

Federal Court



Cour fédérale

Date: 20221125

Docket: IMM-11753-22

Citation: 2022 FC 1629

Ottawa, Ontario, November 25, 2022

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

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

Applicant

and

ALBERTO JAVIER SANTIAO CRUCETA

Respondent

ORDER AND REASONS

[1] The Minister is bringing a motion for an interim stay of the order made by the Immigration Division [ID] of the Immigration and Refugee Board, releasing Mr. Santiago Cruceta from detention. At the hearing yesterday, I indicated to the parties that the motion was dismissed. Here are my reasons for doing so.

[2] As far as I can tell from the parties' correspondence and submissions, the essential facts are as follows. Mr. Santiago Cruceta was arrested upon entering Canada, because a CBSA officer suspected that he was inadmissible. Upon a 48-hour review, he was maintained in detention, as the ID member found that he was a "low end" flight risk, but not a danger to the public. At the seven-day review, however, he was released from detention, under condition that he would reside with a bondsperson.

[3] The Minister's application for judicial review stems from the following incident taking place at the ID hearing. Counsel for Mr. Santiago Cruceta had notified the hearing officer of the identity of the proposed bondsperson before the hearing. Apparently in response to a question from the ID member, the proposed bondsperson testified that he did not have a criminal record. He was not cross-examined on this topic. After a break, both parties made their submissions. A further break was taken. When the hearing resumed and the ID member was ready to announce his decision, the hearing officer asked for leave to bring further evidence, having discovered during the break that the proposed bondsperson had a cannabis-related conviction dating back to 2003. Counsel for Mr. Santiago Cruceta objected, in part because the proposed bondsperson had left the hearing and could not be further questioned about the conviction, for example to ascertain whether he had obtained a pardon. The ID member denied the hearing officer's request and proceeded to give his decision.

[4] The Minister argues that this constitutes a breach of procedural fairness and that the ID member's failure to consider relevant evidence renders his decision unreasonable.

[5] I do not need to decide whether this argument raises a serious issue, as I am of the view that the Minister has not shown that irreparable harm would ensue if the stay were denied.

[6] The ID found that Mr. Santiago Cruceta is not a danger to the public. The Minister is not challenging this determination. Moreover, while Mr. Santiago Cruceta is considered a flight risk, I am told that the ID member found that the risk was at the low end of the spectrum. Given all the circumstances of the case, including the nature of the bondsperson's alleged conviction and the conditions imposed by the ID, I am of the view that releasing Mr. Santiago Cruceta will not give rise to irreparable harm.

[7] Moreover, if we were to consider the balance of convenience, Mr. Santiago Cruceta's liberty interest would carry significant weight in the circumstances.

ORDER in IMM-11753-22

THIS COURT ORDERS that the applicant's motion for a stay of the respondent's release is denied.

"Sébastien Grammond"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11753-22

STYLE OF CAUSE: MPSEP v ALBERTO JAVIER SANTIAO CRUCETA

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 24, 2022

ORDER AND REASONS: GRAMMOND J.

DATED: NOVEMBER 25, 2022

APPEARANCES:

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Jessica Chandrashekar FOR THE RESPONDENT

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