Federal Court  Cour fédérale

**Date: 20251002**

**Docket: IMM-734-24**

**Citation: 2025 FC 1614**

**Toronto, Ontario, October 2, 2025**

**PRESENT: Mr. Justice Brouwer**

**BETWEEN:**

**MARINO VICTORIA CARDENAS**
**and**
**MARTHA LUCIA LOZADA GOMEZ**

**Applicants**

**and**

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

**Respondent**

# JUDGMENT AND REASONS

## I. OVERVIEW

[1] Marino Victoria Cardenas and Martha Lucia Lozada Gomez are nationals of Colombia. They seek judicial review of an Inland Enforcement Officer's refusal to defer their removal to enable a timely assessment of the risks and hardships they would face on return. As explained below, the Officer's refusal to defer the Applicants' removal was unreasonable. The decision must therefore be set aside.

## II. BACKGROUND

[2] Mr. Victoria Cardenas first fled Colombia for the United States in 1992 following death threats and an assassination attempt by the *Fuerzas Armadas Revolucionarias de Colombia* [FARC], a guerilla group. Mr. Victoria Cardenas, who identifies as Afro-Colombian, was running for local election as a member of the Colombian Liberal Party and was targeted by the FARC when it appeared he was poised to defeat the FARC's preferred candidate. Though Mr. Victoria Cardenas survived an assassination attempt, his nephew did not. Mr. Victoria Cardenas' spouse, Ms. Lozada Gomez, joined him in the USA two years later. In 1999, believing conditions had improved in Colombia, they returned there. However, the FARC managed to track down Ms. Lozada Gomez and subjected her to a horrific gang rape that left her with grave injuries. The assailants warned that they would continue to seek and would find Mr. Victoria Cardenas.

[3] The Applicants fled back to the USA, where they remained for the next decade using false identity documents, living and working without legal status. In 2009, they came to Canada and claimed refugee protection. The Refugee Protection Division [RPD] rejected their claims four years later. Mr. Victoria Cardenas, who had been found inadmissible for serious criminality, was excluded from refugee protection under section 98 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] and article 1(F)(b) of the *Convention relating to the Status of Refugees*, Can. T.S. 1969 No. 6, for having committed a "serious non-political crime". Ms. Lozada Gomez and the children's claims were dismissed on the basis that they had neither rebutted the presumption of state protection nor proven that they did not have an internal flight alternative. The RPD declined to grant protection on the basis of "compelling circumstances"

(IRPA, s 108(4)), finding that even though the brutal gang rape that Ms. Lozada Gomez experienced in 1999 would have qualified her for refugee protection at the time that she fled Colombia, it was not proven that the Post-Traumatic Stress Disorder [PTSD] she was experiencing at the time of the refugee hearing was "completely related" to the incident. In reasoning that the Applicant denounces as outdated and premised on "rape myths", the RPD Member found that despite the extreme brutality of the assault, which resulted in Ms. Lozada Gomez's month-long hospitalization and sworn evidence of life-long trauma, the fact that she did not seek psychological treatment until after she came to Canada years later meant that the assault must not have been so traumatic: "We find that had the impact been that traumatic, treatment would have been sought while the claimant was in the U.S." The Member then compared the gang rape of Ms. Lozada Gomez to the atrocities experienced by some other refugees and concluded that Ms. Lozada Gomez's trauma was not exceptional and did not justify granting her protection under subsection 108(1) of the IRPA.

[4]The Applicants and their children applied for permanent residence on H&C grounds a few months later, in 2014. Mr. Victoria Cardenas also applied for a Pre Removal Risk Assessment [PRRA], which was refused for the first time in June 2014 but was then sent back for redetermination pursuant to terms of settlement of an application for judicial review of the refusal. Ms. Lozada Gomez submitted a PRRA application soon thereafter.

[5] On July 4, 2016, an Officer granted the H&C application only in respect of the Applicants' two children. The Officer granted the Applicants themselves 3-year Temporary Resident Permits [TRP] instead, finding that they were both inadmissible for permanent

residence due to serious criminality. Having decided to grant them TRPs rather than permanent residence on H&C grounds, the Officer determined that there was no need to assess and weigh the hardship they would face if removed to Colombia since removal was no longer imminent. The Officer denied the PRRA applications a few weeks later, on July 29, 2016.

[6] Justice O'Reilly dismissed the Applicants' application for judicial review of the refusal of their PRRA applications (*Cardenas v Canada (Minister of Citizenship and Immigration*), 2018 FC 262 at paras 26-28). The Applicants also sought judicial review of their H&C refusals. As discussed in *Lozada Gomez v The Minister of Citizenship and Immigration*, 2025 FC 1615, issued concurrently with this decision, the Minister of Citizenship and Immigration agreed that the refusal of Ms. Lozada Gomez's H&C application had been procedurally unfair and offered terms of settlement that included the redetermination of her H&C application. Justice O'Reilly, however, dismissed Mr. Victoria Cardenas' challenge to the refusal of his H&C application, including his argument that the officer had erred by failing to assess the hardship that Mr. Victoria Cardenas would face on his return to Colombia, finding:

> [4] …The officer reasonably concluded that the analysis of risk should be carried out closer in time to Mr Victoria Cardenas's removal from Canada, whenever that might be, if ever.
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> …
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> [13] …While the issue of hardship has not yet been fully analyzed that issue relates entirely to the risks that Mr Victoria Cardenas might face if he were removed from Canada to Colombia, an issue that can be fully reconsidered on a fresh pre-removal risk assessment.
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> (*Cardenas v Canada (Minister of* Citizenship *and Immigration),* 2018 FC 263 [*Cardenas H&C*]).

[7] The Applicants remained in Canada for the next six years on TRPs. They raised their children here, and during the pandemic risked their own health to volunteer with their local food bank, receiving and packaging donations and delivering food to elderly and other vulnerable community members.

[8] The Applicants' second set of TRPs expired in mid-2023 and were not renewed. In or around June 2023 their counsel, realizing that the redetermination of Ms. Lozada Gomez's H&C application appeared not to have been completed, contacted counsel at the Department of Justice with whom he had negotiated the settlement and asked for an explanation for the delay. In August 2023, the Respondent's counsel advised that the H&C had never been sent for redetermination because the 2017 settlement offer was "contingent on the service and filing of a Notice of Discontinuance of the litigation," and no such notice had been filed. Ms. Lozada Gomez brought an application for leave for judicial review challenging what she characterizes as a breach of the settlement agreement in *Lozada Gomez v The Minister of Citizenship and Immigration,* 2025 FC 1615.

A. *Deferral request*

[9] On December 18, 2023, the Applicants were served with directions to report for removal on January 18, 2024. They promptly submitted new PRRA applications [subsequent PRRA] and an H&C application for Mr. Victoria Cardenas. They then sought a deferral of removal pending the final determinations of their PRRA and H&C applications; if that was denied, they requested as an alternative that removal be deferred until July 1, 2024, to enable the Applicants to prepare for removal, support their children for the remainder of the school year, attend their daughter's

graduation from university, and allow for Ms. Lozada Gomez to obtain mental health support to prepare her for the trauma of her return to the country where she had been brutally assaulted on her previous return there.

[10] The Applicants provided extensive evidence to support their deferral request, including copies of the outstanding PRRA and H&C applications, affidavits and letters, medical evidence, documentation regarding the settlement of Ms. Lozada Gomez's H&C litigation, current country conditions evidence, and jurisprudence.

B. *Decision under review*

[11] By decision dated January 15, 2024, an Inland Enforcement Officer ("the Officer") refused the deferral request. The Officer found that the filing of an H&C application is not itself a sufficient basis upon which to defer removal. Nevertheless, the Officer assessed the grounds raised in the H&C application, including the best interests of the children, Ms. Lozada Gomez's mental health status, the Applicants' establishment in Canada, and the hardship they would face on return to Colombia, concluding that none of these reasons warranted deferring removal.

[12] The Officer determined that the risks the Applicants alleged they would face in Colombia were "the same issues" that had been rejected by the RPD in 2013 and a PRRA officer in 2016 and dismissed the new country conditions evidence as not personalized to the Applicants and "insufficient" to rebut the presumption of state protection. According to the Officer, the Applicants had already benefitted from "a full assessment of their risks during their RPD and PRRA" and there is no statutory stay of removal pending a subsequent PRRA.

[13] After noting that the Applicants had a history of non-compliance with the law in the USA and that Mr. Victoria Cardenas also had criminal convictions, the Officer found that the Applicants had had "plenty of time to prepare for their removal from Canada" and denied the request.

[14] The Applicants initiated the within application for leave and for judicial review of the officer's decision and then sought an order staying their removal. Justice Elizabeth Heneghan granted stays in respect of both this application and the application challenging the alleged breach of settlement (*Lozanda Gomez v. Canada (Citizenship and Immigration)* (18 January 2024), Toronto, IMM-10812-23 (order)).

## III. ISSUES AND STANDARD OF REVIEW

[15] The Applicants challenge the reasonableness of the Officer's refusal to defer their removal pending decisions on their new PRRA and/or H&C applications.

[16] Reasonableness review requires a "sensitive and respectful, but robust, evaluation of administrative decisions" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 12 [*Vavilov*]). While reviewing courts avoid stepping into the role of the decision maker or reweighing the evidence to reach different conclusions, we are obliged to consider the outcome of a given decision and the decision-maker's reasoning to ensure that the decision, as a whole, is transparent, intelligible and justified (*Vavilov* at para 15). A reasonable decision is one that is justified in light of the evidentiary record and the central arguments raised before the

decision maker (*Vavilov* at paras 127-128), and that reflects the stakes, particularly where the impact of the decision on an individual's rights and interests is severe (*Vavilov* at para 133).

[17] Although enforcement officers have limited discretion to defer removal, they must exercise their discretion reasonably.

## IV. ANALYSIS

### A. *Refusal to defer removal pending the determination of the new PRRA applications*

[18] The Applicants argue that they were entitled to a fresh assessment of their risk based on current conditions in Colombia, and that the Officer's failure to defer removal so that this could take place was unjustified, unreasonable and inconsistent with Justice O'Reilly's reasons in *Cardenas H&C*. I agree.

[19] When a person facing removal from Canada asserts a risk of serious harm in the country to which they are being removed, section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], customary international law, and several international treaties to which Canada is a party all require that a risk assessment be conducted prior to effecting the removal (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1; *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177). Indeed, as the Federal Court of Appeal explained in *Canada (Minister of Citizenship and Immigration) v Farhadi,* 2000 CanLII 15491 (FCA) at paragraph 3, "a risk assessment and determination conducted in accordance with the

principles of fundamental justice is a condition precedent to a valid determination to remove an individual" from Canada [emphasis added].

[20] To be effective and meet these legal requirements, the risk assessment must be timely. As Justice Michael Kelen explained in *Ragupathy v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1370:

> [27] A timely risk assessment is Canada's safeguard against deportation to torture or similar treatment. Indeed, the performance of a risk assessment before removal is the mechanism by which effect is given to section 7 of the Charter and various international human rights instruments to which Canada is a party. An individual's rights under section 7 of the Charter would be rendered illusory, however, if the facts underlying the risk assessment did not correspond to the present reality in the country to which the individual is being deported.

[21] Justice John Norris elaborated on the importance of timeliness in his judgment in *Mohamed v Canada (Citizenship and Immigration)*, 2023 FC 1297:

> [44] It is indisputable that a timely risk assessment is a crucial safeguard against deportation to persecution, torture, and other mistreatment: see *Ragupathy v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1370 at para 27; see also my discussion of this issue in *Shaka v Canada (Citizenship and Immigration)*, 2019 FC 798, [2019] 4 FCR 288, at paras 33-44. Whether a risk assessment is timely depends on the circumstances, including the relative stability of country conditions and the proximity of the anticipated removal to the decision (*Thiruchelvam v Canada (Citizenship and Immigration)*, 2015 FC 585 at para 26). As Justice Tremblay-Lamer held in *Revich v Canada (Citizenship and Immigration)*, 2005 FC 852, "if this review is to be effective and consistent with Parliament's intention when creating it, the PRRA must coincide as closely as possible with the person's departure from the country" (at paragraph 16).

[22] While enforcement officers do not control the timing of Pre-Removal Risk Assessments and, as emphasized by the Respondent, are tasked with executing removal orders "as soon as possible" (IRPA s. 48(2)), they are nevertheless constrained by these principles. As noted by the Applicants, officers must exercise their otherwise limited discretion in a manner that meets Canada's obligations under the *Charter* and international law (IRPA ss. 3(3)(d) and (f)).

[23] Enforcement officers are themselves not qualified to undertake risk assessments in any depth; their role in ensuring Canadian compliance with these obligations involves screening deferral requests and exercising their discretion to defer removal in appropriate cases so that qualified decision-makers can conduct a full risk assessment.

[24] In determining whether to defer removal for a risk assessment, enforcement officers are to consider *inter alia* whether, on the evidence before them, removal will expose the requestor to a risk of serious personal harm that arose after the last full risk assessment (be that a PRRA, a decision of the RPD or the RAD, or a Danger Opinion under s. 115 of the IRPA). If the answer is "Yes," removal must be deferred. However, this is not a strict threshold that has to be met to justify deferring removal. Other circumstances may also arise that require deferring removal for a fresh risk assessment. For example, new evidence may become available that substantiates an allegation of risk that was previously rejected, or "evidence that pre-dates the last risk assessment may arise for which there are reasons it was not presented before the last risk assessment" (*Atawnah v Canada (Public Safety and Emergency Preparedness)*, 2016 FCA 144 [*Atawnah*] at para 15, quoting *Etienne v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 415 at para 48).

[25] In *Atawnah*, the Federal Court of Appeal highlighted some examples of cases in which a deferral of removal had been found necessary so that a timely risk assessment could be completed:

> [19] In *Ragupathy v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1370, 303 F.T.R. 178, the applicant submitted considerable evidence of changes in conditions in Sri Lanka that occurred after his risk upon removal was assessed in a danger opinion. The Federal Court found that the risk alleged was both obvious and very serious. While the enforcement officer had correctly determined that at law the applicant was not entitled to a PRRA, the Federal Court found that the enforcement officer possessed discretion to defer the applicants' removal and that the officer's decision not to defer removal was unreasonable. The applicant was not to be removed until the risk he feared of persecution, torture or other inhumane punishment or treatment was reassessed by the Minister's delegate.
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> [20] In *Toth v. Canada (Public Safety and Emergency Preparedness)*, 2012 FC 1051, 417 F.T.R. 279, the Federal Court held, at paragraph 23, that if there is evidence either of changed circumstances of an applicant, or of changed conditions within the country the applicant is to be removed to, with the result that the applicant faces a new or increased risk that has not previously been assessed, or the ability of the state to provide protection has been compromised, "the enforcement officer must assess that risk and determine if a deferral of removal is warranted" (emphasis added).
>
> [21] To similar effect, in *Kopalakirusnan v. Canada (Public Safety and Emergency Preparedness)*, 2013 FC 330, an enforcement officer refused to defer the applicant's removal until he was eligible for a PRRA. The Federal Court stayed the applicant's removal, stating at paragraph 7 of the reasons that, subsequent to an assessment of risk, circumstances may arise that call into question whether an applicant can be removed in a manner that is Charter compliant. An applicant is entitled to adduce evidence of this and "if there is clear and compelling evidence that either the applicant's circumstances have changed or that the conditions in the country to which he is being returned have changed or deteriorated such that the applicant faces a risk of inhumane treatment or death, the applicant is entitled to have his risk assessed in light of that new evidence". Moreover, the evidence in support of the risk need not be conclusive. The mere fact that the evidence involves an element of speculation is not determinative. [Emphasis in original.]

[26] This reasoning, which has been followed repeatedly by this Court, forms the jurisprudential context in which Justice O'Reilly found in 2018 that the risk the Applicants faced in Colombia did not need to be evaluated at the time since they were not facing removal for at least the next three years, but "[could] be fully reconsidered on a fresh pre-removal risk assessment" once removal became a reality (*Cardenas H&C* at para 13).

[27] Viewed in the light of these core principles, the Officer's refusal to defer the Applicants' removal so that their risk allegations could be reassessed based on current conditions in Colombia was unreasonable. By the time the Applicants were scheduled to be removed to Colombia in January 2024, almost seven and a half years had passed since their risk had last been assessed. The risk assessment conducted by the PRRA officer in 2016 was no longer, by any reasonable measure, timely.

[28] In this case, the passage of time alone constituted a very strong basis for deferring removal, given the *Charter* imperative for a timely assessment of risk prior to removal. The fact that extensive evidence and submissions were adduced to demonstrate that conditions in Colombia had in fact changed, and had done so in profound ways that affected the risks the Applicants face and the availability of state protection, makes the Officer's failure to defer for a fresh risk assessment all the more unreasonable.

[29] It was incumbent on the Officer to explain how, based on the circumstances of the case and the evidence before them, the Applicants' right to a timely risk assessment did not warrant a deferral of removal even though the last assessment was conducted seven and a half years earlier.

The Officer failed to do so, instead finding that the "issues" raised were not new, the country conditions evidence was not personalized, the evidence was "insufficient" to rebut the presumption of state protection, and the subsequent PRRAs filed by the Applicants did not attract a statutory stay of removal. This reasoning is frankly unintelligible:

- The "issues" raised by the Applicants did not need to be new to warrant a timely risk assessment;

- The country conditions reports did not need to be "personalized" in order to demonstrate that conditions in Colombia had changed such that the previous risk assessment was no longer reliable;

- The finding that "insufficient" evidence had been provided to rebut the presumption of state protection lacks transparency and was likely beyond the scope of the Officer's screening role; and

- The reliance on the lack of a statutory stay is mystifying at best. (The Officer appears to be suggesting that one of the reasons an exercise of discretion to defer removal was not warranted is that there is no statutory stay. However, it is precisely that absence of a statutory stay that necessitated the deferral request in the first place. If there had been a statutory stay in place, the request would never have been before the Officer.)

[30] The Respondent defends the Officer's decision to proceed with removal in the face of Justice O'Reilly's 2018 finding that risk and hardship should be reassessed "closer in time" to removal by asserting that Justice O'Reilly did not specify how the reassessment of risk and hardship should be assessed prior to removal, nor did he order that the Applicants not be

removed until those reassessments had been conducted. I fail to understand how these arguments could succeed. For one thing, the Respondent's assertion regarding the risk assessment is obviously incorrect: Justice O'Reilly explicitly referred to a "fresh pre-removal risk assessment" (*Cardenas H&C* at para 13). As for the assessment of hardship, the well-established statutory mechanism is section 25 of the IRPA: H&C applications. The Respondent has not explained how the Officer's decision to proceed with removal before the PRRA and H&C reassessments had occurred can be squared with Justice O'Reilly's decision. As for the assertion that Justice O'Reilly did not order that the Applicants could not be removed before these reassessments have taken place, this is correct as far as it goes. But I do not take the Applicants to be asserting otherwise. Their position, as I understand it, is that the Officer needed to justify the decision not to follow Justice O'Reilly's decision, and this was not done. I agree.

[31] I therefore find that the Officer's decision not to defer the Applicants' removal so that their risk could be reassessed in a timely way was unreasonable because it was neither intelligible nor justified.

B. *Refusal to defer removal pending H&C assessments*

[32] The Applicants argue that the Officer also erred in the treatment of Mr. Victoria Cardenas's outstanding H&C application by finding it could have been filed much earlier; by making unreasonable findings regarding the discrimination Mr. Victoria Cardenas will face in Colombia based on his Afro-Colombian identity; and by failing to take into account the Applicants' contributions as essential workers during the height of the pandemic. As I have already found a reviewable error in the Officer's refusal to defer removal for a timely risk

assessment, there is no need to make a finding about this second ground. However, I would strongly caution the Respondent to ensure that any future action with respect to the Applicants' removal is consistent with both the letter and the spirit of this Court's decisions, both this one and the 2018 decision of Justice O'Reilly discussed above. Justice O'Reilly expected that the Applicants would have an opportunity to have their risks and hardships on return assessed in a timely way close to their removal. I expect the same.

## V. CONCLUSION

[33] For the reasons set out above, I find that the Officer's decision refusing to defer the Applicants' removal was unreasonable and must be set aside. Because the Respondent advised me during the hearing that there is no need to order a redetermination of the deferral request since there is currently no scheduled removal to defer, and because the Applicants concurred, I will not order a redetermination at this time.

[34] The parties have not proposed a question of general importance for certification, and I agree that none arises.

**JUDGMENT in IMM-734-24**

**THIS COURT'S JUDGMENT is that**:

1. The application is allowed.

2. The decision of the officer refusing the defer the Applicants' removal is set aside.

3. There is no question for certification.

"Andrew J. Brouwer"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-734-24 |
| **STYLE OF CAUSE:** | MARINO VICTORIA CARDENAS and MARTHA LUCIA LOZADA GOMEZ v MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | JUNE 12, 2025 |
| **JUDGMENT AND REASONS:** | BROUWER J. |
| **DATED:** | OCTOBER 2, 2025 |

**APPEARANCES:**

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| SUBODH BHARATI | FOR THE APPLICANT |
| NEETA LOGSETTY | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

| | |
|---|---|
| COMMUNITY AND LEGAL AID SERVICE PROGRAM<br>TORONTO, ONTARIO | FOR THE APPLICANT |
| ATTORNEY GENERAL OF CANADA<br>TORONTO, ONTARIO | FOR THE RESPONDENT |