Federal Court  Cour fédérale

Date: 20250401

Docket: IMM-5215-25

Citation: 2025 FC 605

Ottawa, Ontario, April 1, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

CM

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, the Minister of Public Safety and Emergency Preparedness, seeks to judicially review the order issued on March 7, 2025, by Member Maleeka Mohamed ("Member") of the Immigration Division ("ID") of the Immigration and Refugee Board of Canada that ordered the Respondent ("CM") to be released from detention, subject to certain conditions ("Decision").

[2] The Applicant asks this Court to set the Decision aside and to send the matter back for redetermination by a different member of the ID.

[3] For the reasons that follow, this application is allowed.

II. Background

[4] The Respondent is a 42-year-old Mexican citizen. He has sole custody of his minor child who is a dual citizen of the United States of America ("US") and Mexico.

[5] The Respondent has a lengthy immigration history in both Canada and the US.

[6] In 2006, he applied for an H2B (non-agricultural Temporary Worker) visa to work for Best Western in Canada. The visa was issued on July 17, 2006, and was valid until December 28, 2006.

[7] The Respondent entered Canada on September 7, 2006. He overstayed his visa by eight years, until 2014.

[8] In 2011, the Respondent was found by the Vancouver Police Department ("VPD") to be in possession of a significant quantity of controlled substances and paraphernalia. He was arrested, but no charges were brought.

[9] In 2014, the VPD and the Royal Canadian Mounted Police ("RCMP") were engaged in a lengthy investigation into organized crime and drug trafficking. The Respondent was present at a meeting where a controlled substance was purchased. In a recording taken by an undercover officer, the Respondent stated that he was a hitman for hire. He provided information concerning his fees, method, and disposal techniques.

[10] On November 4, 2014, the Respondent was arrested and detained by the Canada Border Services Agency ("CBSA"). An exclusion order was issued against him on November 6, 2014, and he was released on conditions.

[11] On February 17, 2015, the Respondent's application for a Pre-Removal Risk Assessment was denied.

[12] On March 26, 2015, a removal interview was conducted with the Respondent. Following the interview, a section 44(1) report was prepared for organized criminality, pursuant to paragraphs 37(1)(a) and (b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[13] On April 7, 2015, the Respondent was removed from Canada.

[14] On October 4, 2021, the Respondent was issued a US visa to visit his son's mother in the US. The Respondent entered the US on October 12, 2021, and overstayed.

[15] On February 19, 2025, the Respondent's US visa was revoked because he was unlawfully in the US longer than 180 days and made misrepresentations on his visa application.

[16] On February 13, 2025, the Respondent entered Canada at an unofficial port of entry with his minor child. They made a claim for refugee protection based on fear of the child's mother and fears that the Trump administration would separate the Respondent from his child. He was questioned and released with conditions pursuant to subsection 44(3) of the *IRPA*.

[17] On February 21, 2025, after reporting for further examination, the Respondent was arrested and detained for danger to the public and for flight risk. Two section 44(1) reports were issued for organized criminality, pursuant to paragraphs 37(1)(a) and (b) of the *IRPA*.

[18] On February 25 and 26, 2025, the Respondent's 48-hour detention review was held before the ID. On February 26, 2025, the ID ordered the Respondent's continued detention.

[19] On March 4 and 6, 2025, the Respondent's 7-day detention review was held before the ID. On March 7, 2025, the Member ordered the Respondent to be released from detention on certain terms and conditions ("Release Order").

[20] On March 9, 2025, the Applicant brought an urgent motion for an interim stay of the Release Order. That same day, Justice Sébastien Grammond granted the request and stayed the Respondent's release until March 17, 2025.

[21] On March 18, 2025, Madam Justice Lobat Sadrehashemi granted the Applicant's motion to stay the Respondent's release and granted leave to commence the application for judicial review.

[22] The Respondent's admissibility hearing began on March 20, 2025. The matter has been adjourned to permit the Respondent to get clarification on representation for the admissibility proceedings.

[23] The Respondent's next detention review is scheduled for April 3, 2025.

[24] The Respondent has been detained at Maplehurst Correctional Centre, a maximum-security provincial jail in Ontario. He has been held in immigration detention for approximately

40 days, 10 of which he was held in segregation. While in detention, the Respondent's child has been staying with his family members in British Columbia.

III. Issues

[25] The issues to be determined in this application are:

A. The Applicant's request for an amended application for leave and judicial review;

B. The admissibility of Applicant's new affidavit evidence of Daniel Iozzo;

C. Admissibility of the Respondent's new affidavit evidence of Jorge Estaban Colin, and alleged mootness with respect to the video camera condition; and

D. Were the conditions imposed by the ID in the Release Order reasonable?

IV. Analysis

A. *Amended application for leave and judicial review*

[26] The Applicant requests that the Registry be directed to issue an amended, stamped application for leave and judicial review with the correct file number.

[27] The Applicant noted that when the application for leave and judicial review was filed on March 9, 2025, the Registry issued a stamped copy with the file number IMM-5212-25. The Court's online docket provides file number IMM-5215-25 for this file. The Court's online docket for IMM-5212-25 is an unrelated matter. Further, the Court's orders granting the Applicant's interim and stay motion are under file number IMM-5215-25.

[28] The Respondent did not make submissions on this issue.

[29] In view of the foregoing, the Registry will be directed to issue an amended stamped application for leave and judicial review with the correct file number, IMM-5215-25.

B. *Admissibility of Applicant's new affidavit evidence*

[30] The Applicant seeks to rely on new evidence, an affidavit from Daniel Iozzo, Inland Enforcement Officer with CBSA dated March 7, 2025. This affidavit was a response to issues concerning the conditions of the Respondent's detention. The conditions of detention are no longer an issue. Accordingly, the affidavit was withdrawn and will not be considered on this application.

C. *Admissibility of Respondent's new affidavit evidence and mootness*

[31] The Respondent also seeks to rely on new evidence, an affidavit from Jorge Estaban Colin dated March 27, 2025, one of the bondspersons for the Respondent ("Mr. Colin" and "Bondsperson 2"). The Respondent seeks to admit this affidavit for the purpose of demonstrating that one of the grounds raised by the Applicant is now moot.

[32] The Applicant agued that the one of the conditions imposed by the Member related to the installation of video cameras at the bondsperson's residence to monitor the Respondent and to provide proof of installation within one week of release. The Applicant argued that this condition was not reasonable, in view of the finding that the Respondent is a danger to the public.

[33] The affidavit sets out that on March 9, 2025, Mr. Colin and his father, Jesus Colin ("Bondsperson 1"), who are bondspersons for the Respondent ("Bondspersons"), purchased and installed Arlo video surveillance cameras at the home of Jesus Colin, and they are operational. Mr. Colin indicated that there is only one exit or entry into the home and cameras have been

installed in a manner that permits the monitoring of the exit outside and the entrance inside the home. The cameras provide a live webcast to which both Bondspersons have access, and the video is recorded and stored in the cloud.

[34] I agree with the Respondent that the usual rules regarding new evidence on judicial review do not apply to evidence establishing mootness (*Dinan v Canada (Transport)*, 2022 FC 106 at para 8). Accordingly, the affidavit of Jorge Estaban Colin is admitted and will be considered by the Court for this limited purpose.

[35] While the evidence illustrates that the Bondspersons have taken steps to have cameras installed in their home, the Applicant argued that the issue raised in the application is not moot. They argued that there continues to be a live issue; namely, should the Member have granted a release order that included conditions that were not in place; the condition for video surveillance, when the Member knew that the Bondspersons did not have the equipment or capacity to comply with this aspect of the Release Order at the time of Decision? This issue will be discussed in further detail below.

D. *Reasonableness of the Decision*

(1) Standard of review

[36] The applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 23). The parties have not pointed to any circumstances that would warrant a departure from this standard.

[37] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified

(*Vavilov* at paras 12–15, 95). Reasons will satisfy these criteria if the Court is able to understand why the decision was made (*Vavilov* at paras 85–86). The Court must be satisfied that any shortcomings in the decision are sufficiently central or significant to intervene and render the decision unreasonable (*Vavilov* at para 100).

(2) Legal framework

[38] This application highlights the intersection between individual liberty interests and the need to protect the public from individuals who pose a danger.

[39] Sections 54–61 of the *IRPA* set out the considerations for detention; generally, detention may be an appropriate where an inadmissible person is a danger to the public or is unlikely to appear for further proceedings. The Federal Court of Appeal ("FCA") set out a general summary of the provisions in *Brown v Canada (Citizenship and Immigration)*, 2020 FCA 130 [*Brown*] at paragraphs 28–44. Of relevance in this application are sections 57 and 58 of the *IRPA*, which provide for periodical review of detention and set out the grounds for which detention may be continued:

Review of detention	**Contrôle de la détention**
57 (1) Within 48 hours after a permanent resident or a foreign national is taken into detention, or without delay afterward, the Immigration Division must review the reasons for the continued detention.	**57 (1)** La section contrôle les motifs justifiant le maintien en détention dans les quarante-huit heures suivant le début de celle-ci, ou dans les meilleurs délais par la suite.
Further review	**Comparutions supplémentaires**
(2) At least once during the seven days following the	**(2)** Par la suite, il y a un nouveau contrôle de ces

review under subsection (1), and at least once during each 30-day period following each previous review, the Immigration Division must review the reasons for the continued detention.

motifs au moins une fois dans les sept jours suivant le premier contrôle, puis au moins tous les trente jours suivant le contrôle précédent.

…

[…]

Release — Immigration Division

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

Mise en liberté par la Section de l'immigration

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, sanctions, serious criminality, criminality, transborder 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, pour sanctions ou pour grande criminalité, criminalité,

	criminalité transfrontalière ou criminalité organisée;
…	[…]

[40] Sections 244–250 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] outline the factors to be considered in determining if an individual is a danger to the public. Section 246 addresses factors in assessing if an individual is a danger to the public, including association with a criminal organization as a factor (s 246(b)). Finally, section 248 lists factors to consider when assessing whether detention should be maintained:

Other factors	**Autres critères**
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:	**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) the reason for detention;	**a)** le motif de la détention;
(b) the length of time in detention;	**b)** la durée de la détention;
(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;	**c)** l'existence d'éléments permettant l'évaluation de la durée probable de la détention et, dans l'affirmative, cette période de temps;
(d) any unexplained delays or unexplained lack of diligence caused by the Department, the Canada Border Services Agency or the person concerned;	**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) the existence of alternatives to detention; and	**e)** l'existence de solutions de rechange à la détention;

(f) the best interests of a directly affected child who is under 18 years of age.	**f)** l'intérêt supérieur de tout enfant de moins de dix-huit ans directement touché.

[41] The considerations set out at section 248 are to be balanced with those set out in section 246. While an individual's liberty interests are important, they are not paramount, and that is to be balanced with the considerations set out in the statute (*Canada (Citizenship and Immigration) v B147*, 2012 FC 655 at para 56).

[42] Further, all provisions of the *IRPA* and the *Regulations* are to be interpreted in view of the stated policy objectives of the immigration system, which includes an intention to prioritize security and to rigorously manage criminality and security threats, as noted by the Supreme Court of Canada in *Medovarski v Canada (Minister of Citizenship and Immigration)*; *Esteban v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 51 at paragraphs 9–13.

[43] The Minister bears the burden to establish that detention is warranted and must establish this at each periodic review (*Brown* at para 118; *Canada (Public Safety and Emergency Preparedness) v Thavagnanathiruchelvam*, 2021 FC 592 [*Thavagnanathiruchelvam*] at para 29).

[44] The detention and arrest provisions set out in the *IRPA* are aimed at protecting Canadians and to ensure that persons who come and remain in Canada do so in a manner that respects Canadian immigration laws.

[45] The Applicant argued that when an individual has been found to be a danger to the public, release conditions must be proportional to the risk and minimise those risks to ensure public safety. The Applicant argued that the Member's Decision is not reasonable because the

release conditions were not proportional to the identified risks to the public and do not minimize risks to public safety.

[46] The Applicant argued that the conditions set out in the Release Order were not sufficiently robust and that the Member unreasonably:

1. Found that the danger the Respondent posed as a drug trafficker and a known associate of the terrorist entity La Familia Michoacana Cartel ("La Familia"), was mitigated due to a lack of criminal charges;
2. Did not address evidence from the 2014 VPD and RCMP investigation where the Respondent voluntarily provided evidence that he was a hitman for hire; and
3. Concluded that the release provisions provided "around the clock" supervision, despite significant supervision gaps, and the member relied on conditions that would not be in place upon the release of the Respondent.

[47] The Applicant's application for leave and memorandum of fact and law also addressed an issue concerning the Member's failure to impose conditions that would mitigate against the Respondent's intention to leave Canada. However, at the oral hearing for this matter counsel withdrew this issue as a ground for review. Accordingly, this Court will not address that issue in these reasons.

(a) *Mitigating factor—lack of criminal charges*

[48] The Applicant argued that at the detention review hearing, they argued alternatives to detention would require multiple layers to ensure that risks posed to the public would be sufficiently addressed. They argued that the Member's finding that the Respondent's danger to the public is at the "lower end of the scale" lacks intelligibility and is irreconcilable with the

finding that there was credible evidence of his involvement in organized crime, drug trafficking, and association with La Familia.

[49] The Applicant argued that the Member failed to grapple with the severity of the allegations, and unreasonably focused on the lack of criminal charges and the passage of time—the evidence of his criminal associations took place 11 and 14 years ago.

[50] The Applicant argued that criminal charges or convictions are not required to find that an individual is a danger to the public. A person who is found to be in association with a known criminal organization may, on a balance of probabilities, be a danger to the public, pursuant to paragraph 246(b) of the *Regulations* (see also *Bruzzese v Canada (Public Safety and Emergency Preparedness)*, 2014 FC 230 at para 52).

[51] The Respondent argued that the Member provided cogent reasons for her Decision. She found that the Respondent is a "present and future danger to the public in Canada." However, she went on to set out mitigating factors, which included the passage of time since the criminal activity, a lack of proof that he was charged or convicted of any crimes, and that he is now a single father. The Respondent argued that the Member found him to be a danger to the public, relying on the evidence of the investigation from 2014 and the evidence of possession of drugs in 2011.

[52] A review of the Decision indicates that the Member placed considerable weight on the length of time that had passed and the "minimal information as to [CM's] current ties with the organization." However, when questioned by the CBSA on February 13, 2025, the Respondent stated that he would be residing with David Jordan-Garcia, a.k.a. Spanish Dave, a person known to the VPD and RCMP from the 2014 investigation. This information was before the Member.

The member states “it does appear that Mr. [CM] has reassociated with a couple of individuals who were alleged back in 2014 of being associated with this organization.” Therefore, it is unclear how the Member concluded that there is minimal information concerning his current ties to La Familia.

[53] The reasons for decision must demonstrate that the member “meaningfully grapple[d]” with key issues or central arguments raised, and the reasons must be responsive to the evidence (*Vavilov* at para 128). The reasons of the Member do not address or grapple with the contradictory evidence that suggests that the Respondent has maintained ties with some individuals he knew in 2014, who were part of the VPD and RCMP investigations into La Familia. It is not clear from the Decision why this important fact was not considered or why the Member was of the view that the Respondent did not have current ties to La Familia. In my opinion, the Decision is not reasonable, justified, or intelligible.

[54] I agree with the Respondent that a lack of criminal charges may also be considered in the analysis of danger to the public. However, in my opinion, the Member over emphasised the lack of criminal conviction but does not appear to consider evidence that suggests that the Respondent has maintained ties with former associates, which would suggest ongoing ties to the criminal organization.

[55] In addition, the Member suggested that the passage of time between the criminal investigations in 2011 and 2014 are a factor that mitigates the present and future risks the Respondent poses to the public.

[56] With respect, this finding does not grapple with a key fact that was before the Member. The Respondent was removed from Canada on April 7, 2015. He did not return to Canada until

February 13, 2025. In my opinion, the fact that the Respondent has been out of country for the last decade and therefore not the subject of ongoing criminal investigations since 2014, must be balanced and addressed.

[57] In summary, it is difficult to understand why the Member found that the lack of criminal charges mitigates against the danger to the public, considering other relevant/contradictory evidence that indicated the Respondent has ongoing ties to former associates from La Familia. It is not clear why the Member considered a lack of charges or convictions in the last decade a mitigating factor, when this is balanced against the fact that the Respondent was not in Canada during this period. The failure of the Member to consider the contradictory evidence is not reasonable, is not intelligible, and is not justified.

(b) *2014 police investigation—evidence that the Respondent was a hitman*

[58] The Applicant argued that the Member failed to analyze the evidence in the record, wherein the Respondent voluntarily provided information to an undercover police officer during the 2014 VPD and RCMP investigation, that he was a hitman for hire.

[59] The Respondent argued that this argument is without merit and must be dismissed.

[60] ID Member Tempier conducted the 48-hour detention review and issued her decision on February 26, 2025. Member Tempier's reasons for decision provided a lengthy analysis of this evidence, and ultimately found that this evidence was a factor in the Respondent's continued detention.

[61] In her reasons for the Release Order, the Member stated that she relied on Member Tempier's analysis of the evidence from the 2014 investigation, which the Applicant argued is an

error. The FCA has found that "[e]ach member is required to undertake their own independent assessment of the case for and the case against detention" (*Brown* at para 133). This is consistent with *Thavagnanathiruchelvam*, where the Court noted that "at each hearing, the member must decide afresh whether continued detention is warranted" (at paras 7, 8).

[62] Here, the Member adopted the prior reasons of Member Tempier but reached a different conclusion on the weight to attribute to this evidence, without clearly explaining what has changed and why. As the FCA noted in *Brown*, "[t]he requirement to give reasons when departing from a prior decision is directed to the well-understood requirement, essential to the integrity of administrative and judicial decision making, that if there is a material change in circumstances or a re-evaluation of credibility, the ID is required to explain what has changed and why the previous decision is no longer pertinent. This reinforces the values of transparency, accountability and consistency" (at para 134).

[63] I am persuaded by the Respondent's submissions that to require ID members to develop a complete set of reasons and to conduct an independent assessment in each detention review is not conducive to efficient decision-making. I agree that ID members hear multiple detention reviews daily and must render decisions quickly. That said, where the member relies on a prior decision but reaches a different conclusion, clear, transparent reasons for the departure are required (*Vavilov* at para 131). Here, the Member relied on Member Tempier's conclusions that the 2014 transcripts were credible and trustworthy evidence, that the Respondent made the statements, and the statements disclosed serious criminality.

[64] The Member went on to give this evidence less weight due to mitigating factors, including the passage of time, the lack of criminal conviction, and personal changes—namely

that the Respondent is now a single parent to a young child. However, despite listing the mitigating factors, it is unclear how these factors mitigate the credible and trustworthy evidence that the Respondent voluntarily gave to an undercover officer that the Member found discloses serious criminal conduct. How the passage of time or lack of conviction mitigates the danger to the public is not clearly articulated in the reasons for Decision. This conclusion is difficult to reconcile with the evidence and is not reasonable because the Decision lacks the necessary justification.

(c) *Condition for release—"around the clock" supervision*

[65] Finally, the Applicant argued that the Respondent was only required to be at the Bondsperson 1's residential address between 8:00 p.m. and 6:00 a.m. In other words, the Respondent is permitted to be outside the residence, alone or with his child during the day, between 6:00 a.m. and 8:00 p.m. without supervision. The Applicant argued that the Member failed to explain how these conditions are "supervision around the clock" or are reasonable and effective in view of the danger to the public.

[66] The Applicant pointed to significant gaps in the release plan, including:

- The requirement for video cameras was to be fulfilled within one week of release; in other words, no video surveillance would be available upon release for up to one week;
- The Respondent is permitted to be home alone and to be outside alone, unsupervised during the day;
- Bondsperson 2 will only be supervising via video camera or telephone while residing and working in another province;

- Bondsperson 1 works outside of the home 40–50 hours per week, leaving the Respondent unsupervised; and
- The Member relied on “trusted family members” who were not Bondspersons and had not been examined to fill in the supervision gaps.

[67] The Respondent argued that the conditions were robust and appropriate in the circumstances and that the Member considered all appropriate factors and crafted a reasonable release plan.

[68] The Respondent also pointed out that any error with respect to the video surveillance condition is now moot, as the new evidence from Bondsperson 2 illustrates that the Bondspersons have now installed video surveillance equipment to monitor the Respondent.

[69] With respect to the mootness argument, the Applicant argued that the matter is not moot. While they did not contest the evidence that illustrated video surveillance has been installed, the Applicant argued that there remains an issue that is live. Namely, that the Member issued a Release Order that contained conditions that were not in place at the time of the Decision.

[70] I am persuaded by the Applicant’s submission, and I am unable to agree that the video surveillance issue is moot. I agree that the Member’s issuance of the Release Order with conditions that were not firmly in place at the time the Decision was issued is a question that this Court ought to consider in this application.

[71] The Applicant argued that the Release Order is unreasonable because it fails to meet the legal standard that the release plan must be proportional to the risk and minimize risks to the

public. As noted by this Court in *Canada (Public Service and Emergency Preparedness) v Layug*, 2024 CanLII 126650 (FC) at paragraph 32:

> … the conditions of release must "minimize" or "attenuate" the risk and be proportional to the risk. Put another way, the conditions must be "sufficiently robust to ensure that the general public will not be exposed to any material risk of harm." (*Canada (Public Safety and Emergency Preparedness) v Ali*, 2018 FC 552, at paragraph 47, cited with approval in *Canada (Public Safety and Emergency Preparedness) v Mawut*, 2022 FC 415 at paragraph 35).

[72] In addition, the Applicant submitted that the Chairperson Guideline 2: Detention at section 3.1.2 highlights that release conditions "should be tailored to the specific circumstances of the case," and "should be linked to risk and be effective an adequately mitigating those risk factors." Proportionality is an important consideration. Section 3.2.2 sets out conditions that may be included in a release order, provided there is a rational connection to the circumstances of the case.

[73] The Applicant argued that the Member's Release Order fails to comply with the legal standards and the guiding principles for the ID members. Specifically, the failure to ensure that video surveillance monitoring was in place prior to issuing the Release Order is not reasonable, justified, or intelligible.

[74] In addition, the Applicant argued that the conditions of the Release Oder that permitted the Respondent to be outside of Bondsperson 1's home during the day without supervision were not reasonable or justified considering the danger to the public.

[75] The Respondent argued that at the detention review hearing, the CBSA Hearings Officer did not raise a concern with respect to the condition that the Respondent is permitted to be alone

outside of the home between 6:00 a.m. and 8:00 p.m. Accordingly, the Applicant cannot argue this on judicial review, as this violates the Court's rules against case splitting.

[76] The Applicant argued that the Minister's failure to raise all objections to the conditions imposed in the Release Order at the time of the Decision is not reasonable or required, and they submit that the first opportunity to raise these issues was on judicial review.

[77] The Respondent pointed to the record of the ID proceedings for this matter and noted that the Member invited comments, and this was the Applicant's opportunity to raise the objections to the Release Order.

[78] A review of the transcript for this matter highlights that the Member clearly articulated that this was her Decision "… so this is my decision and reasons for a decision in the seven (7)-day detention review hearing for Mr. [CM]."

[79] The Member was live to the concerns raised by the Minister that electronic monitoring had not been approved and was not in place. The Member acknowledged that there were some logistical issues that needed to be worked out. Counsel for the Minister alerted the Member to the impact that that may have in terms of a possible delay in releasing the Respondent. The Member then invited counsel for the Minister to provide suggestions on how to word the electronic monitoring condition for the CBSA. Ultimately, counsel for the Minister committed to keeping counsel for the Respondent informed as to the progress concerning the implementation of the electronic monitoring provision and if there were further concerns or inordinate delays, they would communicate with the ID. The Member then confirmed all parties were satisfied with that method of procedure.

[80] There was some discussion on the geographic scope of the electronic monitoring condition as well. Understanding that this condition was not implemented, the discussion ended when the Member stated that "the Minister can always write in to ask for those adjustments to be made to the order and I don't see any issue with my jurisdiction to impose any additional requirements…"

[81] While the Member did ask if there was anything else counsel for the Minister wanted to raise, it is clear from the transcript that this invitation was in respect to the electronic monitoring condition only, and not an invitation for submissions or objections to the Release Order as a whole or other conditions.

[82] Finally, there was some discussion on the record to clarify the conditions concerning the Respondent's mobility outside of Bondsperson 1's home during the day. The Member indicated that a bondsperson is not required to be present, because with electronic monitoring this is not needed. The Member asked if there was "[a]nything else from any of the parties." However, a careful review of the transcript illustrates that this was not an invitation for objections or submissions on this or any other condition, but rather an opportunity for the parties to get clarity on the logistics of the condition.

[83] The record indicates that the Minister objected to the Respondent's release from detention and the Release Order. The Minister confirmed that the parties would comply with the Order. This does not prohibit the Applicant from raising issues with the propriety of the conditions on judicial review.

[84] After careful review of the transcripts, the Member did not invite the parties to make submissions or objections with respect to the Release Order and conditions. It is clear that the

Member was delivering her final Decision. Accordingly, the present application is the Applicant's first opportunity to raise issues and make arguments concerning the propriety of the release conditions set out in the Member's Decision.

[85] The Respondent submitted that until CBSA has completed and approved the Respondent for the electronic monitoring program and set the geographic limitations for the Respondent, can this Court assess the reasonableness of the outside of the home alone condition.

[86] With respect, I do not agree. The Member ordered the release of the Respondent without ensuring that all conditions for his release, including that video surveillance and requisite CBSA approvals and monitoring, would be in place prior to his release. With respect, this is unreasonable. The reasonableness of the Decision ought not be supplemented with CBSA conditions for electronic monitoring, including a geographic limitation that was not known or contemplated by the Member at the time of her Decision.

[87] Finally, the Applicant raised concerns with the suitability of the Bondspersons and their ability to monitor the Respondent in his compliance with the Release Order. In particular, the work hours for Bondsperson 1 and the place of work for Bondsperson 2 were noted by the Applicant. In addition, the Applicant argued the fact that the Member found that other non-bondsperson "trusted family" members could fill in any gaps in supervision of the Respondent while the Bondspersons were absent from the home for work was sufficient.

[88] I agree with the Respondent that "a perfect bondsperson will rarely be available" (*Thavagnanathiruchelvam* at para 37). I agree that the assessment of a bondsperson's suitability is a fact-based discretionary determination, and there is no clear answer or criteria. Rather, the suitability must be weighed against the risks that the individual poses and the total elements of

the release plan. I agree that in this case, the two Bondspersons have put up a significant amount of money, and this is a strong motivation to ensure that the Respondent complies with the Release Order and appears for all immigration proceedings.

[89] The Member addressed the Applicant's concerns with the two Bondspersons, and her reasons are transparent, intelligible, and justified, and bear all the requisite hallmarks of a reasonable decision.

[90] However, the Member also found that gaps in the supervision of the Respondent can be filled in by other family members, who are not bondspersons and who were not examined.

[91] The Respondent submitted that the CBSA Hearings Officer had an opportunity to cross-examine the Bondspersons and could have made inquiries about the other non-bondsperson family members, or to object at the hearing. Having failed to avail themselves of these opportunities, the Respondent argued that the Applicant cannot be permitted to raise this issue on judicial review.

[92] For the reasons highlighted above, I do not agree that the Applicant cannot raise this issue in this application.

[93] I agree that, ultimately, the Member was satisfied that the two Bondspersons are responsible. I also agree that the assistance of other family members is not in and of itself unreasonable. The Applicant noted that the Member did not examine the suitability of the other non-bondsperson family members and pointed to Guideline 3.3.2. With respect, the Respondent is correct that this guideline applies to the examination of persons who are the bondsperson.

[94] In this case, Bondspersons 1 and 2 gave information concerning other family members who would be available to assist in the monitoring, their relationship with those people, and why they would be suitable to assist them with their responsibilities. In my view, the Member's approach to this issue was reasonable. The Applicant made much of the notion that supervision in this case should be "around the clock." This imposes a significant burden on the two Bondspersons, who have employment and other responsibilities that they must attend to. The Bondspersons have a plan, they appear to understand that ultimately, they are the two responsible, and the Member agreed.

V. Conclusion

[95] The Member's conclusion that the passage of time and lack of criminal charges mitigates against the danger to the public, considering other relevant/contradictory evidence that indicated the Respondent has ongoing ties to former associates from La Familia, is unreasonable. The Member's failure to consider contradictory evidence is unintelligible and is not justified.

[96] The Member's failure to grapple with important evidence concerning the Respondent's criminal activity, namely his own evidence to an undercover officer in 2014 that he was a hitman, is impossible to reconcile with the conclusion that the danger to the public the Respondent poses is at the "lower end of the scale."

[97] I am of the view that the Member's release plan, wherein certain essential conditions to ensure that the Respondent was supervised in a manner consistent with the findings that the Respondent is a danger to the public, was not reasonable. There is simply no information to indicate why the Member was of the view that the video surveillance did not need to be in place

prior to the Respondent's release or why the assessment for electronic monitoring did not need to be completed in advance of release.

[98] With respect, these aspects of the Member's Decision are unreasonable, unintelligible, and not justified in view of her findings that the Respondent was a danger to the public.

JUDGMENT in IMM-5215-25

THIS COURT'S JUDGMENT is that:

1. The Registry will issue an amended stamped application for leave and judicial review with the correct file number, IMM-5215-25.

2. The application for judicial review is granted.

3. The Member's Decision to release the Respondent with conditions will be returned to the Immigration Division for review by a new member.

"Julie Blackhawk"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5215-25
STYLE OF CAUSE:	MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v CM
PLACE OF HEARING:	HEARD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 31, 2025
JUDGMENT AND REASONS:	BLACKHAWK J.
DATED:	APRIL 1, 2025

APPEARANCES:

Maria Burgos Aneta Bajic	FOR THE APPLICANT
Anthony Navaneelan Jessica Chandrashekar	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE APPLICANT
Refugee Law Office Legal Aid Ontario Toronto, Ontario	FOR THE RESPONDENT