

**Date: 20080502**

**Docket: IMM-2013-08**

**Citation: 2008 FC 575**

**Vancouver, British Columbia, May 2, 2008**

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

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Applicant**

**and**

**JOSE FRANCISCO CARDOZA QUINTEROS**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This motion is for an order pursuant to section 18.2 of the *Federal Courts Act*, staying the order of Immigration Division (ID) Member Shaw Dyck, dated April 29, 2008, releasing the respondent from detention. The applicant requests that the impugned order be stayed until the earlier of either:

- (a) the application for leave and for judicial review of that order is determined on its merits; or
- (b) the respondent's next statutorily required detention review hearing.

[2] The respondent is a citizen of El Salvador who came to Canada on September 2, 2007 and made a claim for refugee protection. He was required to return to the port of entry for continued examination on September 4, 2007.

[3] On that date, the respondent was interviewed by two officers with the Canada Border Services Agency (CBSA). During the course of that interview, the respondent made a number of statements regarding his involvement with a criminal organization in El Salvador, the MS-13 or the Mara Salvatrucha, between 1999 and 2004. Among other things, the respondent admitted having killed two to four people, and having witnessed between one hundred to one hundred and fifty murders.

[4] After this interview, the respondent was reported by the CBSA as being inadmissible to Canada under paragraph 37(1)(a) of the *Immigration and Refugee Protection Act*, S.C. 2001, ch. 27 (IRPA), for organized criminality.

[5] The respondent was detained due to concerns with his identity, but at the respondent's second detention review hearing, which took place on September 13, 2007, the applicant sought to have the respondent's detention continued due to the danger it argued he posed to the public. At this hearing, counsel for the respondent stated that the respondent denied having been a member of the MS-13, and that he had claimed to be a member of that organization because he wanted admission into Canada. ID Member Nupponen concluded that the respondent could be released on terms and conditions.

[6] The applicant filed an application for leave and judicial review of that decision, but did not seek a stay of the respondent's release pending the disposition of that application.

[7] An admissibility hearing was held and, on February 22, 2008, ID Member Tessler determined that the respondent "was a member of the Mara Salvatrucha in El Salvador", and that he is inadmissible for organized criminality under paragraph 37(1)(a) of IRPA. The respondent was ordered deported from Canada. Neither this determination nor this order have been challenged by the respondent.

[8] On March 31, 2008, the respondent applied for a Pre-Removal Risk Assessment (PRRA), and filed his final PRRA submissions on April 22, 2008. According to the applicant, this application will be processed on an expedited basis.

[9] On April 17, 2008, the applicant's judicial review application of ID Member Nupponen's decision regarding the detention of the respondent was allowed. More particularly, Justice Hansen ruled that ID Member Nupponen had erred in law in concluding that, even if the respondent had been convicted of robbery, this conviction did not come within the purview of paragraph 246(f)(ii) of the *Immigration and Refugee Protection Regulations*, S.O.R./2002-227.

[10] On April 21, 2008, the respondent voluntarily reported to the CBSA to be retaken into custody.

[11] As required by subsection 57(1) of IRPA, a detention review hearing was held on April 23, 2008. In a decision released April 29, 2008, ID Member Shaw Dyck came to the conclusion that the respondent should be released from detention on terms and conditions.

[12] The applicant has applied for leave and for judicial review of this decision, and in the meantime, seeks a stay of the respondent's release.

[13] In order to obtain a stay, an applicant must demonstrate: (1) that there is a serious issue to be tried; (2) that the applicant would suffer irreparable harm if no order were granted; and (3) that the balance of convenience favours the granting of the order (*Toth v. Canada (Minister of Employment and Immigration)* (1988), 86 N.R. 302 (F.C.A)).

[14] Upon hearing counsel for the parties and upon reading the material filed, I am satisfied that there is a serious issue to be tried with respect to ID Member Shaw Dyck's consideration of the following facts:

- (a) the unchallenged determination made on February 22, 2008, by ID Member Tessler that the respondent "was a member of the Mara Salvatrucha in El Salvador", and that he is inadmissible for organized criminality under paragraph 37(1)(a) of IRPA;
- (b) the unchallenged deportation order subsequently made against the Respondent;
- (c) the impact that the media attention to this case, and the imminence of the respondent's removal, may have on the respondent, considering that the ID

member has concluded that the respondent had a tendency to commit violent criminal acts when in situations of conflict.

Given the nature of the above serious issue, I do not find that the danger to the public, if a stay is not granted, is purely speculative. The danger is real and, for the purpose of this motion, it constitutes irreparable harm.

[15] Finally, the security of the public, in the circumstances, tips the balance of convenience in favour of the applicant.

[16] Consequently, ID Member Shaw Dyck's order releasing the respondent from detention will be stayed, although not on all terms proposed by the applicant, until the earlier of either:

- (a) the application for leave and for judicial review of that order is determined on its merits; or
- (b) the day on which the Pre-Removal Risk Assessment (PRRA) is determined.

**ORDER**

Immigration Division Member Shaw Dyck's order, dated April 29, 2008, releasing the respondent from detention, is stayed until the earlier of either:

- (a) the application for leave and for judicial review of that order is determined on its merits; or
- (b) the day on which the Pre-Removal Risk Assessment (PRRA) is determined.

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"Yvon Pinard"  
Judge

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

**DOCKET:** IMM-2013-08

**STYLE OF CAUSE:** MCI v. JOSE FRANCISCO CARDOZA QUINTEROS

**PLACE OF HEARING:** Vancouver, British Columbia

**DATE OF HEARING:** May 2, 2008

**REASONS FOR ORDER  
AND ORDER:** PINARD J.

**DATED:** May 2, 2008

**APPEARANCES:**

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FOR THE RESPONDENT

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