

CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Inadmissible Persons

Detention and Release

Judicial review of Immigration Division decision (ID) ordering respondent's release from detention — Respondent, Filipino citizen, obtaining permanent residence at time of entry — Losing status after criminal conviction — Deportation order issued in 2012 — Transferred to immigration detention upon completion of criminal sentence on grounds respondent danger to public, unlikely to appear for his removal — Receiving positive decision on outstanding pre-removal risk assessment (PRRA) — As result, arrangements to enforce removal suspended — Removal order standing, but stayed by operation of law — During 30-day detention review, applicant sought continued detention of respondent pending formulation of adequate release plan — ID concluding ongoing detention infringing *Canadian Charter of Rights and Freedoms* (Charter), ss. 7, 9; that *Immigration and Refugee Protection Regulations*, SOR/2002-227 (Regulations), s. 248 factors weighing in favour of respondent's release; — Also concluding that absence of enforceable removal order sufficient to determine that respondent's detention was arbitrary, breaching Charter, s. 9 — Whether ID's decision unreasonable — Respondent's positive, albeit restricted, PRRA decision was fact at heart of ID's decision — Enforceability of removal order not prerequisite to detention but requiring existence of valid order — Legislation not including requirement that removal order be enforceable in order to effect detention — Mere existence of removal order, along with danger opinion, may suffice to justify continued detention — Assuming existence of valid removal order, any of circumstances in *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, s. 58(1) may justify refusing to release detainee — Removal constituting one hinge in machinery of immigration control — Danger being second hinge that may necessitate detention — ID's interpretation unreasonably departing from Court's case law, including *Canada (Public Safety and Emergency Preparedness) v. Samuels*, 2009 FC 1152 — When words of s. 58(1) are read in their grammatical, ordinary sense, one cannot read-in word "enforceable" before removal order — ID's decision to read-in that language equivalent to declaration of constitutional invalidity — Without proper constitutional challenge, no reason to depart from *Samuels* interpretation — Respondent remaining subject to valid removal order — By engaging in Charter, s. 9 analysis to deem detention unlawful for arbitrariness, ID unreasonably predetermining outcome of assessment for detention or release mandated by Regulations, s. 248 — ID erring in determining end point of anticipated length of detention under s. 248(c) — ID could, should have simply ruled on whether to continue detention or to release individual on basis of toolkit provided by statute, namely Regulations, s. 248, rather than predetermining it with Charter analysis — Principles of administrative law, statutory interpretation well established, could have been used to arrive at conclusion ID did, namely that respondent should be released under conditions addressing his risks — Conditions placed upon respondent's release by ID unreasonable — Matter sent back to ID — Application allowed.

CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) V. TAINO (IMM-1495-20, 2020 FC 427, Diner J., reasons for judgment dated March 25, 2020, 42 pp.)