IN THE SUPREME COURT OF BELIZE, A.D. 2022

CLAIM No. 260 of 2022

BETWEEN:

YENICEN DEL TORO PEREZ	1ST APPLICANT
YELENYS GONZALEZ FERNANDEZ	2ND APPLICANT*
NIURISLEIDYS GARCIA GONZALEZ	3RD APPLICANT
MANUEL ALBERTO FANDINO SULET	4TH APPLICANT*
IBRAIN FORTES HERNANDEZ	5TH APPLICANT*
GISELLE MENDOZA SANCHEZ	6TH APPLICANT*
JORGE FELIX TOBOSO VILLEGAS	7TH APPLICANT*

AND

SUPERINTENDENT OF PRISONS	1ST RESPONDENT
MINISTER OF FOREIGN AFFAIRS	2ND RESPONDENT
FOREIGN TRADE, AND IMMIGRATION	3RD RESPONDENT
THE ATTORNEY GENERAL	4TH RESPONDENT

BEFORE: The Honourable Madam Justice Patricia Farnese

HEARING DATE: July 29, 2022

APPEARANCES:

Leo Bradley Jr. and Leslie Mendez, for the Applicants

Samantha Matute and Agassi Finnegan, for the Respondents

DECISION ON PERMISSION TO APPLY FOR JUDICIAL REVIEW

* The applicants voluntarily agreed to be repatriated to Cuba despite a court order staying their removal pending the outcome of the leave application. Their repatriation occurred before the release of this decision.

[1] The Applicants seek permission to apply for judicial review of removal orders issued by the Magistrate's Court pursuant to section 30 of the *Immigration Act.*[1] A Magistrate found that each of the Applicants failed to produce visitors permits contrary to subsection 23(1) of the *Immigration Act.* The Applicants' central contention is that the removal orders are unlawful because the Respondents ought to have viewed the Applicants as potential refugees and assisted in efforts to have their circumstances considered by the Refugee Eligibility Committee. In addition to arguing against any role for the Committee, the Respondents assert that the Applicants are not entitled to judicial review for two reasons. First, the Court has already handed down a final decision in this matter when it ruled against granting a writ of *habeas corpus* to the Applicants. In the alternative, the Applicants have not met the threshold for a judicial review because another remedy is available, and the Applicants have not presented an arguable case with a realistic prospect of success.

[2] I find that this matter was not decided in the *habeas corpus* decision. The 1st and 3rd Applicants have demonstrated that the permission to apply for judicial review is warranted. Although a review by the Minister is an alternative, available remedy, I find that a real risk exists that they will not receive a fair hearing in that process. The 1st and 3rd Applicants have also demonstrated that they have an arguable case with a realistic prospect of success primarily due to evidence presented that they left Cuba because of a fear of persecution for their involvement in political activity. Costs of this Application are awarded to the 1st and 3rd Applicants as agreed or assessed. Finally, no damages are awarded at this time, I will remain seized of this matter and decide the issue of damages in the event the 1st and 3rd Applicants are deemed eligible refugees by the Refugee Eligibility Committee.

Issues

[3] After reviewing the parties' evidence and the submissions, I must decide three questions:

(1) Is this case subject to the principle of *res judicata*?

(2) Is an appeal to the Minister a suitable alternative remedy that would bar the Applicants from seeking a judicial review of the Magistrate's decision to order the Applicants' removal from Belize?

(3) Have the Applicants presented an arguable case having a realistic prospect of success in having their removal order overturned on the grounds that they ought to have been considered potential refugee claimants?

[1] Cap. 156, Rev. Ed. 2020.

Analysis

Is this case subject to the principle of res judicata?

[4] No. In her decision denying *habeas corpus* to the current Applicants, the lawfulness of detention was the only issue before Shoman J.[2] She clearly stated that she did not have the question of the Applicants' eligibility as refugee claimants before her. Shoman J. wrote at para. 20 that:

> There is no evidence before the Court that these Applicants or any of them are in fact asylum seekers, nor is this Application concerned with asylum status under the Refugee Act.

I do not accept that Shoman J. intended this statement to be a binding finding of fact. Shoman J. explained that the Applicants' counsel abandoned the ground in the *habeas corpus* application that would have allowed her to decide whether the Applicants should have been treated as potential refugee claimants. While the Applicants would have the burden to establish, on a balance of probabilities, that the detention was unlawful because they ought to have had their eligibility as a refugee considered, they are not under a duty to meet that burden once they have abandoned that claim.

[5] In this context, I read Shoman J.'s comments about the one-sided evidence before her as frustration with the Applicants' counsel decision that prevented her from deciding the central issue of this dispute once and for all. Had Shoman J. been able to consider the abandoned claim in the *habeas corpus* application, *res judicata* may have been a bar to this application.

Is an appeal to the Minister a suitable alternative remedy that would bar the Applicants from seeking a judicial review of the Magistrate's decision to order the Applicants' removal from Belize?

[6] The parties do not dispute the requirements of the threshold test for permitting an application for judicial review. The Applicants must establish, on a balance of probabilities, that their application is an arguable case having a realistic prospect of success and is not subject to a discretionary bar such as the availability of an alternative remedy.[3] Delay can also be a discretionary bar; the Applicants, however, have complied with the relevant timelines.

---

[2] Claim No. 191 of 2022.

[3] *Sharma v. Deputy Director of Public Prosecutions & Ors. (Trinidad and Tobabgo)*, [2006] UKPC 57.

[7] The *Immigration Act* provides for a review of removal orders to the Minister:

> 30(6) No appeal shall lie by or on behalf of an alien against a removal order made by a summary jurisdiction court, provided that the Minister may, on application made to him by such alien, review the order of the summary jurisdiction court and if satisfied that the applicant is not a prohibited immigrant, rescind the removal order.

The only limitation on a Minister's ability to rescind the removal order is the prohibition against rescinding orders to remove prohibited immigrants. Prohibited immigrants are defined in section 5 of the *Immigration Act* and includes such persons as those engaged in espionage, drug trafficking, or treasonable activities. The Applicants are not prohibited immigrants. Therefore, I find on a plain reading of the legislation that an alternative remedy is available. The Minister can rescind the removal order and allow the Refugee Eligibility Committee (the Committee) to consider a person's refugee status if the person applies.

[8] Despite concluding that the legislation provides for an alternative remedy, I find that such a remedy is not currently available to these Applicants. The evidence establishes a high probability that the Minister would continue to improperly interpret the Respondent's obligations under the *Refugee Act*[4] by considering irrelevant factors including Covid-19 restrictions and a bilateral agreement with Cuba. For an alternative remedy to bar a judicial review, fairness demands that an applicant be able to access that remedy.

[9] The *Refugee Act* defines a refugee as follows:

> 4(1) Subject to the provisions of this section, a person shall be a refugee for the purpose of this Act if-
>
> (a) owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country;
>
> (b) not having a nationality and being outside the country of his former habitual residence, he is unable or, owing to a well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion, is unwilling to return to it; or
>
> (c) owing to the external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, he is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

[4] Cap. 165, Rev. Ed. 2020.

The *Refugee Act* empowers the Committee to receive and consider refugee applications using the criteria outlined in section 4.[5]

[10] In addition, the *Refugee Act* expressly gives the *Convention Relating to the Status of Refugees* (the Convention) and the *Protocol Relating to the Status of Refugees* (the Protocol) the force of law in Belize.[6] Together, the Convention and the Protocol impose a duty on the Respondents to accept and consider claims for refugee status using the criteria outlined in section 4 of the *Refugee Act*, subject only to the limitations outlined in Article 9 of the Convention:

> Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

[11] The Magistrate's notes following the 1st and 3rd Applicants' convictions for immigration offences indicate that she was presented evidence that the Committee was not taking applications due to the Covid-19 pandemic. Even if I were prepared to interpret Article 9 to include the pandemic within the meaning of "other grave and exceptional circumstances" that pose a threat to "national security", the Respondents cannot refuse to hear refugee applications and remove those persons. Article 9 clearly requires that a person's case be considered. The Respondents have not provided evidence that the policy has been revoked and the Committee has once again begun to consider applications. The Respondents do not appear inclined to allow the Applicants to remain in Belize until the Committee is once again considering applications.

[12] The Applicants are also at risk of being denied a fair hearing before the Minister because, the Respondents, which includes the Minister, misunderstand the applicability of a bilateral agreement with Cuba. Belize has agreed to repatriate Cuban nationals who are unlawfully found within the country. The Respondents argue that quashing the removal order would violate that agreement.

[13] The Respondents, however, are bound by the prohibition against refoulement. Article 33 of the Convention provides:

> 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, member- ship of a particular social group or political opinion.

---

[5] Section 7.
[6] Section 3.

> 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Similarly, section 14 of the *Refugee Act* provides:

> (1) Notwithstanding the provisions of any other law, no person shall be refused entry into Belize, expelled, extradited or return from Belize to any other country or be subjected to any similar measure if, as a result of such refusal, expulsion, return or other measure, such person is compelled to return to or remain in a country where-
>
> a. he may be subjected to persecution on account of his race, religion, nationality, membership of a particular social group or political opinion; or
>
> b. his life, physical integrity or liberty would be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in a part or the whole of that country.

[14] The bilateral agreement with Cuba does not supersede the Respondents' international and domestic obligations to avoid refoulement by providing those seeking asylum the opportunity to have their cases for recognition as refugees considered. If the agreement is a relevant consideration in the removal of any individual pursuant to section 30 of the *Immigration Act*, it can only apply to those who have either not made a refugee claim or have been denied refugee status after the Committee has determined that they do not meet the eligibility requirements defined by section 4 of the *Refugee Act.*

Have the Applicants presented an arguable case having a realistic prospect of success in having their removal order overturned on the grounds that they ought to have been considered potential refugee claimants?

[15] In addition to quashing the removal order, the Applicants have asked the court to issue an order of *mandamus* directing the 2nd Respondent to put in place adequate arrangements for the Applicants to apply for refugee status. Only the 1st and 3rd Applicants remain in Belize. The other Applicants elected to return to Cuba rather than remain incarcerated at the Belize Central Prison. An order of *mandamus* is of no consequence to the Applicants who are no longer in Belize.

[16] The Applicants only have a reasonable probability of success having their removal orders overturned if their circumstances ought to have alerted the Respondents to their potential eligibility as refugees. Section 8 of the *Refugee Act* requires anyone wishing to remain in Belize

to apply to the Committee within 14 days of their arrival. While it is unclear how many days the Applicants were in Belize prior to being arrested, none of the Applicants have applied to the Committee to date. The Applicants argue they should not be penalized because the Respondents failed in their duty to assist them with their application. Instead, the Respondents detained them and immediately brought them before the Magistrate's Court to obtain a removal order contrary to section 10 of the *Refugee Act*:

> 10(1) Notwithstanding the provisions of the Immigration Act, a person or any member of his family shall be deemed not to have committed the offence of illegal entry under the Act or any regulations made thereunder-
>
> (a) if such person applies in terms of section 8 for recognition of his status as a refugee, until the decision has been made on the application and, where appropriate, such person has had an opportunity to exhaust his right of appeal in terms of that section; or
>
> (b) if such person has become a recognized refugee.
>
> (2) An immigration officer or police officer who is apprised of facts indicating that a person in Belize may be eligible, and intends to apply, for recognition of his status as a refugee pursuant to section 8 shall refer that person to the Refugees Office.

[17] I find the duty to facilitate the Applicants' applications to the Committee only arises if during the Applicants' arrest, the Immigration Officer or Police Officer had knowledge that the Applicants may be eligible for refugee status. As previously noted, the Committee was also not accepting applications. The Applicants were not interviewed by the non-governmental organization, the Human Rights Commission of Belize, who acted as their counsel for this Application, until approximately 6 weeks after their detention. In these circumstances, especially where the Applicants are incarcerated, holding firm to the 14-day timeline is unjust.

[18] Based on the evidence in this case, none of the Applicants arrived directly from Cuba. The 1st and 3rd Applicants claimed they traveled from Nicaragua to Mexico where they were assaulted, robbed, kidnapped, and left in Belize. The Anti-Narcotics Unit of the Police Department arrested them in the home of a Belize national allegedly during a routine check. The Belizean subsequently pled guilty to aiding a person to commit an offence under the *Immigration Act.* The remaining Applicants travelled on bus through Honduras and Guatemala after arriving in Nicaragua from Cuba. They were apprehended in Belize either waiting for a public bus or at a police checkpoint while on a bus to Mexico. According to the interview notes taken by the Immigration Officers who interviewed them after they were detained, the 5 Applicants who have returned to Cuba all denied being aware that they had crossed into Belize from Guatemala. All 7 Applicants expressed that they were traveling through Belize to reach the United States of America.

[19] I find the fact that the Applicants are Cuban nationals did not trigger the Respondents' duty to assist with their application to the Committee. Absent war or widespread civil unrest, arrival from a specific country alone would rarely provide sufficient notice that the person is a potential refugee claimant. The *Refugee Act* requires that Applicants demonstrate that they had sufficient fear that returning to Cuba would result in their persecution or the unjust deprivation of their life, liberty, or personal dignity.

[20] I find that the 1st and 3rd Applicants have an arguable case with a reasonable prospect of success in overturning their removal orders because they have demonstrated that their circumstances provided sufficient notice to the Respondents that they may have been eligible for refugee status. The Magistrate's notes from the 1st Applicant's arraignment were entered into evidence. The notes indicate that the 1st Applicant's eligibility as a refugee was likely discussed. The Magistrate's notes explain that she permitted the removal, in part, because the Committee was not accepting applications. The notes also explicitly state that the 1st Applicant explained that she fled Cuba and feared returning because of her involvement in street protests. Mr. Albert Munnings, the Immigration Prosecutor, also noted in his affidavit that the 1st Applicant became emotional upon learning of the removal order and expressed that she did not want to return to Cuba. No notes from the 3rd Applicant's arraignment were entered into evidence, but in a subsequent application to this court, the 3rd Applicant has expressed a similar fear of returning to Cuba because of her involvement in street protests. It is also clear from the Court Book that the Magistrate had the evidence available from the 1st Applicant's hearing before her and likely viewed their circumstances similarly when she considered the 3rd Applicant's case.

[21] Both Applicants also reported to the Immigration Officer who first interviewed them, to Mr. Munnings, and to the Magistrate that they were assaulted and brought to Belize against their will. These reports should have flagged the 1st and 3rd Applicants as potential victims of human trafficking. The Magistrate's notes explain, however, that she did not believe the Applicants were brought to Belize against their will. The Court Book indicates that 1st and 3rd Applicants were arraigned immediately after the Belize national, Mr. Everisto Cantun, who was charged with aiding them contrary to the *Immigration Act.* Mr. Cantun pled guilty and explained that he knew the 1st and 3rd Applicants were undocumented but did not attend to break the law. He confessed to having provided accommodation for the night for a fee. Mr. Munnings' affidavit outlines that a bus driver provided the fee. The Magistrate grounds her reason for disbelieving the Applicants entered Belize against their will in the fact that Mr. Cantun pled guilty and testified that he was paid for their accommodations.

[22] The Magistrate provides no explanation for why the fact that Mr. Cantun reported he was paid for providing accommodations precludes a finding that the 1st and 3rd Applicants were assaulted and kidnapped. A voluntary statement aimed at mitigating Mr. Cantun's sentence that was not subjected to cross-examination is not sufficient to dismiss the possibility that the 1st and

3rd Applicants were human trafficking victims. Combined with the 1st Applicant's report before the Magistrate of their fear of returning to Cuba because of their involvement in protests, I find that the Respondents had sufficient notice of potential refugee eligibility and should have assisted the 1st and 3rd Applicants with making an application before the Committee.

[23] That the 1st and 3rd Applicants expressed their desire to settle in a third country does not make them ineligible for recognition as a refugee in Belize. An intention to remain in Belize is not included in the meaning of "refugee' provided in section 4 of the *Refugee Act.*

[24] The desire to settle in a third country may be relevant, however, to the question of whether the person "intends to apply" for recognition as a refugee in Belize. Section 10 of the *Refugee Act* specifies that a person is only entitled to assistance where the officer has knowledge of potential eligibility and intention to apply. It would not be in keeping with the overall purpose of the *Refugee Act* to deny someone assistance who otherwise demonstrates that they may be eligible based on a stated intention not to remain in Belize without certainty that the person understood that repatriation is the consequence of not applying for refugee status.

[25] I find that the 1st and 3rd Applicants did not know they would be repatriated if they pled guilty before the Magistrate. Mr. Munnings' affidavit states that he explained that a removal order would be sought when the 1st Applicant asked him about what would happen to her during their initial interview. His affidavit notes her desire to go to Mexico but does not mention that he explained that her removal would be to Cuba. This is the only evidence before this court that the 1st and 3rd Applicants were told that removal would result from a guilty plea. Moreover, Mr. Munnings' affidavit states that the 1st Applicant asked the Magistrate whether it was possible not to be sent back to Cuba after she pled guilty. I find the timing of this question is further proof that the 1st and 3rd Applicants did not appreciate that they would be sent back to Cuba when they expressed their intention not to stay in Belize. Considering these circumstances, I find it is inconsistent with Belize's international obligations to deny the 1st and 3rd Applicants the right to have their case heard by the Committee on the grounds that they expressed a desire to go to a third country even though they have demonstrated sufficient notice of potential refugee eligibility.

[26] It is at the stage of whether a person intends to remain in Belize that the circumstances of the 1st and 3rd Applicants differ from the remaining Applicants. The remaining Applicants have not established that they provided sufficient notice, at the time they were detained or during their proceedings before the Magistrate, that they may be eligible for refugee status. In their initial interviews with Immigration Officers, all the remaining Applicants described moving freely through central America and into Belize on their way to the United States of America in search of a better life and more opportunities. None described a fear of returning to Cuba or a desire to return to Belize during their initial interviews with Immigration Officers or before the

Magistrates Court. No reviewable error in the Magistrate's decision to order their removal is apparent from the evidence available at the time the order was made.

[27] Some of the remaining Applicants, however, subsequently filed affidavits in support of this application for permission for judicial review where they allege fear of persecution for political beliefs in Cuba. I decline to make findings on what consideration the Court should give this new information because the Applicants have returned to Cuba. As a result, I find that only the 1st and 3rd Applicants have met the threshold for permission to apply for judicial review.

Remedy

[28] The 1st and 3rd Applicants have established that judicial review is the most appropriate remedy in this case. In *Louis Smith v. Director of Public Prosecutions,*[7] the Supreme Court of Jamaica recognized that a fundamental principle of judicial review is that approaching the court is a remedy of last resort. Nonetheless, the Court held that "the existence of an alternative form of redress does not always mean that the claim must fail."[8] I find the most appropriate remedy in this case is to send the 1st and 3rd Applicants directly to the Committee to consider their eligibility for recognition as refugees pursuant to the process outlined in section 8 of the *Refugee Act*.

[29] I have previously outlined that there is a real risk that the 1st and 3rd Applicants will not receive a fair hearing before the Minister because of the misunderstanding of the Respondents' obligations under domestic and international law. I was not provided with any policies or evidence of the training of Police and Immigration Officers that demonstrate the existence of a process for identifying potential eligible refugees. There is also no evidence that the Officers in this case turned their minds to that question of refugee eligibility prior to charging the 1st and 3rd Applicants with *Immigration Act* offences and seeking removal orders.

[30] While section 30 of the *Immigration Act* grants the Minister broad discretion to review removal orders, the Minister must act lawfully which includes ensuring that an applicant's rights, either arising from statute, the constitution, or the common law, have been respected in the decision and process to obtain a removal order. The creation of guidelines to aid Officers in identifying when a removal order is not appropriate would assist the Minister in his review and would go a long way to relieving this Court's fairness concerns.

[31] Having found that the 1st and 3rd Applicants have met the threshold for judicial review, I reject the Respondents' argument that they should be denied this remedy because their actions

[7] [2021] JMC FC Full 3.
[8] *Ibid.* at para 82.

are tainted with illegality. Subsection 10(1) of the *Refugee Act*, which excuses potential refugees for any offences related to illegal entry into Belize, applies to the Applicants.

[32] I will also extend the order for interim relief issued on 29 July 2022 until the Committee hears and decides the 1st and 3rd Applicants' refugee eligibility. The application for interim relief sought the 1st and 3rd Applicants' release from custody pending the outcome of this judicial review application. I explained the reasons for my decision to grant interim relief in-person after I considered the parties' oral and written submissions. My reasons for granting interim relief remain equally relevant today. I now wish to use this opportunity to provide written reasons as I am unaware of any relevant jurisprudence from Belize on factors to consider when release from custody is appropriate in the context of immigration detention.

[33] The 1st Applicant entered Belize accompanied by her 2 minor children who were placed in a secure residential facility for youth in need of care. The 3rd Applicant was pregnant when she was placed into custody and was in her last trimester when the interim relief request was granted. The Respondents did not object to the 3rd Applicant's release from custody provided she paid for 24-hour police guard to avoid her absconding from Belize. The Respondents objected to the 1st Applicant's release on the grounds that she posed a flight risk. The Respondents argued that the flight risk was heightened because the Applicants have no desire to be repatriated to their home jurisdiction and have already flouted lawful immigration procedures.

[34] Belize does not have a distinct immigration detention facility that can accommodate families. Persons subject to removal orders are incarcerated among the general prison population in the Belize Central Prison, a facility privately operated by the Kolbe Foundation. While the *Immigration Act* explicitly gives the government the authority to detain persons subject to a removal order and to detain them in a prison, it does not provide any guidelines related to pregnant detainees or detainees who are accompanied by minor children. I was also not provided any general guidelines related to the incarceration of pregnant woman or parents with dependent children. When children of a prohibited person are detained, the practice in Belize is to treat the children as "unaccompanied minors" and place them in the state's care pursuant to the *Families and Children's Act*.[9] In this case, the 1st Applicant's children were subject to a custodial order of the Magistrate's Court until their mother's release from custody.

[35] The application for interim relief required that I weigh the balance of convenience and the potential harm that may result if the relief is denied to "minimize the risk of an unjust result."[10] Harm that can be remedied with monetary damages is strong support for not granting the relief. The Applicants requested relief based on the best interests of the 1st Applicant's

[9] Cap. 173, Rev. Ed. 2020.
[10] *Belize Alliance of Conservation Non-Governmental Organizations v. Department of the Environment & Anor (Belize)*, [2003] UKPC 63 (13 August 2003) at para 39.

children and the health of the 3rd Applicant. The potential harm done by denying this kind of interim relief cannot be adequately remedied with monetary damages.

[36] Dr. Novelo is the sole doctor responsible for the medical care of prisoners at the Belize Central Prison. Upon my request, Dr. Novelo appeared in-person to answer questions about the adequacy of care provided by the Kolbe Foundation. He recommended the 3rd Applicant's release prior to the birth of her child. He testified that the prison was not equipped to provide adequate prenatal assessment and care. The prison had not dealt with childbirth in his 8 years working for the Kolbe Foundation; all incarcerated women who were pregnant had been released prior to childbirth. If I denied interim relief to the 3rd Applicant, she would deliver at the Karl Heusner Memorial Hospital in Belize City, approximately 1 hour from the prison. Dr. Novelo also testified that no doctors are on site, and no one is available to assess the 3rd Applicant's need for medical attention outside of normal working hours. Therefore, if the 3rd Applicant went into labour or had another medical complication, she and her child faced significant risk of harm, even death. I was also not given assurances that adequate plans were in place to ensure that the 3rd Applicant would receive quick assessment and transfer to the hospital if the need arose outside of normal business hours. When the health risks to the 3rd Applicant are weighed against the risk of absconding, the balance clearly is in the 3rd Applicant's favour.

[37] The 1st Applicant's request for interim relief is based on concerns for the best interests of the minor children who were in the state's care while their mother was incarcerated. Ms. Hiomara Williams, the social worker who supervised the children's care, also testified at my request. She confirmed that the 1st Applicant's detention was the sole reason why the children were placed in the state's care. The children were under no other need for protection. Her affidavit confirmed that Officers charged with investigating potential cases of human trafficking interviewed the children and found no evidence that they were trafficking victims. The children were housed and supervised in a secure facility with other girls of similar age. Efforts had been made to provide the children with recreation opportunities and ongoing education with a tutor, but they were not enrolled in school full-time as their time in Belize was initially expected to be limited. Ms. Williams corroborated the 1st Applicant's evidence that regular and meaningful communication with her children had not occurred for a variety of reasons including internet connectivity, conflicts with the children's schedule, and restrictions imposed by the Kolbe Foundation.

[38] The 1st Applicant argued that her release would allow the children to be reunited with her, which was in the children's best interests. They had been separated for approximately 6 months when the application for interim relief was heard. The court took judicial notice that separating children from their parents where the children are not in need of protection is not in their best interest even where the care provided is not wanting. This fact is reflected in the *Families and Children's Act* itself, which provides for removing children from their parents' care only when

there is cause. The Act also specifically speaks to ongoing involvement of the parents in their children's care. Likewise, the order placing these children in the state's care was structured to end upon their mother's release. While the Respondent did raise the potential harm of having to be return to the state's care if the leave application was denied, without specific evidence to the contrary I was unable conclude the potential harm of being returned into care outweighed the benefit of reunification with their mother.

[39] The Respondents argued that the risk of absconding outweighed the best interests of the child although they did not enter evidence and made few specific arguments that explained the state's interest in preventing the Applicants from absconding. The only specific argument presented references the court's interests in having its orders obeyed. While other interests the state has in preventing the Applicants from absconding may seem self-evident, it is not appropriate for the Court to reach conclusions based on its own assumptions of what those interests are. With only a general concern about preventing the Applicants from absconding, it is difficult to attribute much weight to the Respondents' position especially where one side of the balance aims to avoid harm to children. As a result, I found that the balance of convenience also supported the 1st Applicant's release.

[40] I also declined to order that the 1st and 3rd Applicants pay for 24-hour Police surveillance. There was no evidence that the 1st and 3rd Applicants posed a risk to public safety if they were released. Granting bail to persons accused of violent crimes is a regular practice in Belize with the condition that they regularly report to a Police station. The Applicants secured accommodation directly across the street from a Police station. I ordered daily reporting at the Police station.

Disposition

[41] I order that the Respondents assist the 1st and 3rd Applicants in making an application to the Committee.

[42] The Applicants are entitled to costs for this claim as agreed or assessed.

[43] I am not awarding damages at this time. I will remain seized of this matter and decide the issue of damages in the event the 1st and 3rd Applicants are found by the Committee to be eligible refugees.

[44] The interim relief granted to the 1st and 3rd Applicants is extended until the Committee renders a decision on their eligibility as refugees.

[45] I order that the Applicants not be returned to Cuba, including voluntarily, without approval of this court.

Dated October 4, 2022

Patricia Farnese
Justice of the Supreme Court of Belize