

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2026] IEHC 667

2026/1333 JR

BETWEEN/

BM, MA,

ASM (A MINOR SUING BY HER FATHER AND NEXT FRIEND BM),

ASM (A MINOR SUING BY HER FATHER AND NEXT FRIEND BM),

SST(A MINOR SUING BY HER FATHER AND NEXT FRIEND BM)

AND MASM (A MINOR SUING BY HER FATHER AND NEXT FRIEND BM)

APPLICANTS

-AND-

THE MINISTER FOR JUSTICE, HOME AFFAIRS AND MIGRATION

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered *ex tempore* on 6th October 2026

PRELIMINARY

1. These proceedings commenced in early September 2026.
2. The first application made in time was for an interlocutory injunction seeking to restrain the deportation of the First Named Applicant to Bangladesh on foot of a deportation order dated 26th August 2026 made pursuant to s. 3 of the Immigration Act 1999, as amended (“the 1999 Act”).
3. The deportation was due to take place on Monday 28th September 2026.
4. A contested interlocutory injunction application was heard before the High Court (O’Connell J.) on 15th September 2026.
5. In an *ex tempore* ruling on 22nd September 2026, O’Connell J. *inter alia* granted the First Named Applicant an interlocutory injunction restraining his deportation (with final orders to be made on Friday 25th September 2026).
6. Separately, the application for leave to apply for judicial review was adjourned and consequent upon the determination of the interlocutory injunction by O’Connell J. the Statement of Grounds in that application was amended.
7. The *ex parte* application for leave to apply for judicial review came before me on Monday afternoon, 5th October 2026.
8. I granted the Applicants leave to apply for judicial review to challenge the making and notification of the deportation order dated 26th August 2026.
9. By way of a further separate application brought on foot of a notice of motion dated 29th September 2026, the First Named Applicant seeks an order pursuant to s. 5(7) of the 1999 Act that he be released from detention subject to such conditions that may be imposed pursuant to that provision.
10. This *ex tempore* judgment addresses that application.

BACKGROUND

11. I adopt generally the following background facts and chronology as outlined on behalf of the Applicants.
12. The First Named Applicant is a Bangladeshi national married to the Second Named Applicant.
13. They are the parents of the Third to Sixth Named minor Applicants who range in age from 17 years to 4 years. The Second to Fifth Named Applicants are Bangladeshi nationals. The Sixth Named Applicant was born in Ireland in late 2021 and is an Irish citizen.
14. The First Named Applicant entered the State in or around September 2003 pursuant to a student visa and thereafter held a Stamp 2 permission, which was renewed until 2014, when he was granted a temporary Stamp 4 permission.
15. In or around March 2015, the First Named Applicant was granted Stamp 4 permission pursuant to the 2004 Student Probationary Extension, which permission was subsequently renewed. The First Named Applicant held permission to remain in the State for almost 23 years between September 2003 and the revocation of his Stamp 4 permission in or around June 2026.
16. Visas for the Second Named Applicant and their only child (at that time) to join the First Named Applicant in Ireland were applied for in 2014 and granted, but then cancelled in 2015.
17. Subsequent 2016 visa applications were refused in 2018.
18. The Second Named Applicant and three of their children applied for joint family visas in February 2020, which were granted on appeal on 3rd September 2020.
19. They subsequently joined the First Named Applicant in the State in January 2021.

- 20.** Following the birth of the Sixth Named Applicant in Ireland on 25th November 2021, the First and Second Named Applicants held Stamp 4 permissions as the parents of an Irish citizen child.
- 21.** On or about 27th November 2024, the First Named Applicant was convicted, following a guilty plea, of sexual assault contrary to s. 2 of the Criminal Law (Rape) (Amendment) Act 1990 (as amended).
- 22.** The victim was a young adult passenger in the First Named Applicant's taxi.
- 23.** On 11th March 2025, the Dublin Circuit Criminal Court sentenced the First Named Applicant to two years' imprisonment, directed that he be taken into custody at Mountjoy Prison, and ordered that he be registered as a sex offender.
- 24.** The First Named Applicant had no previous convictions. The First Named Applicant was imprisoned in Mountjoy Prison until the date of his release on 8th September 2026.
- 25.** By letter dated 11th May 2026, the Minister for Justice, Home Affairs and Migration ("the Minister") proposed to revoke the First Named Applicant's Stamp 4 permission because of this conviction and invited representations within 15 working days.
- 26.** Following consideration of representations made, the Minister revoked that permission.
- 27.** On 23rd June 2026, the Minister notified the First Named Applicant of his proposal to make a deportation order on the basis that he was serving a term of imprisonment for a serious offence. Representations and supporting documentation were submitted on 14th July 2026.
- 28.** On 26th August 2026, the Minister made a deportation order requiring the First Named Applicant to leave the State and remain thereafter outside it. The order provided for its execution by an immigration officer or member of An Garda Síochána at or shortly before the conclusion of the First Named Applicant's sentence, with provision for his arrest and immigration detention immediately upon completing that sentence.

29. The deportation order was notified to the First Named Applicant by letter dated 26th August 2026, which enclosed an “Examination of File” dated 4th August 2026, upon which the decision to deport was based.

DETENTION OF THE FIRST NAMED APPLICANT

30. Section 5(7) of the 1999 Act provides as follows:

“(7) Where a person detained under this section institutes court proceedings challenging the validity of the deportation order concerned, or of a decision by the Minister under section 3(11) in relation to the order, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:

(a) that the person reside or remain in a particular district or place in the State;

(b) that he or she report to a specified Garda Síochána station or immigration officer at specified intervals;

(c) that he or she surrender any passport or travel document in his or her possession.”

31. Whilst s. 5 of the 1999 Act further provides that a person cannot be detained for more than an eight-week aggregate period, the time period during which legal proceedings have been instituted is not reckonable as part of that eight-week period.

32. In the First Named Applicant’s case, as leave to apply for judicial review was granted on Monday, 5th October 2026, time has effectively been paused insofar as the running of the eight-week period is concerned.

33. In *K. (Detention Pending Deportation) v Minister for Justice, Home Affairs and Migration* [2026] IEHC 514 (“K”), the High Court (Simons J.) at para. 6 of his judgment *inter alia* observed that “... *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...*” and at para. 7 of his judgment the court noted that the statutory purpose of detention was 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, adding as follows:

“... *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.*”

34. The Minister, represented by counsel, opposes the First Named Applicant’s application for release pursuant to s. 5(7) of the 1999 Act and evidence was given by Detective Sergeant Joseph Kenny of the Garda National Immigration Bureau (“GNIB”).

35. As mentioned, Detective Sergeant Kenny gave evidence opposing the application for conditional release.

36. In summary, he stated that the deportation order in relation to the First Named Applicant had only recently been issued and he expressed a concern that, for operational reasons, there was a risk that the First Named Applicant, as a convicted sex offender being released into the community, might seek to abscond and evade his deportation from the

State. He stated that the First Named Applicant was unlawfully in the State and that he would not agree to his release or to any of the statutory conditions in s. 5(7) of the 1999 Act.

37. I consider, however, that the factors outlined by Simons J. at para. 16 of his judgment in *K* are applicable to the exercise of the court's discretion having regard to the evidence adduced, and the facts of this case, and that the matters at para. 15 are not applicable. Further, having regard to para. 30 of the judgment in *K*, there has been no evidence adduced of an individualised risk of absconding to such a nature or degree that it cannot adequately be managed by release subject to appropriate conditions.

38. Previously, at paras. 14 to 16 in *K*, Simons J. stated as follows:

“(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."

- 39.** At paras. 17 and 18 of his judgment in *K*, Simons J. rejected the contention made on behalf of the Minister in that case that a person who is subject to a deportation order *per se* presented a “*baseline risk*” of non-compliance and an incentive not to present themselves to immigration officers once removal was imminent.
- 40.** In his judgment in *K*, Simons J. stated that he could not accept that every intended deportee must be assumed to abscond, or that this supposed “*baseline risk*” was, without more, sufficient to require continued detention.
- 41.** He stated that s. 5(7) of the 1999 Act “... *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.*”
- 42.** Insofar as this application is concerned, as stated above, the First Named Applicant had been imprisoned in Mountjoy Prison until his release on 8th September 2026.

43. On that date, 8th September 2026, the First Named Applicant was arrested on foot of the deportation order dated 26th August 2026 and was moved to Cloverhill Prison, where he remains detained pursuant to s. 5 of the 1999 Act.
44. At the time of this application pursuant to s. 5(7) of the 1999 Act, the First Named Applicant had been granted an interlocutory injunction by the High Court (O’Connell J.) restraining *pro tem* his deportation.
45. The First Named Applicant will, therefore, remain in the State for so long as the injunction is applicable.
46. The First Named Applicant has also now been granted leave to apply for judicial review seeking to challenge the deportation order dated 26th August 2026. He has, therefore, instituted “... *court proceedings challenging the validity of the deportation order concerned ...*” as per s. 5(7) of the 1999 Act but no immediate hearing date has been set as leave was only granted on Monday 5th October 2026.
47. Further, insofar as s. 5(7)(c) of the 1999 Act refers to the following conditions for release, namely “*that he or she surrender any passport or travel document in his or her possession*”, the First Named Applicant has already surrendered his passport to the GNIB.
48. On behalf of the First Named Applicant, it was indicated that he will comply with s. 5(7)(a) of the 1999 Act which provides that “*the person reside or remain in a particular district or place in the State*”. It was stated that the First Named Applicant will agree to reside with his family at Apartment 6, 6 Forst Mews, Forest Road, Swords, County Dublin.
49. It was also confirmed that the First Named Applicant would comply with s. 5(7)(b) of the 1999 Act and that he would report to the Garda Síochána station in Swords or an immigration officer at whatever intervals were specified.

50. In all of the circumstances, therefore, I am satisfied that the First Named Applicant should be granted conditional release pursuant to s.5(7) of the 1999 Act.

PROPOSED ORDER AND CONDITIONS FOR RELEASE

51. Accordingly, I shall direct that the First Named Applicant be released from detention pursuant to s. 5(7) of the 1999 Act subject to the following conditions:

- (i) The First Named Applicant must reside at Apartment 6, 6 Forest Mews, Forest Road, Swords, County Dublin;
- (ii) The First Named Applicant shall report to the offices of the Garda National Immigration Bureau at 13/14 Burgh Quay, Dublin 2 at 11am on Tuesday 13th October 2026 and on each Tuesday thereafter;
- (iii) Whilst the evidence was that the GNIB already has the First Named Applicant's passport in their possession from its investigation, the First Named Applicant is required to surrender in addition to his passport (if he has not already done so), any 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 to the GNIB.

52. I shall hear from the parties in relation to any ancillary or consequential matters which arise.

CONLETH BRADLEY

6th October 2026