



[2022] 1 F.C.R. D-2

CITIZENSHIP AND IMMIGRATION

EXCLUSION AND REMOVAL

Inadmissible Persons

Detention and Release

Judicial reviews of decisions by Immigration and Refugee Board, Immigration Division (ID) ordering respondent's release— Respondent citizen of South Sudan — Having lengthy criminal record, enforceable removal order against him — Detained pursuant to *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 — Enforcement officer granting deferral of removal — Respondent suffering from array of mental health conditions — ID finding, *inter alia*, that respondent not allowed outside of his cell during 16 of 24 days while in detention, breaching respondent's *Canadian Charter of Rights and Freedoms*, s. 12 rights — Finding application of analytical framework governing detention reviews leading to respondent's release — Considering factors mentioned in *Immigration and Refugee Protection Regulations*, SOR/2002-227, s. 248, namely reason for detention, past and likely future length of time in detention, cause of any delays, alternatives to detention — In balancing these factors, ID finding that continuing respondent's detention disproportionate use of power of immigration detention — Ordering respondent's release on standard conditions, which included duty to report biweekly to nearest Canada Border Services Agency (CBSA) office, to keep CBSA informed of residential address — Central issue whether ID's balancing of s. 248 factors reasonable — ID's decision unreasonable — Where ID releasing person posing danger to public or flight risk, it must impose conditions designed to mitigate these risks under Act, s. 58(3) — ID failed to do so here — Unreasonable for ID to recognize that its decision "is not a practical outcome," but that "this is one of those rare cases where the practical must give way to the principle" — ID's decision ignoring case law requiring it to impose conditions of release intended to mitigate danger to public posed by respondent — Not necessary here to rely on idea that conditions of release having to "virtually eliminate" any danger to public posed by respondent — "Virtually eliminate" test impossible to meet, could foreclose release whenever detainee danger to public — This not what Act, s. 58, Regulations, s. 248 contemplating — ID's decisions quashed — Application allowed.

CANADA (PUBLIC SAFETY AND EMERGENCY PREPAREDNESS) V. MAWUT (IMM-1443-22, IMM-2354-22, 2022 FC 415, Grammond J., reasons for judgment dated March 25, 2022, 16 pp.)