Federal Court Cour fédérale

Date: 20260205

Docket: IMM-27407-25
IMM-25903-25

Citation: 2026 FC 167

Toronto, Ontario, February 5, 2026

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

MAHIR YAHYA SHARIF

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Respondent, Mr. Mahir Yahya Sharif, has been in immigration-related detention for roughly eight months, since May 16, 2025. As required under the *Immigration and Refugee Protection Act* [IRPA], his detention has been regularly reviewed since that time. In these applications, the Minister of Public Safety and Emergency Preparedness [MPSEP] seeks judicial

review of two decisions of the Immigration Division [ID] of the Immigration and Refugee Board: 1) an Order dated November 10, 2025, in which the ID ordered that the MPSEP produce various documents in advance of the next detention review; and 2) a decision on December 8, 2025 ordering Mr. Sharif's release from immigration detention.

[2] I have concluded, on somewhat narrow grounds, that both of these applications must be granted. The result of these findings is that I will remit this matter to the ID for redetermination in accordance with these reasons.

[3] Mr. Sharif's next detention review is scheduled for February 9, 2026. With the agreement of the parties, I issued an Order on February 3, 2025, in which I communicated the outcome in these proceedings, and provided a breakdown of my findings with respect to the Production Order, so that these findings could be considered in advance of the next detention review. In the Order, I also indicated that my detailed reasons in respect of these applications would follow. These are my reasons.

II. BACKGROUND

A. *Facts*

[4] Mr. Sharif was born in Saudi Arabia to Somali parents in 1999. He and his family came to Canada as refugees when he was 19 years old, and they settled in Medicine Hat, Alberta.

[5] Soon after, Mr. Sharif started to struggle with substance use and declining mental health. In 2022, he was convicted of trafficking and possession of controlled substances, mischief, theft

under $5,000, fraudulently obtaining transportation (for not paying for a taxi ride), resisting arrest, possession of property obtained by crime, and sexual assault of a fellow psychiatric patient while he was on an involuntary psychiatric hold at Medicine Hat Regional Hospital. Mr. Sharif pled guilty to all charges and was sentenced to six months imprisonment. He was released on parole in August 2024. Mr. Sharif returned to custody two months later when he reported to his parole officer that he had experienced a substance use relapse and hadn't spent the night at his family's home, contrary to his parole conditions.

[6] Mr. Sharif's mental health continued to decline in federal detention, and he was placed on a psychiatric hold at the Regional Psychiatric Centre in Saskatoon.

[7] Mr. Sharif's criminal convictions, particularly the sexual assault conviction, led to a finding that he is inadmissible to Canada for serious criminality pursuant to paragraph 36(1)(a) of the IRPA. Mr. Sharif was also referred for a danger assessment pursuant to subsection 115(2) of the IRPA, and a Minister's Delegate concluded that: 1) he posed a danger to the Canadian public; and 2) that he would not face any risks in Somalia that would warrant ongoing refugee protection in Canada, or the protection provided by section 7 of the *Canadian Charter of Rights and Freedoms*.

[8] On May 16, 2025, Mr. Sharif was transferred from federal custody at the psychiatric centre in Saskatoon to immigration detention under Canada Border Services Agency [CBSA] custody at Maplehurst Correctional Complex in Milton, Ontario.

B. *Procedural History*

[9] At each of Mr. Sharif's statutorily mandated immigration detention review hearings—until December 8, 2025—the ID determined that Mr. Sharif should remain in detention because he was deemed to be a danger to the public and was unlikely to appear for removal.

(1) Production Requests and Order

[10] From his first detention review hearing on May 21, 2025, Mr. Sharif raised concerns about whether his detention had a legitimate nexus to an immigration purpose, as required by the decision of the Federal Court of Appeal in *Brown v Canada*, 2020 FCA 130 [*Brown*], arguing that the Minister had not provided evidence showing that it was possible to deport him to Somalia. The primary basis for these concerns was evidence from CBSA that Somalia will not admit deportees with mental health conditions and that Somalia was not cooperating with Mr. Sharif's removal. There was also a question, arising from CBSA's own policies and practices, of whether it was possible to effect an involuntary removal to Somalia.

[11] Accordingly, Mr. Sharif made requests at his detention review hearings on May 21, May 28, September 4, and October 24 for the MPSEP to produce documents that would demonstrate that CBSA would be able to remove him to Somalia. The ID rejected the first two of these requests. However, it partially granted Mr. Sharif's September 4 request and on November 10, 2025, it granted, verbatim, Mr. Sharif's most recent production request. The resulting Production Order is one of the two decisions under review by this Court.

[12] The Production Order required the MPSEP to provide the identified documents in advance of the next detention review, which was scheduled for November 21, 2025. On November 14, 2025, the MPSEP requested an extension of time to comply with the November 10 Production Order. On November 20, 2025, the day before Mr. Sharif's next detention review hearing was scheduled, the Minister submitted an Application for Reconsideration of the November 10 Production Order. In a special case-management conference on November 21, which replaced the detention review hearing, the presiding ID member declined the Minister's request for reconsideration.

[13] The MPSEP brought an application for judicial review of the Production Order and a motion to stay the Order pending judicial review. On November 26, 2025, the Applicant advised the ID that it would not be producing any further materials pending the disposition of the stay motion. On December 8, 2025, Justice Saint-Fleur granted an interim stay of the Production Order.

(2) Release Decision

[14] At Mr. Sharif's detention review hearing on December 11, 2025, the presiding ID member determined that Mr. Sharif had to be released because there was insufficient evidence to conclude that there was an ongoing nexus between Mr. Sharif's detention and a valid immigration purpose.

[15] On the same day, the Applicant sought judicial review of this decision and obtained an interim stay of Mr. Sharif's release from detention. On December 22, 2025, Justice Heneghan granted a further stay of the Release Order pending the judicial review.

[16] In a separate Order, Justice Heneghan consolidated the judicial reviews in respect of the ID's Production Order and Release Order, granted leave in both matters, and ordered that the proceedings be expedited. The hearing in respect of both matters was held on January 29, 2026.

(3) Concurrent Proceedings

[17] In separate proceedings, Mr. Sharif has also brought an application for judicial review of the danger opinion made pursuant to IRPA paragraph 115(2)(a). On June 26, 2025, the Federal Court declined to grant a stay of his deportation pending the final determination of that judicial review. A decision on leave in that matter has not yet been made.

[18] On July 2, 2025, Mr. Sharif made submissions to the United Nations Human Rights Committee [UNHRC] under the *International Covenant on Civil and Political Rights 1996* claiming that his deportation would violate his rights under the Covenant. The UNHRC issued an Interim Measures Request for Canada to refrain from removing Mr. Sharif until it had considered his case. However, the MPSEP refused to accede to the Interim Measures Request. Mr. Sharif applied to the Ontario Superior Court for judicial review of the MPSEP's refusal to accede to the UNHRC's request, and obtained a stay of removal from that Court, but his application was ultimately rejected on September 18, 2025. Mr. Sharif appealed this decision to the Court of Appeal for Ontario, and, on October 17, 2025, he was granted a further stay of removal pending

his appeal. That appeal is currently scheduled to be heard on February 18, 2026. As such, Mr. Sharif's removal from Canada cannot occur until at least after this proceeding takes place.

III. ISSUES

[19] The Applicant raises the following issues in these applications:

Production Order

1) The ID's Production Order is overly broad, requests irrelevant evidence, and fails to account for the privacy interests of third parties.

Release Order

2) The ID erred in jurisdiction by functionally ignoring the terms of Justice Saint-Fleur's Stay Order in ordering the Respondent's release.

3) The ID erred by misapplying the decision of the Federal Court of Appeal in *Brown* by applying a certainty standard to the prospect of the Respondent's removal.

4) The ID erred in ordering the release of the Respondent without sufficiently robust plans to mitigate the risk the Respondent poses.

[20] The Respondent has provided arguments responding to each of these issues, but in addition, raises three threshold issues that he argues would justify dismissing these applications without considering them on the full extent of their merits. These are as follows:

Production Order

1) Is the application a collateral attack on the ID's reconsideration decision?

2) Does the Applicant have clean hands?

Release Order

3) Should the application be dismissed because the Applicant has not challenged the ID's findings related to the refusal of Somalia to accept the removal of people with mental health diagnoses, which was an "independently determinative" finding?

IV. STANDARD OF REVIEW

[21] With the exception of one of the issues outlined above, the parties agree that the presumptive standard of review – that of reasonableness – is applicable to these matters.

[22] The exception relates to the Applicant's assertion that the ID committed a jurisdictional error by ignoring Justice Saint-Fleur's stay of the Production Order. This, the Applicant maintains, is analogous to an error related to the jurisdictional boundaries between two or more administrative bodies, which was confirmed as one of the exceptions to reasonableness review in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 53 [*Vavilov*].

[23] I disagree with the Applicant's substantive arguments on this issue, and I also disagree with this submission on standard of review. The Applicant's complaint is not related to the jurisdictional boundaries between two or more administrative bodies, but, quite simply, to the question of whether the ID properly complied with a Federal Court order.

[24] There is no analogy here, which is abundantly clear when one looks to the kinds of jurisdictional boundary scenarios that the Court in *Vavilov* referred to in discussing this aspect of correctness review. See, for example, the situations that arose in *Regina Police Assn. Inc v Regina (City) Board of Police Commissioners*, 2000 SCC 14, [2000] 1 SCR 360; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Quebec (Attorney General)*, 2004 SCC 39, [2004] 2 SCR 185; *British Columbia Telephone Co v Shaw Cable Systems (BC) Ltd*, 1995 CanLII 101 (SCC).

[25] Jurisprudence since *Vavilov* has underscored the limited scope of this domain of correctness review: see for example *Castillo v Service d'administration PCR Ltée*, 2023 FC 526 at paras 22-27; *1120732 BC Ltd v Whistler (Resort Municipality)*, 2020 BCCA 101 at para 35. Commentary since *Vavilov* has also made it clear that the exception applies only to situations involving competing or overlapping lines of jurisdiction between tribunals or other administrative bodies: Paul Daly, "Exceptional Circumstances? O.K. Industries Ltd. v. District of Highlands, 2022 BCCA 12" (January 14, 2022), online (blog): *Administrative Law Matters*; Sara Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis, 2022) at 246.

[26] In other words, this exception to the reasonableness rule does not govern either a tribunal's relationship with the courts, or the question of whether a tribunal has properly implemented or complied with a court order. A court order is clearly a legal constraint on a tribunal's authority, but a failure to comply with such a constraint is simply not a question of competing jurisdictions between tribunals. There is no application of this principle to the situation that arises in this case, and the Applicant has not argued that this situation calls for a new category of correctness review.

[27] As a result of the above, reasonableness is the applicable standard of review for each of the issues identified by the parties.

V. ANALYSIS

A. ***The Production Order – IMM-25903-25***

(1) Should the Court dismiss this application because the Applicant failed to judicially review a reconsideration request?

[28] As mentioned above, on November 20, 2025, the Minister applied to the ID, requesting that the presiding member reconsider his November 10 Production Order. The member heard submissions from the parties on the request, and dismissed it, as follows:

> … I issued a summons and production order for documents on November 10th, 2025. I provided by reasons for doing so. I'm not reconsidering the issuance of that summons and that production order. If the Minister had an issue with my decision, the appropriate forum to dispute it would have been to seek judicial review.

[29] The Respondent argues that, having brought an application to reconsider the Production Order, it is now inappropriate for the Applicant to challenge the original Production Order, as it has essentially been superseded by the reconsideration decision.

[30] The basis for this submission is the decision of the Federal Court of Appeal in *Vidéotron Télécom Ltée v Communications, Energy and Paperworkers Union of Canada*, 2005 FCA 90 [*Vidéotron*].

[31] In *Vidéotron*, the Court observed that in some situations, a tribunal may simply dismiss a reconsideration decision and refuse to consider it on its merits. In these situations, "the initial decision will remain intact and must be directly challenged": para 10.

[32] In other situations, however, a tribunal may engage with the merits of a reconsideration request and either vary the initial determination or leave it intact. In such situations, the Court found that a party will need to challenge the reconsideration decision, and, in some circumstances, the initial decision: *Vidéotron* at paras 11-12.

[33] The question for present purposes, then, is whether the ID's rejection of the Applicant's reconsideration request amounts to a decision on the merits or is more properly understood as a refusal to consider the application outright. The Respondent urges the Court to find that it is the latter, because despite the brevity of the reconsideration decision, the member heard detailed submissions prior to rejecting the application. The Applicant argues that the ID did not entertain the decision on the merits, which is evidenced by the lack of any reasons provided for the rejection.

[34] I am inclined toward the position of the Applicant. While it is clear that the ID member heard arguments from both parties in relation to the reconsideration request, it is less clear that his subsequent rejection of the application was sufficiently based on the merits, such that it completely superseded the original Production Order. The Member did not reiterate the terms of the Production Order, and nor did he delve into reasons for affirming the original Order. In the circumstances, I believe that the initial Production Order remained intact following the reconsideration determination, and it is therefore permissible for the Applicant to solely challenge this decision. In any event, the animating principle underlying the *Vidéotron* decision is the desire to avoid litigating duplicative and moot issues. In my view, the questions raised by the Applicant in this matter are not moot and were not superseded by the reconsideration decision. Moreover, even if these questions were somewhat addressed in the reconsideration decision (which I do not find), I would exercise my discretion to hear this matter on its merits: *Vidéotron* at para 15.

(2) Should the Court dismiss this application because the Applicant does not have "clean hands"?

[35] I have considerable sympathy for the Respondent's frustration with the Applicant's actions following the issuance of the Production Order. As the Respondent notes, in the 28 days between the issuance of the Production Order and the granting of the stay, the Minister repeatedly intimated that it was in the process of complying with the Order but needed more time to do so. In the words of the Respondent, the Minister "used the prospect of compliance" to obtain adjournments and amended deadlines.

[36] In this regard, it is noteworthy that Mr. Sharif's detention reviews scheduled for November 21 and November 28, 2025, were both postponed to accommodate the Minister's requests for time to comply with the Production Order. Those adjournments were granted in reliance on the Applicant's representations that disclosure would be forthcoming.

[37] Of perhaps most significant concern, the Respondent points to the Applicant's correspondence to the ID on November 26, 2025, in which the CBSA Hearings Officer stated that the Minister would not be producing any further materials pending the outcome of the stay proceedings that it had filed that same day. The Respondent argues that this bald defiance of an operative tribunal order "directly impaired Mr. Sharif's ability to challenge the legality of his continued detention."

[38] It is readily apparent to me that the Applicant's response to the Production Order left much to be desired. I recognize that litigants are not required to share their litigation strategy with either an opposing party or the decision-making bodies before which they appear. This said,

my concern in this matter is not that the Minister was less than candid about their litigation strategy, but that they leveraged this lack of candour to obtain a benefit from both the Respondent and the tribunal, namely agreement to postponements and adjournments. Whether this was the Minister's intent or not is besides the point – it is clear from the record that both the Respondent and the ID were left with the impression that they had been deceived by the Minister's actions. This is not to be condoned.

[39] With that said, I have determined that I *will* hear this matter on its merits. While the Minister's response to the Production Order was unfortunate, there is further context worth bearing in mind.

[40] The first contextual consideration relates to the realities of litigation in the fast-moving context of detention reviews. It is self-evident that the Production Order issued by the ID was quite sweeping. Whether it was simply broad or was *overly* broad is a topic to which I will return below, but it is not controversial to state that it required the production of many documents, coming to several hundreds of pages, at least some of which may have required redaction or consideration for privilege. Given the short timelines involved, it may well have been the case that the Minister would have requested some flexibility in timing regardless of its ultimate decision to challenge the Production Order itself.

[41] Beyond this, there are times when litigation strategies change. It may be that the Minister knew they were going to challenge the Production Order in the very first instance. However, it may also be that such a decision was not made until later, and after some extensions of time and adjournments had already been sought. Absent some clearer indication that the Applicant meant

to deceive the tribunal and the Respondent, I am not prepared to dismiss this matter on the basis of bad faith.

[42] The other contextual factor is that the Applicant had produced many hundreds of pages of disclosure in past detention reviews, and did produce some material in response to the Production Order. The extent to which this disclosure met the terms of the Production Order is a matter of dispute between the parties, and the Applicant openly acknowledges that it did not comply with all of its terms. Nevertheless, this fact suggests that the Applicant's response to the Production Order was not singularly defined by bad faith.

[43] There is still the issue of the Applicant's statement on November 26 that it would simply not comply with the ID Production Order until a determination had been made on the stay of that Order. While certainly candid, this bald refusal to comply with an active tribunal order is troubling. Best efforts should be made to ensure compliance with tribunal orders, just as they should be made to obey court orders. And these efforts should continue right up until the point that they are either satisfied or, as in the case here, stayed by judicial intervention. This is a basic rule of law principle, one that should be respected by government representatives and enforced by the courts.

[44] Once again, however, context counts. At the hearing into this matter, counsel for the Applicant suggested that, as of November 26, they intended to argue the stay motion immediately but agreed to a delay in the proceeding at the request of the Respondent. The Respondent did not challenge counsel's assertion of this sequence of events. This reality *somewhat* diminishes the concern over the Minister's actions because it suggests that the

understanding at the time was that the pause in preparing disclosure was to be brief, pending the outcome of an imminent and urgent stay motion. Nevertheless, Hearings Officers do not have the authority to refuse a tribunal order, and they should *always* avoid conduct that suggests such a refusal.

[45] The result of the above is a mixed bag. On the one hand, the conduct of the Applicant raises legitimate concerns, particularly given the liberty interests at stake. I do not take those concerns lightly, and nor should the Applicant. On the other hand, I do not believe there is evidence in the record to establish that this matter should be summarily dismissed based on the clean hands test, as set out *in Canada (Minister of Citizenship and Immigration) v Thanabalasingham*, 2006 FCA 14.

[46] Finally, I should note that the clean hands argument was considered, and dismissed, in the stay decision issued by Justice Saint-Fleur. The Applicant suggests that Justice Saint-Fleur's decision on this issue effectively takes it off the table. While there is a certain logic to the Minister's position, once again, context matters. The clean hands argument before Justice Saint-Fleur was considered in the context of an urgent stay motion and appears to have been focused on the question of whether the balance of convenience weighed against granting the relief sought by the Minister. I am not convinced by the Applicant's argument that the stay order finally disposed of the matter such that it can no longer be raised, pursuant to the doctrine of *res judicata*. Nevertheless, the matter is moot as I agree with Justice Saint-Fleur's determination.

(3) The Reasonableness of the Production Order

[47] I have concluded that it was within the authority of the ID to order production of many of the documents listed in the Production Order. However, I have also concluded that some aspects of the Order were overly broad, and likely irrelevant to the detention review process.

[48] The Production Order required the Minister to disclose the following:

1) All communications between CBSA and the Somali authorities including but not limited to communications between CBSA (removals, Stakeholder Engagement Unit, Liaison Officers, Migration Integrity Officers) and Somali authorities in Canada, the US, Kenya, and Somalia;

2) All communications between CBSA and IRCC, including "Diplomatic Notes" as referred to in M9;

3) All evidence the Minister has in their possession regarding any confirmation or assurances received that Mr. Sharif will be allowed entry into Somalia if removed on a SJD;

4) A copy of a IMM5149B, a requirement for obtaining a SJD;

5) The narrative report for Mr. Sharif as required per ENF10 s. 22.5 for the use of a single journey travel document;

6) All evidence related to CBSA's contingency plan(s) if Mr. Sharif is refused entry to Somalia, as per ENF10 s. 22.5;

7) All information pertaining to Mr. Sharif's removal per ENF10 s. 26.1 for the Liaison Officer (LO) in Nairobi, including all communications exchanged with the LO/LO's office in Nairobi for the purpose of Mr. Sharif's removal;

8) All internal documentation pertaining to the use of SJDs for involuntary removals and for removals to destination countries who have refused to issue a travel document for removal;

9) The most up-to-date wiki for removals to Somalia;

10) The most recent policy for removals to Somalia, including that which is not publicly available;

11) The most recent wiki for the Liaison Officer and CBSA Migration Integrity Officer in Nairobi pertaining to removals to Somalia which transit through Nairobi; as well as all policy-related documents pertaining to escorted removals for Somalia and airline liability cases for Somalia;

12) All information pertaining to the removal procedure between Nairobi, Kenya to Somalia, including information on escorts (including privately contracted escorts), and the procedure for admission into Somalia.

[49] The Applicant argues that the ID erred in issuing the Production Order for three reasons. First, the Applicant argues that the ID's *reasons* for issuing the Production Order are inconsistent with the *content* of the Order, suggesting a break in the Member's chain of reasoning. More specifically, the Applicant argues that the Member's reasons suggest that the Production Order was required for the Tribunal to obtain more specific information about removal on a Single Journey Document [SJD]. This underlying intent, however, was subsequently belied by the extremely broad language of the Production Order, which went far beyond the process of removing individuals on SJDs.

[50] Second, the Applicant argues that the ID erred in ordering the production of documents that were either irrelevant or unnecessary for the sake of the detention review process.

[51] Third, the Applicant argues that the ID erred in ordering production of documents without adequately appreciating the different roles of separate government agencies.

[52] The point of departure for assessing the Minister's disclosure requirements in the context of detention reviews is *Brown*. In *Brown*, the Federal Court of Appeal reiterated the principle that the lawful power to order detention requires an evidentiary foundation. That evidentiary foundation, in turn, must establish that there is a nexus between detention and an immigration

purpose. Where that purpose is removal, the evidence must establish that removal is possible. The Court noted (at para 145):

> The legality of a detention order pending removal is underpinned by a finding, on the evidence, that removal remains a possibility. For this reason, disclosure of evidence concerning the likelihood of removal is also central to the legality of a detention order. This in turn requires the ID to assess the Minister's efforts respecting removal and the reasons for delay at each and every hearing. Detainees are entitled to know what evidence the Minister relies upon for an argument that removal remains a possibility. Subject to recognized public interest privileges arising under section 38.01 of the *Canada Evidence Act*, R.S.C., 1985, c. C-5, relevant evidence of communications with a receiving country ought to be disclosed in advance of the hearing. Given the obligation imposed by section 248 of the Regulations, it would be a rare case where a member could properly exercise their discretion to continue detention in the absence of this evidence.

[53] The Court in *Brown* also affirmed that, to be meaningful, the Minister's disclosure obligation "cannot be limited to information on which the Minister intends to rely. All **relevant** information must be disclosed, including information that is only to the advantage of the detainee": see *Brown* at para 142 [emphasis added].

[54] In *Mawut v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1155 [*Mawut*], my colleague Justice Grammond restated the common-sense propositions from *Brown* that the duty to disclose is not unlimited and is "tempered by the requirement that the information be relevant": *Mawut* at para 35, citing *Brown* at para 142.

[55] However, borrowing from the pre-trial contexts in both civil and criminal law, Justice Grammond proposed a broad approach to relevance, assessed through the lens of a "reasonable possibility." In other words, relevance in this context is assessed "by asking whether the

information can possibly assist the other party in building its case. Thus, disclosure is required even if it is not certain that the evidence will advance the other party's case": *Mawut* at para 33.

[56] These references to relevance track back to one of the Applicant's principal arguments, which is that while the broad scope of the Production Order may be relevant to a general audit of the CBSA removals regime to Somalia, much of it is *not* relevant to the particular circumstances of the Applicant's removal.

[57] However, as Justice Grammond noted in *Mawut*, two of the main questions in cases such as this are first *how* relevance is to be assessed, and secondly, by *whom*: the party responsible for disclosing evidence or the tribunal charged with evaluating it. Flowing from both *Brown* and *Mawut*, I believe the appropriate answer to these questions is first that relevance is to be assessed broadly based on whether the evidence could be of possible assistance to the other party. And second, while the disclosing party will always have to make a preliminary assessment of relevance, the balance of that assessment is within the purview of the tribunal. I believe it is for this reason that Justice Grammond noted in *Mawut* that the "Minister's representative should review the file and start from the premise that disclosure is the rule and withholding information, the exception": *Mawut* at para 35.

[58] At the hearing into this matter, counsel for the Applicant conceded that the Minister did not necessarily object to the production of *all* of the information set out in the Production Order, and undertook in post-hearing submissions to specifically identify which of the above items were objectionable, and which were acceptable. The Respondent was provided with an opportunity to reply to these submissions.

[59] In these post-hearing submissions, the Applicant opposed the production of items 1-3, 6, 8, 9, 11 and 12 as set out above. The Applicant consents that much of the remaining information was reasonably included in the Production Order but maintains that adequate production of these items has already been provided in the form of an affidavit of Corey Germansen, dated November 20, 2025 [the Germansen affidavit] and in a series of emails disclosed just prior to the most recent detention review hearing on December 8, 2025.

[60] In reply, the Respondent maintains that, read in conjunction with the parties' submissions on the Production Order, all of the items identified in it fall squarely within a range of reasonable outcomes. The Respondent further argues that the Minister's current position undermines its initial argument that the Production Order was, in its entirety, unlawful and unreasonable.

[61] In respect of the Applicant's claim that much of the information set out in the Production Order has already been provided in summarized form in the Germansen affidavit, the Respondent notes that whether or not this is the case is a determination for the ID, and not the Minister, to make, citing *Mawut* at paragraphs 35 and 38. The Respondent also points to some internal incoherence in the Applicant's current position, noting that in some instances, the Minister simultaneously asserts that a production item is "too broad" while also stating that no responsive documents exist.

[62] Having considered the positions of the parties, I am convinced that some of the items listed in the Production Order were untenably broad and therefore inconsistent with the reasons provided in support of the Production Order. I am also convinced that some of the items are likely overbroad and irrelevant to the detention determination (and therefore inconsistent with

the findings in *Brown* and *Mawut*). However, I also find that several of the items were reasonably included in the Production Order. For ease of reference, I provide my findings on each of the Production Order items in the below table.

Item	Finding
1) All communications between CBSA and the Somali authorities including but not limited to communications between CBSA (removals, Stakeholder Engagement Unit, Liaison Officers, Migration Integrity Officers) and Somali authorities in Canada, the US, Kenya, and Somalia;	• This item is unreasonably broad because it is unlimited in scope—both temporally and as it relates to the subject matter of these communications. This is contrary to the findings in *Brown* at para 142. If this item was *meant* to be limited to the situation of Mr. Sharif, this should have been made explicit. • Production Orders create obligations that must be specifically actioned. As such, they must be intelligible on their own terms. It is insufficient to suggest that an overbroad Production Order can be rehabilitated by reference to submissions made in support of it.
2) All communications between CBSA and IRCC, including "Diplomatic Notes" as referred to in M9;	• This item was reasonably included in the Production Order, as it relates directly to the removal plans that were made in respect of Mr. Sharif. • The references to "Diplomatic Notes" in the Tribunal's Exhibit M9 were specific, and likely subject to disclosure, pursuant to *Mawut* at para 52 and *Brown* at para 145. It will be for the Tribunal to determine whether anything in these "Notes" is relevant to the Applicant's removal, given the Minister's plan to remove Mr. Sharif on an SJD rather than through the cooperation of the Somali state. • Should the Minister consider information included in this item to be subject to public interest privileges

	arising under section 38.01 of the *Canada Evidence Act*, RSC, 1985, c C-5, the Minister ought to specifically raise this concern to the Immigration Division.
3) All evidence the Minister has in their possession regarding any confirmation or assurances received that Mr. Sharif will be allowed entry into Somalia if removed on a SJD;	• This item was reasonably included in the Production Order • However, it appears that no such evidence exists as there is no communication with the Somali government on SJD removals. • Nevertheless, as this item was reasonably included in the Production Order, the Minister is obliged to respond to it, even if only to confirm that no such evidence exists.
4) A copy of a IMM5149B, a requirement for obtaining a SJD;	• This item was reasonably included in the Production Order • However, this document may already have been disclosed, as it appears that this document is the SJD itself, various versions of which have already been disclosed.
5) The narrative report for Mr. Sharif as required per ENF10 s. 22.5 for the use of a single journey travel document;	• This item was reasonably included in the Production Order • However, it appears that it may have been disclosed at Exhibit "A" to the Germansen affidavit.
6) All evidence related to CBSA's contingency plan(s) if Mr. Sharif is refused entry to Somalia, as per ENF10 s. 22.5;	• This item was reasonably included in the Production Order • Contingency plans were set out in the Germansen affidavit. However, if there is further documentation related to these plans, this should be disclosed.
7) All information pertaining to Mr. Sharif's removal per ENF10 s. 26.1 for the Liaison Officer (LO) in Nairobi,	• This item was reasonably included in the Production Order

including all communications exchanged with the LO/LO's office in Nairobi for the purpose of Mr. Sharif's removal;	• However, it appears that all emails pertaining to Mr. Sharif's removal have now been disclosed. Future communication with Liaison Officers should be disclosed as the "Minister's duty to disclose is a continuing one": *Mawut* at para 36.
8) All internal documentation pertaining to the use of SJDs for involuntary removals and for removals to destination countries who have refused to issue a travel document for removal;	• This item is unreasonably broad and unnecessary as it would seem to apply to a vast number of destinations that are inapplicable to the Applicant's situation. • The Immigration Division's responsibility with respect to the SJD is to determine whether the Applicant's removal to Somalia is possible. Much of the information captured by this item would be irrelevant to that determination. • If the Immigration Division wished to obtain case-specific information on the general profile of those who have been removed *to Somalia*, i.e., whether anyone with a mental health diagnosis has been removed on an SJD, this ought to have been specifically set out in the Production Order, mindful of privacy interests and the Minister's obligation not to disclose protected information.
9) The most up-to-date wiki for removals to Somalia;	• This item was reasonably included in the Production Order • The Applicant states that the Germansen affidavit explains the nature of the removal process to Somalia, but this does not render this item irrelevant, redundant, or unnecessary. It was reasonable for the Immigration Division to wish to see this document in assessing whether the Applicant's removal to Somalia is possible.

	• This is particularly the case because a previous version of a CBSA wiki on Somalia indicated that Somalia may not allow the return of "any individual with a diagnosed mental health issue."
10) The most recent policy for removals to Somalia, including that which is not publicly available;	• This item was reasonably included in the Production Order • While the point of the detention review is not to conduct an "audit" of Canada's removal policy, the Applicant has not established that it was unreasonable for the Immigration Division to have access to the removal policy (assuming such a document exists) in assessing whether the removal of the Applicant to Somalia is possible.
11) The most recent wiki for the Liaison Officer and CBSA Migration Integrity Officer in Nairobi pertaining to removals to Somalia which transit through Nairobi; as well as all policy-related documents pertaining to escorted removals for Somalia and airline liability cases for Somalia;	• This item was reasonably included in the Production Order • The Applicant states that the relevant aspects of this document were summarized in the Germansen affidavit. • However, as the Court noted in *Mawut*, where a disclosure obligation pertains to documents, "there is no authority for the proposition that the obligation may be satisfied by a summary prepared by the disclosing party": *Mawut* at para 38.
12) All information pertaining to the removal procedure between Nairobi, Kenya to Somalia, including information on escorts (including privately contracted escorts), and the procedure for admission into Somalia.	• This item was reasonably included in the Production Order • Properly understood, this item relates to Canadian removal procedures between Nairobi and Somalia and the specific procedure for admission into Somalia. This would appear to be directly relevant to the question of whether Mr. Sharif's entry into Somalia is possible. • Once again, it is not necessarily

	sufficient that the Germansen affidavit provides a summary of these procedures. Ultimately, it is for the Immigration Division, and not Mr. Germansen, to decide whether removal is possible.

[63] As noted above, and set out in detail below, I have determined that the application for judicial review in respect of the ID's Release Order ought to be granted. It is for this reason that I have provided the above table of findings, as they may well be relevant to the reconsideration (and potential ongoing review) of the Applicant's detention.

[64] Finally, on this issue, I refer back to the disclosure obligations set out in *Brown* and *Mawut*. These obligations must be observed in good faith. In the coming review of Mr. Sharif's detention, the operating premise of the Hearings Officer must be that disclosure is the rule and withholding information, the exception. As my colleague Justice Battista recently observed, "full disclosure benefits the justice system as a whole because it facilitates the search for truth, allowing access to information and the testing of assertions": *Ali v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1085 at para 33, citing *Mawut* at para 29.

B. ***The Release Order - IMM-27407-25***

(1) Should the Court dismiss this application because the Applicant has not challenged an independent and determinative ID finding?

[65] As noted above, the ID ordered the Respondent's release because it found that the Minister had failed to establish a nexus to an immigration purpose, namely removal. This was a crucial finding because the Court of Appeal's decision in *Brown* established that for detention to

be legal under the IRPA, there must, as a threshold issue, be a nexus to an immigration purpose. If that is missing, detention under the IRPA is not possible: *Brown* at para 90.

[66] The "no nexus" conclusion was based on two separate findings. The first was that while the Applicant had clearly established plans to *remove* Mr. Sharif from Canada, it had failed to establish with sufficient evidence that he would be authorized to *enter* Somalia, as required by section 241 of the *Immigration and Refugee Protection Regulations* [IRPR].

[67] The second finding, which the ID described as forming "a separate basis for finding that there is no nexus to removal" relates to the Respondent's mental health. Mr. Sharif has been diagnosed with schizophrenia. As alluded to in the section above, the record contained a reference to a 2023 CBSA Wiki document on travel document procedures. The reference is as follows:

> FROM CBSA WIKI:
>
> TRAVEL DOCUMENT PROCEDURE
>
> 2023-04-11
>
> Somalia only issues travel documents for voluntary returns.
>
> *Somalia does not allow the return of any individual with a diagnosed mental health issue* [emphasis added].

[68] The Respondent argues that the Applicant has challenged the first of the above findings, but has made no arguments related to the second finding, which stands alone as a determinative finding of no nexus to an immigration purpose. As the Applicant has not challenged an independent, determinative finding, the Respondent argues that this application should be dismissed on this basis alone.

[69] The Applicant counters that it did address the ID's findings on this issue and, as such, the Respondent's arguments in this regard should be rejected.

[70] While the Minister's references to the ID's findings on the second nexus issue are somewhat oblique, I agree with the Minister that they were not ignored, and they did not go unchallenged. I say that the Minister's submissions on this issue were oblique because they did not explicitly address the issue of the Applicant's mental health and the likelihood that Somalia would grant him entry. Rather, the Minister provided general references to the current removals regime in respect of Somalia, and to the ID's allegedly erroneous reliance on outdated information. More specifically, the Applicant noted as follows:

> This is the current process and evidence regarding the success of Somalia removals. The ID erroneously relies on previous CBSA guidance for circumstances where the Somali government would not issue a travel document. That evidence did not speak to the use of SJDs.

[71] The above statement contains a citation to the ID's reasons with respect to the Respondent's mental health status and the CBSA wiki on travel documents and Somalia's refusal to facilitate the return of those with mental health conditions. As a result of the above, I am convinced that the Applicant did challenge, in a general sense, the ID's findings on this issue.

(2) Did the ID commit a jurisdictional error by ignoring the Stay Order of Justice Saint-Fleur

[72] The Minister argues that the ID committed a serious error in faulting the Minister for failing to disclose "the exact type of information Justice Saint-Fleur said was inappropriately ordered disclosed." I disagree for the following reasons.

[73] First, a note on timing. At the time of the detention review hearing on December 8, 2025, Justice Saint-Fleur's Stay Order had not yet been issued. However, by the time that the ID Member provided his reasons for ordering the Respondent's release, on December 10, 2025, the Minister's stay had been granted, which was specifically acknowledged by the Member: "As I understand it from a letter that the Minister's Counsel submitted to this Division, the Minister's stay motion was successful, and as such my production order has been stayed."

[74] Beyond this, the Member was explicit that the Release Order was not predicated on a general failure on the part of the Minister to provide disclosure:

> For greater clarity, I am not ordering release in accordance with paragraph 149 of Brown, that being vitiating detention due to a lack of timely disclosure resulting in a breach of procedural fairness. My finding is solely based on their [sic] being insufficient case specific and credible evidence before me that there is a realistic possibility of removal.

[75] The timing and circumstances of the Stay Order put the ID Member in a very difficult situation. On the one hand, the Member was obligated to proceed with a detention review and to freshly assess whether the Minister had established an evidentiary foundation that the Respondent's removal remained possible. On the other hand, the Member had in hand a stay order which found that a serious issue arose as to some, but not necessarily all, of the items contained in the Production Order. As the Minister now acknowledges, several of the items identified in the Production Order were not unreasonable, although debate remains as to the extent to which these items have already been produced.

[76] Taking the above into consideration, I am not convinced that the ID ignored the Stay Order of Justice Saint-Fleur, or that the Member implicitly faulted the Minister for failing to provide documents that the ID was specifically enjoined from requiring.

[77] Rather, I find that the ID Member set out to do precisely what he was required to do: that is, to assess (based on the record before him) whether the Minister had met the evidentiary and legal burden of establishing that Mr. Sharif's detention continued to have a nexus to an immigration purpose. Whether the ID member's determination in this respect was reasonable is a separate matter to which I will turn below, but for present purposes, I see no basis on which to conclude that the ID ignored, or otherwise disregarded, the Order of Justice Saint-Fleur.

[78] I am further supported in this conclusion by the fact that the ID's findings on nexus were based on: 1) whether the Minister had established that Somalia would admit the Applicant, pursuant to section 241 of the IRPR, which was a new argument raised by the Respondent; and 2) the evidence that had already been in the Record for many months regarding Somalia's refusal to allow the return of those with mental health issues. In other words, the ID's conclusions appear to have been based more on the submissions of counsel and the existing record, rather than any conscious disregard of Justice Saint-Fleur's Stay Order.

(3) Did the ID misapply the decision in *Brown* by applying a certainty standard to the prospect of the Respondent's removal?

[79] Next, the Applicant argues that the ID erred in applying a standard of certainty to the prospect of the Respondent's removal. This, the Applicant argues, is incompatible with the

decision in *Brown*, which affirmed that removal must only be a *possibility* to maintain a nexus between detention and an immigration purpose.

[80] In this case, the Minister argues that Mr. Sharif's removal is transparently possible, as evidenced by the fact that his removal would already have taken place, but for the intervention of the Ontario courts. While the Minister acknowledges that it is always possible that a complex removal such as this will not be successful, there was ample evidence before the Member that established that removal is possible. Specifically, the Applicant points to the following evidence that was before the ID Member:

a) Travel documents, like passports, issued by a foreign state are different from SJDs.

b) Regarding the removal of Somali foreign nationals on SJDs, the CBSA does not communicate with Somali authorities.

c) Regarding the removal of Somali foreign nationals on travel documents, Somalia's continued position is that they need to conduct in-person interviews, which have not occurred recently, nor likely to occur in the near future, despite CBSA engaging with Somali authorities.

d) There have been 14 successful removals of foreign nationals to Somalia between October 2024 and October 2025 – of these 14, ten were successful removals using an SJD, and four used a valid passport, a travel document. This signifies the "success of the previous SJD removals to Somalia" which "is accepted by Somali authorities upon landing for entry".

e) The process for procuring a SJD recently changed in July 2025, dispelling the Respondent's arguments that a voluntary statutory declaration is required.

f) There have been six successful non-voluntary removals to Somalia since July 2025.

> g) There have also been no attempted removals to Somalia during the aforementioned period which were refused entry into Somalia.

[81] In further developing this argument, the Minister points to various passages in the Release Order that suggest the Member was applying a standard that was considerably higher than the "realistic possibility" standard required by *Brown*. For example:

> a) …none of that is evidence that the Somali authorities **have or will** authorize Mr. SHARIF's entry to Somalia…
>
> b) In Mr. SHARIF's case, the Minister has not proposed a next step that will advance the process of **ensuring** Mr. SHARIF will be authorized entry into Somalia…
>
> c) …there is no case-specific credible evidence that Mr. SHARIF **will be** authorized entry…
>
> d) Further, the affidavit of Mr. Germanson (ph) indicated that there have been no attempted removals to Somalia that were refused entry; however, this is also not case-specific credible evidence that Mr. SHARIF himself **will be** authorized entry to the country.
>
> e) None of the evidence from the Minister speaks to whether Somalia **will allow** Mr. SHARIF to enter given that he has a diagnosed mental health issue.
>
> f) …the Minister has not produced any case-specific credible evidence that Mr. SHARIF **will be** authorized entry into Somalia (decision line 316-317). [emphasis added by the Applicant]

[82] The Respondent counters that these passages are of no consequence because they represent factual findings, assessed on a balance of probabilities. When it came time for the ID to apply these findings to the question of whether the Minister had met its legal burden, the Member clearly demonstrated that he understood the applicable threshold, as indicated by the below:

> It is on the Minister to provide evidence that there is a realistic possibility that Mr. SHARIF will be allowed entry to Somalia. The Minister's evidence to date, for the aforementioned reasons, has failed to establish a realistic possibility that he will be allowed entry to Somalia, and as such, I find that Mr. SHARIF's detention has no nexus to removal.

[83] I am certainly convinced that, on some fundamental level, the Member understood the applicable legal standard emanating from *Brown*. However, I am also convinced that, at least in some instances, the Member lost sight of the interplay between the evidentiary and legal burdens borne by the Minister. Take for instance the following passage, as quoted above: "the Minister has not proposed a next step that will advance the process of ensuring Mr. Sharif will be authorized entry into Somalia." To "ensure" is to "make something certain to happen": see *Cambridge Dictionary*, sub verbo "ensure," accessed online 4 February 2026. To state things plainly, there is simply no burden on the Applicant to provide evidence that Mr. Sharif's entry into Somalia has been *ensured*. What is required, is that the Minister provide evidence to demonstrate, on a balance of probabilities, that there is a realistic possibility of effecting Mr. Sharif's removal from Canada and entry into Somalia.

[84] The above is perhaps the clearest instance of the ID Member's error in this regard, but I am persuaded that it was neither an isolated misstep, nor simply an unfortunate use of words. It follows that I do not accept the Respondent's argument that the passages are merely innocuous examples of the Board's evidentiary assessment.

[85] I am also aware that, in other instances, the ID Member properly articulated the legal and evidentiary burdens. The question then becomes how to evaluate a decision that, at times,

communicated the correct legal principles, but at other times, fell into error. In the end, I am persuaded by the considerable body of evidence suggesting that when an officer makes a reviewable error regarding a central issue, such as the applicable legal and evidentiary burdens, the Court should generally return the matter for reconsideration: *Luse v Canada (Citizenship and Immigration)*, 2017 FC 464; *Paz Ospina v Canada (Citizenship and Immigration)*, 2011 FC 681; *Alam v Canada (Minister of Citizenship and Immigration)*, 2005 FC 4.

[86] In addition to the above, I have concluded that there are at least two other aspects of the decision under review that are unreasonable.

[87] The first is that, at least in some instances, the ID member misinterpreted the evidence that had been disclosed by the Minister, most notably the Germansen affidavit. For instance, the Member noted as follows:

> Based on the affidavit evidence of Mr. Germanson … it is clear that the Somali authorities require in person interviews before they will authorize Mr. SHARIF to enter Somalia. Mr. Germanson…in his affidavit acknowledges that there are no plans for such an interview to take place.

[88] This statement is not an accurate description of the Germansen affidavit. The affidavit did *not* indicate that the Somali authorities require interviews before authorizing an individual's entry into Somalia, but that such interviews were required for returns on a Somali travel document. The interview requirement for travel on a Somali document was not particularly germane to the Applicant's removal on an SJD, as the SJD removals process does not involve the Somali authorities. In this regard, the only evidence before the Board was that the government

has removed ten individuals on SJDs to Somalia over the last year, none of whom have been refused entry.

[89] Second, as I indicated in the hearing into this matter, Mr. Sharif's circumstances appear to be distinct from those at issue in essentially every other case that has advanced the jurisprudence in this area in recent years. In cases such as *Brown*, *Mawut* and *Canada (Public Safety and Emergency Preparedness) v Suleiman*, 2022 FC 286 [*Suleiman*], the status quo at successive detention reviews was that the Minister could not remove the individual but claimed to be working toward that possibility.

[90] In *Brown*, the status quo was Canada's inability to remove Mr. Brown because it took the Jamaican government nearly five years to confirm Mr. Brown's nationality and issue a travel document. In *Suleiman*, the CBSA had not been able to effect the Respondent's removal because he was considered stateless as he had no confirmation of citizenship in any country. In *Mawut*, the CBSA had not removed the Applicant because South Sudan had a longstanding policy of refusing to issue travel documents to its nationals found inadmissible to Canada.

[91] Finally, there is *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 and the other security certificate cases, in which detention became prolonged in part because the government could not remove the individuals in question due to concerns related to persecution and torture in the countries of return.

[92] The situation that arises in Mr. Sharif's case is, in some sense, the opposite of these situations, as the Minister had developed advanced plans to remove Mr. Sharif that were on the

cusp of being executed, but for the stays of removal ordered by the Ontario courts. The Applicant's SJD had been obtained. Arrangements had been made with airlines and layover countries. A contingency plan was in place in case Mr. Sharif was not permitted entry into Somalia. These were important facts and strong evidence of the *possibility*, if not the assurance, of Mr. Sharif's removal. It is notable, in fact, that the same ID member in this matter recognized these facts at a previous detention review, stating as follows:

> On any potential issues surrounding nexus, I do find that a nexus to removal exists. Citing *Brown*, the possibility of removal must be realistic, not fanciful, and not based on speculation, nor can it be based on assumption or conjecture. There's no impasse here. The Minister has a travel document in the form of a single journey document for Mr. SHARIF. The prior stay on removal expires 30 days from September 18th at which point there will be no longer any impediments to Mr. SHARIF's removal.

[93] To his credit, the ID Member acknowledged his previous findings and explained why he did not feel bound by them. I will not make a finding as to whether these reasons for departing from a previous detention order were sufficient in the sense contemplated at para 134 of *Brown*, because the Applicant has not raised this issue. My point for present purposes is the concern that the Member in the latest detention review failed to adequately grapple with the evidence suggesting not only that Mr. Sharif's removal was possible, but that at various points in the process, it had been imminent.

[94] Of course, it was never assured that Somalia would permit Mr. Sharif's entry into the country. The Applicant plainly acknowledged this reality, and planned for it, as set out in the Germansen affidavit. In these circumstances, I believe it was important for the ID to consider the

Minister's contingency planning in evaluating the overall removal strategy that had been prepared for Mr. Sharif. This was not done.

[95] When asked about this at the judicial review hearing, the Respondent argued that the ID need not have considered the Minister's contingency planning, because it had no bearing on the question of whether Mr. Sharif would be permitted entry into Somalia. I disagree.

[96] The Minister's contingency planning was one part of its overall effort to do what it is statutorily obligated to do – that being to enforce removal orders as soon as possible: IRPA section 48. Taken together, the Minister's removal strategy forms the immigration purpose that the Immigration Division was responsible for evaluating, in connection with Mr. Sharif's detention.

[97] Seen in this light, the Minister's contingency planning was a relevant consideration and ought to have been evaluated by the ID. I am supported in this conclusion by the fact that the Respondent specifically requested information related to the Minister's contingency planning in his request for a production order. Evidently, the ID agreed that this was relevant information because it was included in the Production Order, which required that the Minister produce: "all evidence related to CBSA's contingency plan(s) if Mr. Sharif is refused entry to Somalia." Suffice to say, if information is sufficiently important and relevant to include in a production order, it is also worthy of consideration in the decision that follows that order.

[98] None of the above should be construed as a finding that the Minister has established that Mr. Sharif's removal is a realistic possibility, or that there remains an immigration nexus to his

detention. It will be for future ID panels to make this determination based on the evidence available to them at that time. Given my findings on the Production Order, it will be permissible, if not necessarily obligatory, for the ID to require more specific information from the Minister in making that determination.

(4) Did the ID err in ordering the release of the Respondent without sufficiently robust plans to mitigate the risk that he poses?

[99] Given my conclusion that this matter must be returned to the ID for redetermination, I need not consider this issue in significant detail. Should a subsequent ID panel order the release of the Respondent, it will be for that panel, at that time, to determine the appropriate conditions for release. I will only say the following. First, in *Suleiman*, my colleague Justice Sadrehashemi affirmed the principle that when the Immigration Division finds that it no longer has the authority to continue detention because there is no nexus to removal, it retains the authority to impose conditions on release: see *Suleiman* at para 77.

[100] Second, it is possible for the Minister to oppose release, while also providing the ID with specific and detailed submissions about the conditions of release, should the tribunal determine that release is appropriate. In this case, the Minister's submissions on the conditions of release were minimal, vague, and of limited assistance to the ID Member. This fact undermined the Minister's subsequent position before this Court that the conditions of release imposed by the ID were inadequate.

VI. CONCLUSION

[101] For the reasons set out above, the application for judicial review in respect of the Production Order (Court File Number IMM-25903-25) is granted in part, with the particulars of my findings reproduced at Annex “A” of this judgment.

[102] The application for judicial review in respect of the Release Order (Court File Number IMM-27407-25) is granted and the matter is remitted to the Immigration Division for reconsideration in accordance with these reasons.

[103] The parties did not propose questions of general importance for certification, and I agree that none arise.

[104] I commend counsel for both parties in this matter, which was complex and proceeded on an expedited basis. Submissions from both were exceptionally helpful in my deliberations.

[105] Finally, I will take the unusual step of commending the ID Member who presided over these matters. While I have found that both decisions under review require reconsideration, I can also appreciate that the Member went about the difficult task of navigating this case with diligence.

JUDGMENT in IMM-27407-25 and IMM-25903-25

THIS COURT'S JUDGMENT is that:

1. The Application for Judicial Review in Court File Number IMM-25903-25 is granted in part, with the particulars set out at Annex "A" of this judgment.

2. The Application for Judicial Review in Court File Number IMM-27407-25 is granted and the matter is remitted to a different member of the Immigration Division of the Immigration and Refugee Board for reconsideration in accordance with these reasons.

3. There is no question for certification.

4. No costs are awarded.

"Angus G. Grant"
Judge

Annex "A"

Item	Finding
1) All communications between CBSA and the Somali authorities including but not limited to communications between CBSA (removals, Stakeholder Engagement Unit, Liaison Officers, Migration Integrity Officers) and Somali authorities in Canada, the US, Kenya, and Somalia;	• This item is unreasonably broad because it is unlimited in scope—both temporally and as it relates to the subject matter of these communications. This is contrary to the findings in *Brown* at para 142. If this item was *meant* to be limited to the situation of Mr. Sharif, this should have been made explicit. • Production Orders create obligations that must be specifically actioned. As such, they must be intelligible on their own terms. It is insufficient to suggest that an overbroad Production Order can be rehabilitated by reference to submissions made in support of it.
2) All communications between CBSA and IRCC, including "Diplomatic Notes" as referred to in M9;	• This item was reasonably included in the Production Order, as it relates directly to the removal plans that were made in respect of Mr. Sharif. • The references to "Diplomatic Notes" in the Tribunal's Exhibit M9 were specific, and likely subject to disclosure, pursuant to *Mawut* at para 52 and *Brown* at para 145. It will be for the Tribunal to determine whether anything in these "Notes" is relevant to the Applicant's removal, given the Minister's plan to remove Mr. Sharif on an SJD rather than through the cooperation of the Somali state. • Should the Minister consider information included in this item to be subject to public interest privileges arising under section 38.01 of the *Canada Evidence Act*, RSC, 1985, c C-5, the Minister ought to specifically

	raise this concern to the Immigration Division.
3) All evidence the Minister has in their possession regarding any confirmation or assurances received that Mr. Sharif will be allowed entry into Somalia if removed on a SJD;	• This item was reasonably included in the Production Order • However, it appears that no such evidence exists as there is no communication with the Somali government on SJD removals. • Nevertheless, as this item was reasonably included in the Production Order, the Minister is obliged to respond to it, even if only to confirm that no such evidence exists.
4) A copy of a IMM5149B, a requirement for obtaining a SJD;	• This item was reasonably included in the Production Order • However, this document may already have been disclosed, as it appears that this document is the SJD itself, various versions of which have already been disclosed.
5) The narrative report for Mr. Sharif as required per ENF10 s. 22.5 for the use of a single journey travel document;	• This item was reasonably included in the Production Order • However, it appears that it may have been disclosed at Exhibit "A" to the Germansen affidavit.
6) All evidence related to CBSA's contingency plan(s) if Mr. Sharif is refused entry to Somalia, as per ENF10 s. 22.5;	• This item was reasonably included in the Production Order • Contingency plans were set out in the Germansen affidavit. However, if there is further documentation related to these plans, this should be disclosed.
7) All information pertaining to Mr. Sharif's removal per ENF10 s. 26.1 for the Liaison Officer (LO) in Nairobi, including all communications exchanged with the LO/LO's office in Nairobi for the purpose of Mr. Sharif's	• This item was reasonably included in the Production Order • However, it appears that all emails pertaining to Mr. Sharif's removal have now been disclosed. Future

removal;	communication with Liaison Officers should be disclosed as the "Minister's duty to disclose is a continuing one": *Mawut* at para 36.
8) All internal documentation pertaining to the use of SJDs for involuntary removals and for removals to destination countries who have refused to issue a travel document for removal;	• This item is unreasonably broad and unnecessary as it would seem to apply to a vast number of destinations that are inapplicable to the Applicant's situation. • The Immigration Division's responsibility with respect to the SJD is to determine whether the Applicant's removal to Somalia is possible. Much of the information captured by this item would be irrelevant to that determination. • If the Immigration Division wished to obtain case-specific information on the general profile of those who have been removed *to Somalia*, i.e., whether anyone with a mental health diagnosis has been removed on an SJD, this ought to have been specifically set out in the Production Order, mindful of privacy interests and the Minister's obligation not to disclose protected information.
9) The most up-to-date wiki for removals to Somalia;	• This item was reasonably included in the Production Order • The Applicant states that the Germansen affidavit explains the nature of the removal process to Somalia, but this does not render this item irrelevant, redundant, or unnecessary. It was reasonable for the Immigration Division to wish to see this document in assessing whether the Applicant's removal to Somalia is possible. • This is particularly the case because a previous version of a CBSA wiki on Somalia indicated that Somalia may not

	allow the return of "any individual with a diagnosed mental health issue."
10) The most recent policy for removals to Somalia, including that which is not publicly available;	• This item was reasonably included in the Production Order • While the point of the detention review is not to conduct an "audit" of Canada's removal policy, the Applicant has not established that it was unreasonable for the Immigration Division to have access to the removal policy (assuming such a document exists) in assessing whether the removal of the Applicant to Somalia is possible.
11) The most recent wiki for the Liaison Officer and CBSA Migration Integrity Officer in Nairobi pertaining to removals to Somalia which transit through Nairobi; as well as all policy-related documents pertaining to escorted removals for Somalia and airline liability cases for Somalia;	• This item was reasonably included in the Production Order • The Applicant states that the relevant aspects of this document were summarized in the Germansen affidavit. • However, as the Court noted in *Mawut*, where a disclosure obligation pertains to documents, "there is no authority for the proposition that the obligation may be satisfied by a summary prepared by the disclosing party": *Mawut* at para 38.
12) All information pertaining to the removal procedure between Nairobi, Kenya to Somalia, including information on escorts (including privately contracted escorts), and the procedure for admission into Somalia.	• This item was reasonably included in the Production Order • Properly understood, this item relates to Canadian removal procedures between Nairobi and Somalia and the specific procedure for admission into Somalia. This would appear to be directly relevant to the question of whether Mr. Sharif's entry into Somalia is possible. • Once again, it is not necessarily sufficient that the Germansen affidavit provides a summary of these procedures. Ultimately, it is for the Immigration Division, and not Mr.

	Germansen, to decide whether removal is possible.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-27407-25 AND IMM-25903-25
STYLE OF CAUSE:	THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v MAHIR YAHYA SHARIF
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 29, 2026
JUDGMENT AND REASONS:	GRANT J.
JUDGMENT AND REASONS DATED:	FEBRUARY 5, 2026
ORDER ISSUED:	FEBRUARY 3, 2026

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