

Federal Court



Cour fédérale

**Date: 20240624**

**Docket: IMM-8828-24**

**Citation: 2024 FC 973**

**Ottawa, Ontario, June 24, 2024**

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

**BETWEEN:**

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

**Applicant**

**and**

**WANDERSON DOS SANTOS FREITAS**

**Respondent**

**ORDER AND REASONS**

[1] The Minister of Public Safety and Emergency Preparedness [Minister] seeks an injunction to stay the effect of a production order issued by the Immigration Division [ID] of the Immigration and Refugee Board on May 17, 2024. The ID ordered the Minister to produce records in the possession or control of the Canada Border Services Agency [CBSA] that are relevant to the Respondent's ongoing inadmissibility proceedings under the *Immigration and*

*Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Minister filed an application for leave and judicial review [ALJR] of the production order in this Court, which is currently pending.

[2] For the reasons that follow, I dismiss the motion for injunctive relief. The Minister failed to demonstrate that it meets the requirements for granting this extraordinary remedy; particularly, that irreparable harm will occur if the requested injunction is not granted. Without prejudice to raising the matter in the ALJR. I also refuse the Minister's informal request to expedite the underlying proceedings.

I. Background

[3] The Respondent is a citizen of Brazil and permanent resident of Canada. He is the subject of ongoing inadmissibility proceedings before the ID due to the Minister's allegations that he is inadmissible for serious criminality, organized criminality, and transactional criminality under sections 36(1)(b), 37(1)(a) and 37(1)(b) of the IRPA. The Minister alleges that he engaged in human smuggling as part of a transnational criminal organization. The Minister disclosed records relating to these allegations; however, the Respondent says that not all records have been produced.

[4] The Respondent sought a production order from the ID to compel the Minister to disclose all records that are relevant to his inadmissibility hearing, regardless of whether those records are in the possession or control of the CBSA or the Royal Canadian Mounted Police [RCMP]. He sought disclosure of records relating to his investigation, as well as the investigations of eight other individuals who are allegedly members of the criminal organization of which he is alleged

to be a part. After a full hearing on the request, the ID issued the requested order on January 22, 2024 [the Initial Production Order].

[5] The Minister successfully sought a stay of the Initial Production Order pending a decision on its ALJR on an expedited basis. On April 22, 2024, this Court quashed the Initial Production Order as unreasonable: *Canada (Public Safety and Emergency Preparedness) v Dos Santos Freitas*, 2024 FC 608 [*Freitas*]. It found that the ID misapprehended the statutory framework that governs the relationship between the Minister, the CBSA, and the RCMP, and misconstrued the nature of the Minister’s responsibility for the agencies within his portfolio. The material part of the Judgment reads as follows:

1. The application for judicial review is allowed, and the production order issued by the Immigration Division of the Immigration and Refugee Board on January 22, 2024 is quashed.
2. Wanderson Dos Santos Freitas remains at liberty to seek further disclosure of records from the Canada Border Services Agency and, if necessary, from the Royal Canadian Mounted Police as a third party, in accordance with the Reasons that accompany this Judgment.

[6] The Respondent sought the further disclosure referenced in paragraph 2 of the Judgment. The ID declined to hear the disclosure application on a *de novo* basis, finding that the Court did not disturb its initial findings about the relevancy of the records at issue to the Respondent’s admissibility hearing, or the scope of the Minister’s disclosure obligations. As such, the May 17, 2024 production order [the Second Production Order] is identical to the Initial Production Order but omits the reference to the RCMP “to bring the order into alignment with the Court’s judgment.” The Second Production Order reads:

The Canada Border Services Agency is ordered to disclose all relevant records in its possession or control with respect to the investigation of the Respondent Mr. Freitas for involvement in human smuggling or organized criminality, as well as all relevant records in its possession or control with respect to the criminal organization(s) of which the Respondent is alleged to have been a member, including but not limited to the investigations of : Ernane Jorge Dos Santos, Rafael Santos Vivaldo, Ricardo Dias Gomez, Renan Portela Bandeira de Souza, Tiago Mello Lima, Yure Rodriguez Rezende, Fernano Silva, and Tulio de Mata Vanconcelos.

[7] Shortly thereafter, the Minister brought an ALJR of the Second Production Order arguing, among other things, that the ID fundamentally misunderstood the effect of the decision in *Freitas*, failed to provide adequate reasons on the contested issue of relevance, and ordered party-to-party disclosure without exercising its required function of review. This motion for injunctive relief is to stay the effects of the Second Production Order until the Court disposes of the underlying application.

## II. Analysis

[8] An interlocutory injunction is an extraordinary, equitable remedy, the purpose of which is to preserve the rights of the parties so that courts may enforce them in the event that the action ultimately succeeds on the merits: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 [*Google*] at para 24.

[9] To be granted injunctive relief, an applicant must demonstrate that: (1) there is a serious question to be tried; (2) they will suffer irreparable harm if the injunction is not granted; and (3) the balance of convenience favours granting the injunction: *RJR--MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR*] at 334. The test is conjunctive; an applicant must

satisfy each element to succeed: *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 14. Failure to demonstrate even one element is sufficient to disentitle an applicant's motion for an injunction.

[10] I am not persuaded that the Minister will suffer irreparable harm if the injunction is refused.

[11] "Irreparable" refers to the nature of the harm, not the magnitude: *RJR* at 341. This is harm not compensable by damages. The Minister argues that unlawfully compelled disclosure of protected information meets this standard: *Canada (Attorney General) v Amnesty International Canada*, 2009 FC 426 [*Amnesty*] at para 55, citing *O'Connor v Nova Scotia*, 2001 NSCA 47 [*Nova Scotia*] at para 16. This is because disclosure, once made, cannot be undone nor meaningfully compensated by damages: *Douglas v Canada (Attorney General)*, 2014 FC 1115 at para 45; *Canada (Minister of Public Safety and Emergency Preparedness) v Kahlon*, 2005 FC 1000 [*Kahlon*] at para 14. This is especially true where the information at stake raises privacy concerns: *Kahlon* at para 15; *R v McNeil*, 2009 SCC 3 at para 19.

[12] While I agree with these statements in the abstract, I find that they are not applicable in the case at bar. Granting injunctive relief is context-specific: *Google* at para 25.

[13] The Second Production Order compels the Minister to produce "relevant" information relating to the Respondent's inadmissibility proceedings. Importantly, it does *not* require the Minister to immediately release "confidential" or otherwise privileged information to the Respondent, as was the case in *Amnesty*, *Nova Scotia*, and *Kahlon*. Here, while the relevant

records may contain protected information, the Minister retains the power to invoke privilege or other exceptions to disclosure such as those grounded in privacy. I agree with the Respondent that it is premature for the Minister to argue irreparable harm on these bases where it has not first raised them to the ID for proper adjudication. The ID itself acknowledged at its hearing on the Respondent's initial disclosure request that any claims of privilege arising from its resulting production order must be properly raised before it:

As for investigative privilege, if the RCMP wants to invoke it in order to refuse disclosure to the CBSA, we can cross that line when we can, or if the CBSA wants to invoke it in order to refuse disclosure once they have received it from the RCMP, we can cross that road when we can -- when we get to it. But we can not [*sic*] say that the potential existence of an investigative privilege means that there is no disclosure obligation; that is not how it works. The way it works is, there is an obligation to disclose, and the party under that obligation to disclose then has to make its case that the documents in question are actually subject to an investigative privilege, one (1) requirement thereof would be that there is an ongoing investigation, which seems highly unlikely in this case.

[...]

If in fact, either the CBSA or the RCMP claims that privilege, we will have to hear submissions and cross that bridge when we come to it, but I will not make any other comments about privilege.

[14] In complying with the Second Production Order, the Minister must first decide what records it considers "relevant" to the Respondent's inadmissibility proceedings in the first instance. It also may raise any issues of protected personal or privileged information to the ID and produce redacted records. The ID can then properly exercise its review function to assess the necessity of the withheld records and/or redactions, and the Minister at that point may seek a review of any decisions with which it disagrees. There is no risk of unlawfully compelled

disclosure, nor the irreparable harms that follow, in complying with the Second Production Order and its disclosure obligations now.

III. Conclusion

[15] As I find that the Minister did not establish irreparable harm on the balance of probabilities, I need not assess whether there is a serious issue to be tried nor where the balance of convenience rests. The motion for an injunction to stay the Second Production Order is dismissed.

[16] The Respondent sought costs of this motion; however, in the exercise of my discretion pursuant to Rule 400(1) of the *Federal Courts Rules*, SOR/98-106, I shall not award costs.

**ORDER in IMM-8828-24**

**THIS COURT ORDERS** that this motion is dismissed, without costs.

"Russel W. Zinn"

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Judge



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

**DOCKET:** IMM-8828-24

**STYLE OF CAUSE:** THE MINISTER OF PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS v WANDERSON DOS  
SANTOS FREITAS

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** JUNE 19, 2024

**ORDER AND REASONS:** ZINN J.

**DATED:** JUNE 24, 2024

**APPEARANCES:**

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