically relied upon paragraph 47(2)(a), which states that a person who posts a guarantee must “be a Canadian citizen or permanent resident”, arguing that this requirement was impossible to meet when the funds came from a group. Paragraph 47(2)(b) also requires that the person posting the guarantee “be able to ensure that the person or group of persons in respect of whom the guarantee is required will comply with the conditions imposed.” When the Court pointed out that at issue was not the posting of the guarantee but rather the deposit, the Minister then argued that sections 47 and 49 generally required that the funds only come from an individual.

[12] The Minister drew the Court’s attention to *Canada (Minister of Citizenship and Immigration) v Zhang*, 2001 FCT 522 [*Zhang*]. I do not find that this case is of assistance in these circumstances. In *Zhang*, this Court found the Immigration Division’s decision to not name any specific individual on a release order to post a bond to be unreasonable. The Court in *Zhang* also noted that there were special considerations in that case given that there was a wider context and concern relating to the potential involvement of criminal human smuggling operations.

[13] In this case, as I understand it, the Member was aware of the source of the funds being offered and decided that the individual who had been examined at the hearing and was posting a guarantee would be the individual responsible for posting the deposit. Accepting the Minister’s articulation of the Member’s findings and the events at the hearing, I cannot see a basis to find a serious issue, even if I were to apply the low threshold. I acknowledge that there is debate in our Court as to the appropriate standard to apply in these circumstances where the Minister is

seeking to stay a release order, with some requiring an elevated threshold (see *Canada (Minister of Public Safety and Emergency Preparedness) v Allen*, 2018 FC 1194; *Canada (Minister of Public Safety and Emergency Preparedness) v Mohammed*, 2019 FC 451) and others requiring a low threshold (see *Canada (Minister of Public Safety and Emergency Preparedness) v Asante*, 2019 FC 905). I need not decide this here given that even on the lower standard, I do not find that the Minister has established that there is a serious issue.

[14] Ultimately, the Minister’s complaint about the Member’s decision appears to be a disagreement with how the Member balanced various factors and came to a conclusion, after two hearing days, on the appropriateness of an alternative to detention in all the circumstances presented.

[15] Further, in considering the balance of convenience, in addition to the interest in ensuring that removal arrangements are complied with, I also have to consider the public interest in the enforcement of the release order.

[16] The Minister noted that Mr. Preciado Cordoba’s detention would be reviewed again on February 24, 2023 if he is not released, and he would be removed on February 27, 2023. As noted by Justice Norris, “the loss of liberty for any amount of time is still a weighty consideration: see *R v Hall*, 2002 SCC 64 at para 47; and *R v Penunsi*, 2019 SCC 39 at para 68” (*Canada (Minister of Public Safety and Emergency Preparedness) v Erhire*, 2021 FC 908 at para 45 [*Erhire*]). Mr. Preciado Cordoba’s liberty interests carry significant weight not only as a private interest in ending his detention, but also as part of the public interest of ensuring “any

deprivation of liberty is justified” (*Erhire* at para 44; *Canada (Minister of Public Safety and Emergency Preparedness) v Kalombo*, 2020 FC 793 at paras 57-62; *Canada (Minister of Public Safety and Emergency Preparedness) v Santiago Cruceta*, 2022 FC 1629 at para 7).

[17] In considering all of these circumstances, I am not satisfied that the Minister has established that an interim stay ought to be ordered.

THIS COURT ORDERS that

The Applicant’s motion for interim stay of release is dismissed.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2373-23

STYLE OF CAUSE: MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS v JHONNY PRECIADO CORDOBA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: FEBRUARY 21, 2023

ORDER AND REASONS: SADREHASHEMI J.

DATED: FEBRUARY 21, 2023

APPEARANCES:

Leila Jawando

FOR THE APPLICANT

Jhonny Preciado Cordoba

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE APPLICANT