APPROVED **[2026] IEHC 514**

THE HIGH COURT
JUDICIAL REVIEW

2026 1003 JR

BETWEEN

K. (DETENTION PENDING DEPORTATION)

APPLICANT

AND

MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENT

JUDGMENT of Mr Justice Garrett Simons delivered *ex tempore* on 22 July 2026

INTRODUCTION

1. This matter comes before the court by way of an application for the release of an individual who is the subject of a deportation order ("*the intended deportee*"). The intended deportee has instituted judicial review proceedings challenging the validity of the deportation order. He has been detained since 8 July 2026 and is scheduled to be deported to Georgia before the end of August. The application for his release is made pursuant to section 5(7) of the Immigration Act 1999.

2. The judicial review proceedings have been expedited and the substantive application has been fixed for hearing before me on 31 July 2026.

3. It is important to distinguish the jurisdiction under section 5(7) of the Immigration Act 1999 from that which the High Court exercises in an inquiry under Article 40.4.2° of the Constitution. In such an inquiry, the question is whether the relevant individual is being detained in accordance with law. If not, the court must direct his or her immediate release as a matter of constitutional obligation. Section 5(7), by contrast, confers a distinct statutory jurisdiction. It requires the High Court to determine whether detention should continue in the circumstances prevailing at the time of the application for release and expressly permits the court to direct release subject to such conditions as it considers appropriate.

DETENTION PENDING DEPORTATION

4. Section 5(1) of the Immigration Act 1999 permits an immigration officer or a member of An Garda Síochána to arrest a person without warrant where a deportation order is in force against that person and the officer or member, with reasonable cause, suspects that one or more of the circumstances specified in the subsection exist. The specified circumstances include a failure to leave the State within the time specified in the order; a failure to comply with another provision of the order or with a requirement contained in the relevant notice; an intention to leave the State and enter another State without lawful authority; the destruction of identity documents or possession of forged identity documents; and an intention to avoid removal from the State. A person so arrested may be

taken to a prescribed place and detained for the purpose of effecting his or her deportation.

5. The section then addresses the position where a detained person institutes court proceedings challenging the validity of the deportation order concerned or of a decision made by the Minister under section 3(11) in relation to the deportation order. More specifically, section 5(7) provides that the court hearing those proceedings, or any appeal from them, may, on application to it, determine whether the person shall continue to be detained or shall be released. Any such release may be made subject to such conditions as the court considers appropriate. The conditions expressly identified include requirements that the person reside or remain in a particular district or place, report to a specified Garda Síochána station or immigration officer at specified intervals, and surrender any passport or travel document in his or her possession.

6. It is necessary to say something about the *purpose* of the detention of intended deportees and the place of the court's power of release within the legislative scheme. Detention under section 5 of the Immigration Act 1999 is a form of preventative civil detention. The intended deportee has not been imprisoned as punishment for a criminal offence. Nor may detention be imposed as a sanction for procedural delay on the part of the intended deportee or his or her legal advisers. Such delay falls to be analysed in assessing the merits of the judicial review proceedings and may, depending upon the circumstances, also have evidential relevance to the assessment of the risk of absconding. It does not, of itself, provide a basis for detention.

7. The statutory purpose of detention is to ensure the intended deportee's deportation from the State and, in that way, to secure the effective and orderly

operation of the immigration system. The power of detention—and the concomitant power to direct release—must be interpreted in the light of that purpose and of the constitutional importance attached to personal liberty. As explained by Hogan J. in *C.A. v. Governor of Cloverhill Prison* [2017] IECA 46, preventative civil detention pending deportation is exceptional in nature and must always remain so in a free and democratic society.

8. The power to direct release is not merely incidental to the statutory scheme. Rather, it is an integral part of that scheme and is intended to safeguard the constitutional right to personal liberty and the constitutional right of access to the courts. The Oireachtas has provided both for detention for the purpose of ensuring deportation and for a judicial determination of whether detention should continue once proceedings challenging the deportation order, or a decision under section 3(11) in relation to that order, have been instituted.

9. The court must be alert to the practical effect of detention upon the person's ability to consult legal advisers, give instructions, obtain and consider relevant materials, and participate effectively in the underlying judicial review proceedings. Those matters do not automatically require release, but they form part of the circumstances in which the necessity and proportionality of continued detention must be assessed. Detention may continue only insofar as it remains directed towards the statutory purpose of ensuring deportation and is shown to be necessary for that purpose in the circumstances of the individual case. A form of detention which is maintained for the purpose of discouraging proceedings, or which imposes an unjustified impediment to their effective prosecution, would represent a misuse of the statutory power.

10. The existence of the deportation order and the fact that it remains valid and enforceable unless and until set aside or revoked are matters which must be given considerable weight. The State has an important and legitimate interest in the effective and orderly implementation of immigration law. Accordingly, the mere commencement of judicial review proceedings does not, without more, confer an entitlement to release.

Settled intention / Realistic prospect

11. Subject to the exclusions and qualifications provided for in section 5, including the exclusion under section 5(8)(b)(iii) of certain periods spent in detention while court proceedings are pending, the ordinary outer limit on detention is eight weeks, or 56 days, in aggregate. This period is an outer limit only and will not be appropriate in all cases: the continued detention may cease to be justified before the eight-week milestone is reached. As explained in *C.A. v. Governor of Cloverhill Prison* (cited above), there must be a settled intention to deport and a realistic prospect that deportation can be effected within the period for which detention is lawfully permissible.

12. The existence of such a realistic prospect is a condition precedent to continued detention. Its existence is not, however, determinative of the separate question as to whether continued detention is necessary to secure that purpose in the circumstances of the individual case.

13. The deportation process must be pursued with reasonable diligence. The longer the period of detention, the more exacting the court's scrutiny of the progress being made, the obstacles remaining and the steps being taken to overcome them. If it becomes apparent that deportation cannot realistically be effected within the

period for which detention may lawfully continue, the intended deportee must be released.

FACTORS GOVERNING THE EXERCISE OF THE JURISDICTION

14. One of the principal factors is the risk that the intended deportee will abscond, avoid removal or otherwise frustrate the deportation process. The existence and degree of that risk must be assessed individually by reference to the evidence and the circumstances prevailing at the time of the application for release.

15. The considerations which might point against release include previous failures to comply with residence or reporting requirements; concealment of an address; the use of a false identity; the destruction or concealment of identity documents; an attempt to depart unlawfully or to evade arrest or removal; conduct which has obstructed the State in obtaining the documentation required for deportation; and other conduct which provides an individualised basis for concluding that the person may seek to frustrate removal. The timing and circumstances of the underlying judicial review proceedings will also be relevant where the evidence supports an inference that the proceedings have been brought at the eleventh hour for the purpose of frustrating the immigration process.

16. The considerations which might point in favour of release include residence at a stable and verified address; compliance with residence and reporting obligations; cooperative engagement with the immigration authorities; surrender of any passport or travel document in the person's possession; and strong family or community ties in the State. Past compliance is relevant but not necessarily decisive, particularly where the evidence indicates an increased risk of absconding as removal becomes imminent.

17. Counsel for the Minister submitted that a person who is subject to a deportation order presents a "*baseline risk*" of non-compliance. It was said that such a person has an obvious incentive not to present themselves to immigration officers once removal becomes imminent, and the court was invited to take "*judicial notice*" of that general risk.

18. With respect, I cannot accept that every intended deportee must be assumed to abscond, or that this supposed "*baseline risk*" is, without more, sufficient to require continued detention. Section 5(7) expressly contemplates that an intended deportee might be released subject to conditions. The court's jurisdiction to direct release is, as already explained, an integral part of the statutory scheme. If the supposed general incentive faced by every person subject to a deportation order to abscond were sufficient in itself to require detention, then the statutory jurisdiction to grant conditional release would be rendered largely a dead letter.

19. The necessity for detention cannot be inferred solely from the existence of the deportation order, the person's wish to challenge that order, or the obvious fact that he or she would prefer not to be removed. Those circumstances will be present in many, if not most, applications under section 5(7). Something more is required to establish that the particular intended deportee cannot safely be released subject to appropriate conditions.

20. Rather than relying upon a general presumption, the court must undertake an individual assessment. That assessment must address both the existence and the degree of the risk. The identification of some possibility of non-compliance does not, without more, establish that detention is necessary. The court must consider whether the risk is sufficient to justify the deprivation of liberty or whether the

statutory purpose can adequately be secured by release subject to appropriate conditions. Such conditions may include requirements that the intended deportee reside at a specified address, report at specified intervals to a specified Garda Síochána station or immigration officer, and surrender any passport or travel document in his or her possession.

21. The question is not whether detention offers the greatest degree of certainty: it will almost invariably provide greater practical control than release subject to conditions. If that consideration were decisive, the statutory power to direct release would be deprived of much of its practical effect. The core question is whether detention is necessary, having regard to the nature and degree of the risk established and the capacity of appropriate conditions to manage that risk.

22. It should be reiterated that this assessment arises only where there remains a settled intention to deport and a realistic prospect of effecting deportation within the period for which detention may lawfully continue. Unless that condition precedent is satisfied, continued detention cannot be justified by reference to a risk of absconding.

G.T. V. MINISTER FOR JUSTICE

23. The Minister relies upon the judgment of Phelan J. in *G.T. v. Minister for Justice and the Commissioner of An Garda Síochána* [2025] IEHC 133. There are similarities between that case and the present case. Both concern Georgian nationals detained under section 5 pending removal from the State, and in both cases the judicial review proceedings were listed for expedited hearing. There is, however, an important jurisdictional distinction. The present application is brought under section 5(7) in proceedings challenging the validity of the

deportation order. In *G.T.*, that statutory jurisdiction was not invoked because the proceedings did not directly challenge the deportation order or a decision under section 3(11) in relation to it.

24. In *G.T.*, the applicant sought the Minister's consent under section 22 of the International Protection Act 2015 to make a subsequent application for international protection after his previous application had been finally determined. The section 22 application was made only after he had been arrested and detained. Consent was refused at first instance, and an appeal to the International Protection Appeals Tribunal remained pending when the application for release was determined.

25. There is a material distinction between the procedural position in *G.T.* and that in the present case. In *G.T.*, the ordinary international protection process had been finally exhausted. The application made after detention was an application under section 22 of the International Protection Act 2015 for consent to make a subsequent application, and the pending appeal against the refusal of consent did not itself confer a general statutory entitlement to remain in the State.

26. The present applicant challenges the validity of the deportation order dated 28 May 2026, made under section 51 of the International Protection Act 2015 and notified by letter dated 2 June 2026, together with the section 50 assessment which preceded it. The papers for the judicial review proceedings had been prepared, and the grounding affidavits had been sworn on 7 July 2026, before the applicant's arrest on 8 July 2026, although the application for leave was made outside the twenty-eight day time-limit.

27. The evidence concerning the risk of absconding was also materially stronger in *G.T.* Phelan J. heard oral evidence from Detective Inspector Griffin, who had

extensive experience of involuntary removals and expressed the individualised opinion that G.T. would not present voluntarily for deportation. That assessment was considered together with the timing of the section 22 application, the applicant's previous conduct, the imminence of removal, the existence of a time-limited travel document and the arrangements for the applicant to travel on a specified commercial flight accompanied by three Garda escorts. There is no equivalent individualised Garda evidence in the present proceedings.

28. It is relevant that the applicant in *G.T.* had previously complied with reporting requirements. Phelan J. nevertheless found, on the particular evidence before her, that he presented a high risk of absconding once removal became imminent. Past compliance is not, therefore, decisive. As discussed at paragraphs 30 to 37 below, however, the circumstances of the present applicant's arrest, his conduct while subject to the deportation order, his communications with the Voluntary Returns Unit and the absence of equivalent individualised Garda evidence distinguish the present case materially from *G.T.* The reasoning in *G.T.* is relevant to that question, but the factual findings made on the evidence in that case cannot be treated as evidence against the present applicant. The refusal of release in *G.T.* rested upon a combination of individualised evidence and risk factors which has not been established here.

DISCUSSION

Realistic prospect of deportation

29. I am satisfied that the Minister has a settled intention to deport the intended deportee and that there is a realistic prospect of effecting his removal within the period for which detention may lawfully continue. The evidence was that an

application under the readmissions case-management system had been made on 9 July 2026 and was expected to be completed by 21 July 2026, with the necessary travel document anticipated shortly thereafter. Flight arrangements were made on 15 July 2026, and removal is expected to take place before the end of August 2026. The removal process is therefore being actively progressed, and the continued detention remains capable of serving its statutory purpose. That finding does not, however, determine whether continued detention is necessary in this particular case.

Individualised risk of absconding

30. The principal issue is whether the evidence establishes a risk of absconding of such a nature or degree that it cannot adequately be managed by release subject to appropriate conditions. In addressing that issue, it is necessary to consider the circumstances in which the intended deportee came to be arrested, his communications with the immigration authorities, and the Minister's reliance upon the timing of the judicial review proceedings.

31. The deportation order was made on 28 May 2026 and notified by letter dated 2 June 2026. The notification letter indicated that the intended deportee was required to leave the State by 2 July 2026. The notification letter expressly warned that a failure to leave by that date would constitute a failure to comply with the deportation order and would render him liable to arrest and detention. However, the notification letter then went on to require the intended deportee to reside at his notified address pending removal and directed him, should he not have left the State, to present himself at the Garda National Immigration Bureau, Burgh Quay, at 2.30 p.m. on 22 July 2026.

32. The direction to present on 22 July 2026 did not confer permission to remain in the State after 2 July 2026. Although the matter had not been addressed in the affidavits, counsel for the Minister subsequently confirmed on instructions during the hearing that the intended deportee had been arrested at his home in Bray on 8 July 2026. It is relevant to the assessment of the risk of absconding that this was the address specified in the Minister's correspondence and that the intended deportee had continued to reside there. There is no evidence that he had concealed his whereabouts or moved from that address in an attempt to evade removal. Nor had the date fixed for his attendance at Burgh Quay yet arrived. This is not, therefore, a case in which the arrest followed a failure to attend as directed.

33. Counsel for the Minister emphasised that the intended deportee had not availed of the statutory opportunity for voluntary return within the five-day period specified in the notification of 19 May 2026. His later communications with the Voluntary Returns Unit occurred after the making of the deportation order and at a time when, on the Minister's evidence, he was no longer eligible for assisted voluntary return.

34. The exhibited correspondence records that the intended deportee contacted the Unit by email on 25 June 2026, seeking assistance to return to Georgia before 2 July 2026. He explained that he did not have possession of his passport or national identity card and lacked the means to purchase an airline ticket. He sought assistance with the necessary travel documentation and the cost of his return, submitted a completed application form, and followed up by email on 2 July 2026. One of the intended deportee's emails stated that he was travelling to the Citywest Reception Centre.

35. The evidence adduced on behalf of the Minister was that the intended deportee was informed, by telephone, that he was no longer eligible to participate in the Voluntary Returns Programme because a deportation order had already been made in respect of him. The Unit indicated that it would follow up with him. There is no evidence that this occurred.

36. Counsel for the Minister invited the court to infer from the intended deportee's alleged non-attendance at Citywest that he was unwilling to cooperate with the immigration authorities. I do not consider that the evidence supports such an inference. No formal appointment, direction to attend or arrangement for processing his proposed return at Citywest has been identified. Nor is there evidence that the Unit could have processed an assisted voluntary return notwithstanding the existing deportation order. Insofar as the email correspondence bears upon the present application, it indicates an attempt to engage with the immigration authorities and explore the possibility of returning voluntarily. The intended deportee subsequently obtained legal advice concerning the validity of the deportation order and elected to challenge it by way of judicial review. I therefore attach no material weight to the alleged non-attendance at Citywest.

37. Separately, it should be explained that the intended deportee's communications with the Unit were not disclosed when the application for leave and interim relief was made *ex parte*. That omission was serious. His solicitor subsequently swore a corrective affidavit, accepted that the communications should have been disclosed, and apologised unreservedly to the court. For present purposes, the underlying communications do not establish an intention to abscond or frustrate

removal. Nor does the subsequent failure to disclose them, serious though it was, establish such an intention.

38. I have also had regard to the timing of the judicial review proceedings. The application for leave was made outside the prescribed statutory period, and the intended deportee was therefore required to seek an extension of time. The grounding affidavits had, however, been sworn on 7 July 2026, before his arrest on 8 July 2026. This is not a case, therefore, in which the first step towards judicial review was only taken after detention. Delay and the timing of the proceedings may have evidential relevance to the risk of absconding, but they cannot operate as an independent justification for detention.

39. Counsel for the Minister further submitted that the delay had allowed the removal process to advance, including the initiation of the readmissions procedure and the making of flight arrangements. Insofar as financial prejudice was asserted, however, no evidence was adduced as to the amount or nature of any expenditure, whether the booking was refundable or transferable, or whether the arrangements could be used for another returnee. I therefore attach no weight to any asserted but unquantified financial loss. The fact that administrative steps had been taken is relevant to whether there is a realistic prospect of effecting deportation, but does not of itself establish that continued detention is necessary.

Necessity of continued detention

40. The foregoing considerations do not eliminate the possibility that the intended deportee might fail to comply as removal approaches. The existence of some risk is not, however, determinative. The question is whether the nature and degree of the risk make detention necessary or whether the statutory purpose can adequately be secured by less restrictive measures.

41. There is no individualised Garda evidence equivalent to that which was before the court in *G.T.* The intended deportee remained at his notified address and was arrested there before the date fixed for his attendance at Burgh Quay. He had also communicated with the Voluntary Returns Unit concerning return to Georgia. Against that background, I am not satisfied that the evidence establishes a risk which cannot adequately be managed by stringent conditions requiring residence at a specified address, daily reporting, surrender of travel documents, cooperation with the removal process, maintenance of telephone contact and personal attendance at the substantive hearing.

42. Detention would undoubtedly afford the State greater certainty that the intended deportee would remain available for removal. For the reasons already explained, that consideration cannot be decisive. In the circumstances of this case, continued detention would represent a greater interference with personal liberty than is necessary to secure the statutory purpose.

CONCLUSION AND CONDITIONS OF RELEASE

43. I am satisfied that the appropriate and proportionate course, balancing the intended deportee's rights to personal liberty and access to the courts against the public interest in the effective implementation of the deportation order, is to direct his release subject to stringent conditions. Those conditions are necessary to ensure his continued availability to the immigration authorities, his cooperation with the removal process, and his attendance at the expedited hearing of the judicial review proceedings.

44. I will, therefore, direct that the intended deportee ("*the applicant*") be released from detention pursuant to section 5(7) of the Immigration Act 1999, subject to the following conditions:

(1) The applicant must reside at [Address partially redacted], Bray, County Wicklow. He must report daily to Bray Garda Station between 9.00 a.m. and 5.00 p.m. and sign the book maintained there for that purpose.

(2) The applicant must attend personally at the High Court, Four Courts, at 11.00 a.m. on Friday, 31 July 2026 for the hearing of the judicial review proceedings. If he fails to attend without the prior permission of the court, or without an objectively sufficient explanation which is accepted by the court, the proceedings will be dismissed on that date.

(3) Insofar as he has not already done so, the applicant must surrender to the Garda National Immigration Bureau any passport, national identity card, travel document or other document capable of facilitating international travel which is in his possession or which subsequently comes into his possession.

(4) The applicant must cooperate fully with the Minister, An Garda Síochána and the Garda National Immigration Bureau in relation to any documentation which may be required if the deportation proceeds. The interlocutory injunction restrains the applicant's deportation until 31 July 2026. It does not prevent the Minister from taking steps in the interim to progress the removal arrangements. If the applicant's cooperation is required for that purpose, including the provision of information, he must provide it.

(5) The applicant must provide an operative mobile telephone number to the Garda immigration authorities. He must keep the telephone with him at all reasonable times, respond promptly to communications from the immigration authorities, and attend any appointment reasonably required in connection with travel documentation or removal arrangements.

(6) The applicant must not leave the State. If the judicial review proceedings are dismissed, withdrawn or otherwise finally determined against him, and no order restraining his removal remains in force, he must comply with any lawful requirement to present for removal.

(7) If it becomes necessary and is otherwise authorised by law, the applicant may be arrested in the precincts of the Four Courts on 31 July 2026. If the proceedings are determined against him and no stay is granted pending any appeal, he must surrender himself to arrest if lawfully required to do so.

45. Any material breach of these conditions may result in the revocation of the order for release. The applicant is to be informed through his solicitor of the terms of the conditions and of the consequences of any breach. The court has been informed that the applicant is fluent in English and that a translation of the order is not required.

46. Before his release, the applicant must sign the written acknowledgment appended to the perfected order, confirming that he understands the conditions, including the requirements that he report daily and attend personally at the Four Courts. This is a statutory release pursuant to section 5(7) of the Immigration Act 1999. It is not a formal bail order, and no bond or cash lodgement is required.

47. The costs of this release application are reserved to 31 July 2026 to allow the parties an opportunity to consider the approved written version of this *ex tempore* judgment following its circulation.

48. The interlocutory injunction restraining the Minister from taking any steps to deport the applicant from the State will remain in force until further order of the court at the substantive hearing commencing at 11.00 a.m. on Friday, 31 July 2026.

Appearances

David Leonard for the applicant instructed by Conor Ó Briain Solicitors
John Gallagher for the respondent instructed by the Chief State Solicitor's Office

APPROVED
23 JULY 2026