

**Federal Court**



**Cour fédérale**

## **STAY OF RELEASE FROM DETENTION PROTOCOL**

November 30, 2020

This protocol addresses the procedure to be followed where the Minister of Public Safety and Emergency Preparedness (“Minister”) intends to seek an order in the Federal Court (“Court”) staying an order for release from detention made by the Immigration Division (“ID”) of the Immigration and Refugee Board of Canada. In particular, this protocol addresses the steps when seeking an urgent interim stay of a release order, and an interlocutory stay of the release order, pending the determination of the Minister’s application for leave and for judicial review.

### **Request for an Interim Stay of a Release Order Pending a Motion to Stay a Release Order**

- (a) Once a decision is made to bring a motion for a stay of release in the Court, counsel for the Minister will inform the Court Registry by phone of the pending motion, contact the Respondent’s counsel (if represented) as soon as possible, and make best efforts to notify the Respondent (if unrepresented).
- (b) The Minister will file a letter under Rule 35(2) of the *Federal Courts Rules*, SOR/98-106 requesting an urgent interim order staying the ID’s release order. The letter will include relevant facts, explain the grounds and provide a brief summary of the arguments justifying the grant of an urgent interim stay of release pending the determination of the interlocutory motion for a stay of release. The Minister will provide the letter to the Respondent’s counsel (if any) or the Respondent (if unrepresented).
- (c) The Respondent’s counsel shall inform the Court and the Minister as soon as possible of the Respondent’s position on the request for an urgent interim stay of release and, if applicable, their availability for an urgent hearing.
- (d) In deciding an opposed request for an interim stay of release, the Court will endeavor to hold a teleconference hearing. Where it is not reasonably possible to schedule a hearing on the request for an interim injunction at a mutually convenient time for the parties (or their respective counsel) and the Court, the Court may decide the matter without a hearing, bearing in mind such factors as the procedural fairness rights owed to both parties, the timing of the Respondent's potential release from detention, whether the Respondent is

represented by counsel, and the reachability and availability of the Respondent or counsel (if any).

- (e) The ID will provide the Court and the parties' counsel with an audio recording of the ID proceedings no later than 24 hours following the ID's order for release.<sup>1</sup> The ID will provide a transcript of the decision portion of the ID proceedings within 3 business days of the ID's order for release.
- (f) If the Court orders an interim stay of release, the Court shall set a date for the hearing of the interlocutory motion to stay the release order. The hearing of the interlocutory stay motion shall be held within 7 days of the order granting the interim stay of release; however if that is not possible, it shall be scheduled as soon as reasonably practicable thereafter. The parties may consent to a different timeline. The parties will be given the opportunity to file motion records.
- (g) If, during the interim stay of release stage of this process, the Minister did not serve and file an Application for Leave and for Judicial Review in respect of the release decision being challenged, the Minister shall do so as soon as possible thereafter, and in any event prior to the hearing of the interlocutory motion.

#### **Motion to Stay a Release Order Pending the Resolution of the Application for Leave and for Judicial Review**

- (h) At the request of either party or on its own motion immediately after deciding the interlocutory motion for a stay of release, the Court may also decide to vary the time limits prescribed by the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22, and decide whether to grant or dismiss leave in the underlying Application for Leave and for Judicial Review, and whether to expedite the judicial review hearing, if it is in the interests of justice and if circumstances permit. Parties will also provide availability for the subsequent judicial review proceeding (if any) and advise whether, pursuant to section 74(b) of the *Immigration and Refugee Protection Act*, they consent to an expedited judicial review hearing.
- (i) If the Court grants leave in the underlying Application for Leave and for Judicial Review, the Court will provide a date for the hearing and set out the due dates for the parties' additional written submissions and affidavits. If the Court hears the judicial review application prior to the Respondent's next detention review, this would be with a view to

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<sup>1</sup> While the ID will strive to consistently provide an audio recording within 24 hours, some delays may be possible arising from the current coronavirus pandemic.

judgment being issued, if possible, before the ID makes a decision at that next detention review.

### **Service and Filing**

- (j) When filing a request for an interim stay of release Order, the Minister's counsel shall first call the Registry Officer (see telephone listing below), and second, file the Rule 35(2) letter at the electronic address\* provided by the Registry:
- a. If an urgent request for an interim stay of release order is brought when the **Court Registry office is closed** – see After hours telephone listing [Urgent requests only]
  - b. If a request for an interim stay of release order is brought when the **Court Registry office is open** – see Regular hours telephone listing
- (k) If the Respondent is represented by counsel, to facilitate the efficient and expeditious disposition of the matters addressed herein, the parties' submissions and other communications between and among the parties and the Court may be served and filed electronically. Documents for the Court can be filed at the electronic address\* provided by the Registry.

\* **Note:** the maximum Registry e-mail size is 25 MB. However, conversion of attachments into e-mail format adds up to about 30% of the original document size, so an 18 MB attachment will come close to the maximum email size limit. If filing documents by e-mail, it is recommended that larger PDF documents (i.e., over 18 MB) be split into smaller parts before sending. Please consult sections 3.2.1.1 and 6.8 of our E-filing Guide for information on reducing the size of PDF documents: <https://www.fct-cf.gc.ca/en/pages/online-access/e-filing-resources>

### **Unrepresented Respondents**

- (l) The Court recognizes that Respondents who are unrepresented by counsel may need extra attention and assistance to help ensure a fair, expeditious, and efficient resolution of the proceedings.

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"Paul S. Crampton"

Chief Justice