

Federal Court



Cour fédérale

Date: 20260114

Docket: IMM-24228-24

Citation: 2026 FC 51

Calgary, Alberta, January 14, 2026

PRESENT: Mr. Justice Brouwer

BETWEEN:

**KERMIT NATHANIEL MACKEY,
JOYANN ROBERTS-MACKEY,
KAI-JAI KERMIT N. MACKEY**

Applicants

and

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

Respondent

JUDGMENT AND REASONS

[1] The Applicants are citizens of the Bahamas. They were scheduled to be removed from Canada on December 31, 2024, but made a request to the Canada Border Services Agency [CBSA] to defer their removal until June 30, 2025, so that the minor Applicant, who was 10 years old at the time, could finish the school year. A CBSA Enforcement Officer refused the request, so they brought this application for leave and judicial review of the Officer's decision and sought a stay of removal pending the determination of the underlying application.

[2] By order dated December 27, 2023, my colleague Justice Lobat Sadrehashemi granted their stay motion. She found that the Applicants had raised a serious issue regarding the Officer's treatment of the best interests of the child, whose access to school-based autism services would have been interrupted by the December 31, 2024, removal, and that removing him in the middle of the school year without a plan for his education in the Bahamas would result in irreparable harm.

[3] Leave for judicial review was granted on October 2, 2025, and the application was scheduled to be heard on December 16, 2025. By this time, however, the event upon which the deferral request was based had long since passed. As a result, no purpose would be served by granting the Applicants the remedy they are seeking: "An order quashing the refusal of the Applicants' request to defer their removal from Canada and an order remitting the matter back for a re-determination by a different Officer." The Respondent therefore seeks an order dismissing the application as moot.

[4] I agree with the Respondent that the Application is now moot. The Applicants request, however, that I exercise my discretion to hear the case even if I find that it is moot. The Respondent opposes this request. To determine whether such an exercise of discretion is warranted, I must consider three factors: the adversarial system, concern for judicial economy, and the Court's proper law-making role (*Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC) at 358-363).

[5] The Applicants assert that these factors support their request. They say the parties remain locked in an adversarial dispute regarding the reasonableness of the deferral decision; hearing the case would not impact judicial economy since the parties were present and prepared to argue the merits and the hearing had been scheduled before me for 90 minutes; and this Court's findings would provide necessary guidance to a future decision maker in the event of a renewed request to defer removal.

[6] I am not persuaded by the Applicants' arguments. In my view, there is simply no valid purpose to be served by rendering judgment on the reasonableness of the Officer's assessment of the best interests of the child and/or their treatment of the objective evidence. Even if the Applicants are rescheduled for removal, they will have an opportunity to make a fresh deferral request, and CBSA will be required to render a fresh, responsive, reasonable and procedurally fair decision that reflects all the evidence and submissions and that takes seriously the best interests the minor Applicant (*Aina v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 1188 at para 20; *Abdelsalam v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 1918 at para 9). It is, moreover, reasonable to expect that CBSA will take to heart the findings of Justice Sadrehashemi in her December 2024 stay order and will avoid repeating an unreasonable decision to remove a vulnerable child midway the school year without proper arrangements in place in the destination country.

[7] I find that notwithstanding a continuing adversarial context, judicial economy and recognition of the Court's role weigh against exercising my discretion to decide this case, and I decline to do so. The application is therefore dismissed as moot.

JUDGMENT in IMM-24228-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

"Andrew J. Brouwer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-24228-24

STYLE OF CAUSE: KERMIT NATHANIEL MACKEY, JOYANN
ROBERTS-MACKEY, KAI-JAI KERMIT N. MACKEY
v THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: DECEMBER 16, 2025

JUDGMENT AND REASONS: BROUWER J.

DATED: JANUARY 14, 2026

APPEARANCES:

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JORDAN FINE FOR THE RESPONDENT

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