HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 28 Mar 2024 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number:	P7/2024
File Title:	ASF17 v. Commonwealth of Australia
Registry:	Perth
Document filed:	Form 27D - Respondent's submissions
Filing party:	Defendant
Date filed:	28 Mar 2024

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA

PERTH REGISTRY **NO P7 OF 2024**

BETWEEN: **ASF17**

Appellant

AND: **COMMONWEALTH OF AUSTRALIA**

Respondent

SUBMISSIONS OF THE RESPONDENT

PART I FORM OF SUBMISSIONS

1. These submissions are in a form suitable for publication on the internet.

PART II ISSUES PRESENTED BY THE APPEAL

2. This appeal, which has been removed from the Full Federal Court, concerns the application of the constitutional limitation identified in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*.[1] There, this Court held that Ch III prevents the detention of an alien for the purpose of removing that alien from Australia if there is no real prospect of removal becoming practicable in the reasonably foreseeable future. The central question in this appeal is whether that constitutional limit applies to render unlawful the detention of an alien who has sought and been refused permission to remain in Australia, and who cannot be removed solely because of their refusal to cooperate in that removal. The Commonwealth submits that the primary judge was correct to find that the constitutional limit identified in *NZYQ* is not engaged in such a case.

3. In addition to the central issue identified above, the appeal also raises:

   (a) whether, even if the central issue (which is the subject of **ground 1**) is determined in favour of the Commonwealth, a different answer is to be given where non-cooperation is due to a genuine subjective fear of harm in the place to which it is proposed that the non-citizen be removed (**grounds 2 and 3(b)**); and

   (b) whether, if that question is answered in favour of the appellant, the primary judge erred in finding that the appellant's refusal to cooperate with his removal to Iran was not due to a genuine subjective fear of harm (**grounds 3(a) and 4**).

4. In summary, the Commonwealth submits that, if a non-citizen who has been refused permission to enter or remain in Australia could be removed if they cooperated with their removal, the detention that is required and authorised by ss 189(1) and 196(1) of the *Migration Act 1958* (Cth) (**Act**) is reasonably capable of being seen as necessary for the legitimate and non-punitive purpose of removal from Australia. "In constitutional terms, the detention of an alien does not lose the objectively determined purpose of removing the alien from Australia if the alien is choosing not to cooperate in achieving that purpose" (**CAB 20 [52]**). Such detention cannot properly be characterised as punitive, because the alien could bring it to an end at any time. That is true even if the alien's non-cooperation

[1] (2023) 97 ALJR 1005 (***NZYQ***).

is the result of a genuine subjective fear of harm in the place to which the alien is to be taken. Such a fear of harm is relevant to removal only if it has been advanced, and accepted as well-founded, through the statutory processes that Parliament has enacted to prescribe the manner in, and extent to which, Australia gives effect to its non-refoulement obligations. If those submissions are accepted, grounds 3(b) and 4 do not arise.

PART III NOTICES UNDER SECTION 78B OF THE JUDICIARY ACT

5. The appellant has issued a notice under s 78B of the *Judiciary Act 1903* (Cth) (**CAB 71**).

PART IV FACTS

A. Appellant's facts

6. The Commonwealth substantially[2] agrees with the summary of facts in **AS [9]-[22]**. At **AS [24]** the appellant submits that his claim to fear harm based on his bisexuality had "never been considered in any statutory protection visa process", nor in any non-statutory process. That is true because, despite multiple prior opportunities to do so (detailed below), that claim was raised for the first time in the context of this proceeding (**CAB 30-31 [88]-[89]**; **ABFM 119 [7]-[13]**). The appellant asserts (**AS [24], fn 19**) that the primary judge made no finding that his stated reasons for not raising this claim earlier were not genuine. That is incorrect: the primary judge analysed and rejected his explanations for not having made the claim earlier (**CAB 36-37 [109]-[114]**; also **CAB 32 [96]**).

B. Additional facts

7. The appellant applied for a safe haven enterprise visa (**SHEV**) on 1 April 2016 on the basis that he feared harm because he was a stateless Faili Kurd and also because he had converted to Christianity (**CAB 30 [86]**). A delegate of the Minister for Immigration and Border Protection found that the appellant was not a refugee and was not owed protection obligations in relation to Iran (**ABFM 88-104**). Judicial review proceedings in respect of that decision were dismissed by the Federal Circuit Court of Australia,[3] and an appeal in respect of that decision was dismissed by the Federal Court of Australia.[4]

8. As noted above, in his affidavit affirmed on 13 December 2023 in the context of this

---

2 Subject to two corrections, being (1) the appellant's bridging visa was cancelled on 10 February 2014 (**cf AS [11]**; see **RBFM 8 [12.4]**); and (2) the removals interview happened on 6 September 2023 (not 3 September) (cf **AS [17]**; see **ABFM 15 [32]**).

3 *ASF17 v Minister for Immigration and Border Protection* [2017] FCCA 2498

4 *ASF17 v Minister for Immigration and Border Protection* [2018] FCA 1149.

proceeding, the appellant gave evidence for the first time that he feared harm in Iran on the basis that he had been found by his wife having sexual intercourse with another man in Iran (**CAB 30 [88]**). This claim was not advanced in the appellant's entry interview on 13 August 2013 (**CAB 32-34 [97]-[102]**), in his protection visa application (**CAB 36 [111]**), in his interview in relation to his protection visa application on 2 June 2016 (during which he had representation) (**CAB 30 [86]**, **35 [105]-[106])**, in subsequent court proceedings (**CAB 37 [111]**), nor in the years that he had been in detention and was regularly interviewed by officers as to whether he would return to Iran voluntarily (**CAB 29 [80]**; **ABFM 13-16 [19]-[33]**). As is addressed below (at [21] and [54]), that claim was rejected by the primary judge.

9. The appellant stated in his entry interview that he had come to Australia to seek economic opportunity (**CAB 33 [99]**). He accepted at that time that he was an Iranian citizen, although he later claimed in his protection visa application that he was stateless (**CAB 35 [106]**). He maintained his claim to be stateless until June 2019, at which time he again admitted to being an Iranian citizen, and he provided the Department of Home Affairs (**Department**) with identity documents (**ABFM 54**). The appellant conceded in cross-examination that he has known ever since he came to Australia that he was an Iranian citizen and not a stateless person (**T111.34-39**, **RBFM 28**).

10. There is no country other than Iran to which it is possible to remove the appellant (**CAB 42 [131]**).[5] There being no such country, there is no basis for the appellant's assertion that he was not removed "by reason of policy" (cf **AS [50]**). Indeed, if there was a real prospect that he could be removed to some other country, that would be a further reason he does not fall within the *NZYQ* limitation. In those circumstances, the references in submissions to his preparedness to be removed to a third country are an irrelevant distraction.

11. The Commonwealth's position is that the appellant is lawfully detained for the purpose of removal to Iran. He has not been removed to Iran because he has refused to meet with Iranian authorities for the purpose of procuring travel documents to facilitate his removal (**CAB 9 [4]**). There is no dispute that, if the appellant took the step of procuring such travel documents (which it is and has at all times been within his power to do), he could

[5] There was unchallenged evidence before the primary judge that the Commonwealth had investigated third country options for removal, but had concluded that none was viable: Affidavit of Edward Jones affirmed on 28 November 2023 at EJ-9 (**ABFM 67-73**); T60.12-16 (**ABFM 133**).

be removed to Iran (**CAB 11 [12]**, **CAB 42 [131]**).

C. Judgment of the primary judge

12. The primary judge held that the limitation in *NZYQ* (**CAB 20 [53]**):

> is concerned with the objective purpose served by the ongoing detention. Where ongoing detention is to arrange removal from Australia as soon as practicable, that lawful purpose is served for so long as there is a practicable way that the person may be removed, even if it requires cooperation from the detainee for it to be achieved. Practicability focuses upon whether something is able to be done. Where a person lacks the capacity to cooperate then removal is no longer practicable. However, the practicability of removal is not altered by the subjective state of mind of the person being detained. Nor is it altered by an unwillingness on the part of the detainee to do that which is able to be done. (emphasis added)

13. His Honour understood that, in formulating the limitation that was recognised in *NZYQ*, this Court "was concerned to ensure that the formulation of the constitutional limitation did not 'uncouple the limitation from its underlying constitutional justification'" (**CAB 20 [52]**). He continued (**CAB 20 [52]**):

> That justification was to be found in the objectively determined purpose that was being carried into effect by the ongoing detention. In constitutional terms, the detention of an alien does not lose the objectively determined purpose of removing the alien from Australia if the alien is choosing not to cooperate in achieving that purpose.

14. The primary judge's references to the "objectively determined" purpose of detention drew directly from the language in *NZYQ* at [44]-[45] (**CAB 18-19 [45]-[46]**).

15. Applying the *NZYQ* limit, the primary judge concluded that, in determining whether there is a real prospect of a detainee's removal from Australia becoming practicable in the reasonably foreseeable future, "there is to be regard to all voluntary actions that may be undertaken by the detained person to assist in their removal irrespective of whether the detainee is refusing to undertake those actions in respect of removal to a particular place because of a genuine subjective fear of harm if removed to that place" (**CAB 23-24 [64]**).

16. In support of that conclusion, the primary judge considered it significant that the Court in *NZYQ*[6] had pointed out that the plaintiff in that case had cooperated with the Department's requests for information, and drawn a distinction with *Plaintiff M47/2018 v Minister for*

[6] (2023) 97 ALJR 1005 at [62].

Home Affairs[7] on that basis (**CAB 12-13 [18]-[22]**). In *NZYQ*, this Court referred to *Plaintiff M47* as an instance where an argument to re-open *Al-Kateb v Godwin*[8] had failed on the facts.[9] The primary judge considered it implicit in that reference that *Plaintiff M47* "did not establish circumstances in which the constitutional limitation on the duration of immigration detention as articulated in *NZYQ* was exceeded" (**CAB 13 [24]**). Later in his reasons, having quoted extensively from *Plaintiff M47* (**CAB 21-22 [55]-[59]**), the primary judge concluded that the reasoning was to the effect that, "unless there is an inability to cooperate (for medical reasons or a lack of knowledge), in the absence of cooperation as to matters relating to removal it cannot be concluded that there is no real prospect of the person's removal from Australia becoming practicable in the reasonably foreseeable future" (**CAB 22-23 [60]**).

17. The primary judge distinguished *AZC20 v Secretary, Department of Home Affairs (No 2)*,[10] in which Kennett J held that *Plaintiff M47* supported a limitation on *NZYQ* only "where an unlawful non-citizen embarks on a deliberate strategy of preventing their removal from Australia".[11] The primary judge distinguished *AZC20* on the basis (*inter alia*) that the applicant in that case had mental health conditions that meant he was incapable of cooperating with efforts to effect his removal.[12] By contrast, he found as a fact that the appellant "has made a voluntary decision not to cooperate in meeting with Iranian authorities to facilitate his removal to Iran, a decision which he has the capacity to change but which he chooses not to change" (**CAB 16 [37]**). However, in addition to distinguishing *AZC20*, the primary judge also declined to follow Kennett J's analysis of the relationship between *Plaintiff M47* and *NZYQ* (**CAB 17 [41]**).

18. In the light of the conclusions summarised above, it was not strictly necessary for the primary judge to decide any other issues. However, his Honour proceeded to do so in the event the matter went on appeal, given that they gave rise to factual findings that depended on assessment of the appellant's credit (**CAB 27 [71]**).

19. The primary judge held that the appellant's refusal to undertake voluntary actions to assist in his return to Iran was not because of a genuine subjective fear of harm if returned there

7 (2019) 265 CLR 285 (***Plaintiff M47***).
8 (2004) 219 CLR 562 (***Al-Kateb***).
9 (2023) 97 ALJR 1005 at [16].
10 [2023] FCA 1497 (***AZC20***).
11 [2023] FCA 1497 at [65(a)]).
12 *AZC20* [2023] FCA 1497 at [65(d)]. The primary judge emphasised this feature of the case: **CAB 17 [39]**.

(**CAB 42 [130]**). The appellant had raised four bases for fearing harm on return to Iran: (i) he was bisexual and his wife had found him in bed in Iran with another man, as a result of which he feared harm from his brothers and the Iranian authorities if returned (**CAB 30-31 [88]-[91]**); (ii) he had converted to Christianity from Islam and the punishment in Iran for apostasy is death; (iii) he is a Faili Kurd and does not enjoy equal rights in Iran; and (iv) he is opposed to the extremist government in Iran for their mistreatment of women and had regularly posted in solidarity with Iranian women on social media (**CAB 31 [92]**).

20. With respect to the third and fourth claims, the primary judge held that the appellant had not adduced evidence to discharge his evidentiary onus, and therefore no onus of proof fell as to those matters on the Commonwealth (**CAB 41 [127]**).

21. With respect to the first and second claims, while the primary judge accepted that the appellant's "present and recent sexual orientation" was bisexual, he did not accept that the appellant was discovered by his wife in bed with another man before coming to Australia, nor that he fled Iran because of that event or its consequences (**CAB 40-41 [126(1)-(3)]**). Nor did the primary judge accept that the appellant had converted to, or was a practicing adherent of, Christianity (**CAB 41 [126(5)-(6)]**). The essential reason for these findings was that the primary judge formed a highly adverse view of the appellant's credibility. His Honour was not satisfied that the appellant's evidence was reliable (**CAB 32 [96]**), noting many inconsistencies in his accounts (**CAB 32-37 [97]-[113]**). In relation to some evidence, the primary judge found that the appellant "was saying whatever came into his mind to support his case" and that his evidence was "inconsistent, illogical and lacking in any credibility" (**CAB 34 [104]**). With respect to other evidence, he found that the appellant was evasive in cross-examination (**CAB 36 [109]**; also **CAB 35 [105]**); had given evidence that "d[id] not make sense"; and had adopted inconsistent positions over a period which "reflect[ed] very adversely upon his credibility", demonstrating that he was "prepared to concoct and adhere for a considerable period to a false version of events for the purpose of assisting his claim to protection" (**CAB 35-36 [108]**).

22. The primary judge was not prepared to infer that the length of time that the appellant had been detained meant that it should be inferred that his fears were genuine, finding that his "behaviour [wa]s also consistent with a singular focus upon being able to secure permission to be released into the Australian community rather than face economic

difficulty if he was to be made to return to Iran" (**CAB 38 [116]**).

PART V ARGUMENT

A. Issue one: application of *NZYQ* in cases of non-cooperation (ground 1)

Detention of a person who could be removed but for their refusal to cooperate is not punitive

23. In applying the constitutional limitation identified in *NZYQ*, and therefore in assessing whether there is "no real prospect of the removal of [an unlawful non-citizen] from Australia becoming practicable in the reasonably foreseeable future", the primary judge was correct to conclude that it is necessary to take into account the ability or capacity of a non-citizen to cooperate in achieving their removal, irrespective of any demonstrated unwillingness to cooperate, and irrespective of any subjective reasons for refusing to cooperate (**CAB 23-24 [64]-[65]**).

24. The essential reason that is so is because the principle in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*[13] – upon which the holding in *NZYQ* was based – is "ultimately directed to a single question of characterisation (whether the power is properly characterised as punitive)".[14] Accordingly, the application of the limitation identified in *NZYQ* is not solely "a factual question" (cf **AS [54]**; **IS [17], [23]-[26]**). Unlike the situation considered in *NZYQ* itself, where removal could not be "achieved in fact"[15] because there was no place that would accept the plaintiff, the detention of a non-citizen who could and would be removed from Australia, but for their refusal to cooperate, cannot properly be characterised as punitive. Consistently with that submission, it has long been recognised that "[t]he fact that detainees may request removal is important to, if not determinative of, a conclusion that the detention authorised by the provisions is not punitive".[16] *A fortiori*, the fact that it is within the power of such a non-citizen actually to bring their detention to an end by cooperating with their removal answers the single question of characterisation. A non-citizen in that position is in

13 (1992) 176 CLR 1 (***Lim***).

14 *NZYQ* (2023) 97 ALJR 1005 at [44].

15 *NZYQ* (2023) 97 ALJR 1005 at [40].

16 *Re Woolley; Ex parte Applicants M276/2003* (2004) 225 CLR 1 (***Woolley***) at [95] (McHugh J); see also [30] (Gleeson CJ), [153] (Gummow J). The significance of a non-citizen's capacity to bring their detention to an end by requesting removal for the characterisation of detention was likewise accepted in *Lim* (1992) 176 CLR 1 at 34 (Brennan, Deane and Dawson JJ), 72 (McHugh J).

"'three-walled' detention only".[17] Such detention is not punishment. Its purpose, "objectively determined",[18] is removal (usually to a place where the person is a citizen).

25. That submission does not involve testing the prospect of removal on a "hypothetical basis" (cf **AS [30], [47], [54]**). It simply recognises that the objective purpose of the detention that ss 189 and 196 of the Act authorise and require remains the purpose of removal, if the only reason that that detention has not been brought to an end by removal under s 198 is because a non-citizen is frustrating or preventing the performance of that duty.

26. To hold that a non-citizen who refuses to cooperate in their removal can take advantage of the constitutional limitation identified in *NZYQ* would be to "uncouple the limitation from its underlying constitutional justification".[19] That follows because to conclude that detention is not for the purpose of removal in circumstances where the only impediment to removal is a detainee's non-cooperation would "go beyond merely ensuring that the non-punitive purpose of detention remains a purpose capable of being achieved in fact".[20] It would also go beyond "ensuring that the detention is limited to what is reasonably capable of being seen as necessary for the purpose of removal".[21]

27. Relatedly, to have regard to a detainee's refusal to cooperate with their removal, or to the reason(s) given for that non-cooperation, or to conduct an inquiry into the genuineness of those reasons or their basis in fact, would "leav[e] the constitutional limitation to have an unstable operation".[22] It would make the validity of ss 189 and 196 in their application to particular non-citizens dependent upon the subjective attitude of detainees with respect to their removal. That attitude may change over time. And what may begin as a genuinely held view might not remain so. Just as the criteria governing the duration of detention must be "capable of objective determination by a court at any time and from time to

---

17 *Woolley* (2004) 225 CLR 1 at [152]-[153] (Gummow J).

18 *NZYQ* (2023) 97 ALJR 1005 at [44].

19 *NZYQ* (2023) 97 ALJR 1005 at [58]. The proposed intervener's submission that "the only question to be determined by a court, in any given case, is a factual one" (**IS [26]**) attempts such uncoupling, by contending that the terms of the limitation identified in *NZYQ* must be applied without regard to the constitutional principle that underpins it.

20 *NZYQ* (2023) 97 ALJR 1005 at [58] (emphasis added).

21 *NZYQ* (2023) 97 ALJR 1005 at [58].

22 *NZYQ* (2023) 97 ALJR 1005 at [58].

time",[23] so, too, must the question whether detention is reasonably necessary to effectuate a non-punitive purpose.

28. These matters were understood by the primary judge. They underpin his Honour's central conclusion at **CAB 20 [53]**, which is quoted in paragraph 12 above but bears repeating:

> Where ongoing detention is to arrange removal from Australia as soon as practicable, that lawful purpose is served for so long as there is a practicable way that the person may be removed, even if it requires cooperation from the detainee for it to be achieved. Practicability focuses upon whether something is able to be done … [T]he practicability of removal is not altered by … an unwillingness on the part of the detainee to do that which is able to be done.

29. That reasoning is correct. It is entirely consistent with the *Lim* principle: detention is reasonably capable of being seen as necessary for the non-punitive purpose of removal if the only impediment to that removal is the non-citizen's non-cooperation (**cf AS [35]**). Such detention does not have the character of being punitive, because as a matter of "substance and not mere form",[24] it will cease upon removal, which will occur as soon the non-citizen decides to cooperate (**cf AS [40]**). The detention that is authorised therefore goes no further than is necessary to achieve its purpose.[25] Nothing about detention in those circumstances encroaches upon the judicial power of the Commonwealth.

Consistency with *Plaintiff M47*

30. In *NZYQ*, this Court pointed out that the case before it was not one in which a detainee had contributed to the frustration of attempts to bring about their removal.[26] In doing so, it cited several passages from *Plaintiff M47*. That case involved an attempt to challenge *Al-Kateb*, which failed because the Court unanimously concluded that the factual basis for the reconsideration of that decision had not been established notwithstanding the fact that the plaintiff had been detained for over 8 years. The Department's efforts to remove the plaintiff from Australia had been frustrated by the plaintiff having failed to cooperate with efforts to establish his identity. In those circumstances, Kiefel CJ, Keane, Nettle and

---

23 *North Australian Aboriginal Justice Agency Ltd v Northern Territory* (2015) 256 CLR 569 at [99] (Gageler J). See also *Plaintiff M68/2015 v Minister for Immigration and Border Protection* (2016) 257 CLR 42 at [184] (Gageler J).

24 *NZYQ* (2023) 97 ALJR 1005 at [28].

25 *Falzon v Minister for Immigration and Border Protection* (2018) 262 CLR 333 (***Falzon***) at [29] (Kiefel CJ, Bell, Keane and Edelman JJ).

26 (2023) 97 ALJR 1005 at [62].

Edelman JJ characterised the position of the plaintiff as having "contributed to the frustration of lines of enquiry as to his identity and nationality",[27] those being lines of enquiry that were indirectly relevant to the prospects that his removal would become practicable. Their Honours noted that "the plaintiff seeks to take advantage of difficulties to which he has contributed to contend that enquiries as to his identity and country of origin have no prospect of success."[28] They then observed that there was "no basis in the materials before the Court for any conclusion other than that the plaintiff has deliberately failed to assist the defendants in their attempts to establish his true identity and nationality".[29] Their Honours concluded that it had not been established that the options for his removal within a reasonable time had been exhausted "if his cooperation is forthcoming".[30] It was on that basis that their Honours held that the factual basis for the challenge to *Al-Kateb* had not been established, and that "no question arose as to the lawfulness of the plaintiff's detention"[31] (cf **AS [42]**).

31. The reasoning summarised above is to the effect that, in a case where a non-citizen is detained for the purpose of removal, the prospect of removal is assessed on the premise that "cooperation is forthcoming" and that, in the absence of such cooperation, no question of the lawfulness of detention arises. If non-cooperation did not have that effect, then a question as to the validity of the plaintiff's detention would have arisen.

32. The joint reasons of Bell, Gageler and Gordon JJ are to materially the same effect. Their Honours stated that they agreed with Kiefel CJ, Keane, Nettle and Edelman JJ's reasons for concluding that the plaintiff had "deliberately failed to assist the defendants in their attempts to establish his true identity".[32] That was important due to "the practical necessity for the Department … to establish his identity before any other country will agree to receive him".[33] That is, non-cooperation with inquiries as to his identity was significant because of its ramifications for his prospects of removal (meaning *M47* cannot be distinguished on the basis that the non-cooperation here directly impedes removal, as opposed to indirectly impeding removal by impeding inquiries that are a pre-requisite to

27 *Plaintiff M47* (2019) 265 CLR 285 at [31] (Kiefel CJ, Keane, Nettle and Edelman JJ).
28 *Plaintiff M47* (2019) 265 CLR 285 at [32] (Kiefel CJ, Keane, Nettle and Edelman JJ).
29 *Plaintiff M47* (2019) 265 CLR 285 at [34] (Kiefel CJ, Keane, Nettle and Edelman JJ).
30 *Plaintiff M47* (2019) 265 CLR 285 at [41] (Kiefel CJ, Keane, Nettle and Edelman JJ) (emphasis added).
31 *Plaintiff M47* (2019) 265 CLR 285 at [42] (Kiefel CJ, Keane, Nettle and Edelman JJ).
32 *Plaintiff M47* (2019) 265 CLR 285 at [47].
33 *Plaintiff M47* (2019) 265 CLR 285 at [48].

removal) (cf **AS [33], [50]; IS [34]**). Their Honours pointed out that an available inference was "that it is within the plaintiff's power to cooperate in other ways with requests made by the Department in its attempt to establish his identity and nationality. In the absence of his cooperation, it cannot be known whether the plaintiff's identity can be established, nor can the Court essay any conclusion as to the prospect or likelihood of his removal from Australia".[34]

33. In light of the summary above, the primary judge was correct to observe that all members of this Court in *Plaintiff M47* agreed that "in the absence of cooperation as to matters relating to removal it cannot be concluded that there is no real prospect of the person's removal from Australia becoming practicable in the reasonably foreseeable future" (**CAB 22-23 [60]; cf AS [42]**). While the statement in *NZYQ* was made in terms of the "frustration of the pursuit of lines of inquiry by officers of the Department attempting to bring about the person's removal",[35] that simply reflected the specific facts of *Plaintiff M47*. As noted above, however, those inquiries were significant only because of their ramifications for the prospects of removing the Plaintiff. Accordingly, at the level of principle, the case directly concerns the significance of an unlawful non-citizen's failure to cooperate with efforts to remove him or her from Australia (**cf AS [50**]). Both *Plaintiff M47* itself, and *NZYQ*, strongly support the conclusion that when it is within a non-citizen's "power to cooperate" in their removal, their prospects of removal must be assessed on the basis that "cooperation is forthcoming".[36]

34. The primary judge found, on the basis of a formal concession made by senior counsel for the appellant, that if he cooperated in his removal to Iran by making an application to the Iranian authorities for a travel document he could be removed from Australia (**CAB 42 [131]**). For as long as the appellant is capable of making that application, his removal from Australia "remains a purpose capable of being achieved in fact"[37] and the executive has not yet "complet[ed] … [the] administrative processes directed to th[at] purpos[e]"[38] (**cf AS [56]**).

---

34 *Plaintiff M47* (2019) 265 CLR 285 at [49] (emphasis added).

35 *NZYQ* (2023) 97 ALJR 1005 at [62].

36 *Plaintiff M47* (2019) 265 CLR 285 at [41] (Kiefel CJ, Keane, Nettle and Edelman JJ).

37 *NZYQ* (2023) 97 ALJR 1005 at [40], [58] (emphasis added).

38 *Plaintiff M76/2013 v Minister for Immigration, Multicultural Affairs and Citizenship* (2013) 251 CLR 322 at [140] (Crennan, Bell and Gageler JJ), approved in *NZYQ* (2023) 97 ALJR 1005 at [33].

35. It remains to note that the primary judge was correct to decline to follow the reasoning of Kennett J in *AZC20*, to the effect that *Plaintiff M47* supports an exception to the *NZYQ* limitation only where "an unlawful non-citizen embarks upon a deliberate strategy of preventing their removal".[39] Not only does that fail accurately to capture what was said in *NZYQ* concerning *Plaintiff M47*,[40] it diverts attention from the objective purpose of detention (which underpins the constitutional limit) into irrelevant questions about subjective fault. It also inappropriately deploys "principle of legality" reasoning to determine the scope of a constitutional limitation that arises from the separation of powers, rather than from a direct concern to protect individual liberty (**cf AS [51]**).[41]

Consistency with other authorities

36. Although the primary judge did not rely upon them (**CAB 26 [70]**), his decision is consistent with several cases – mostly in the Federal Court – which were decided in the context of the statutory limitation on detention that was thought to exist in the period between the Federal Court's decision in *Al Masri*[42] and this Court's decision in *Al-Kateb*. That limitation was formulated in terms similar to the constitutional limitation in *NZYQ*, being that the power to detain under ss 189 and 196 of the Act ceased once there was no real likelihood or prospect of a detainee being removed in the reasonably foreseeable future.[43] In applying that limitation, several cases addressed whether a non-citizen who had failed or refused to cooperate in their removal from Australia could benefit from that limitation. Those cases consistently held that they could not. Of particular note, on appeal in *Al Masri*, the Full Federal Court held:[44]

> [W]e do not intend our observations to give any support to a contention that a person … might by their own act in frustrating the process of removal, make their continued detention unlawful. For the purposes of the implied limitation, if such a person were, for example, to refuse to sign a consent required by a country otherwise prepared to take him, that person would not (ordinarily at least) be held in circumstances where there was no reasonable likelihood of his removal.

---

39 *AZC20* [2023] FCA 1497 at [65(a)] (emphasis added).

40 (2023) 97 ALJR 1005 at [62].

41 *AZC20* [2023] FCA 1497 at [64]-[65(a)].

42 *Al Masri v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 1009; 192 ALR 609 (Merkel J).

43 *Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri* (2003) 126 FCR 54 (***Al Masri***) at [136] (Black CJ, Sundberg and Weinberg JJ).

44 *Al Masri* (2003) 126 FCR 54 at [137] (Black CJ, Sundberg and Weinberg JJ).

37. Subsequently, in *WAIS v Minister for Immigration and Multicultural Affairs and Indigenous Affairs*,[45] French J (as his Honour then was), in discussing the same implied limitation, said:[46]

> A detainee cannot, in effect, create a circumstance which negatives any reasonable likelihood that he can be removed in the foreseeable future by withholding his consent or cooperation to a particular avenue for removal and specifically to removal to the country from which he came.

38. Two paragraphs earlier, French J had explained that "absent the applicant's own reservations and conditions on his removal from Australia, he has not demonstrated that there would not be a real likelihood of his removal from Australia in the reasonably foreseeable future, assessed in the light of the real world difficulties that attach to such removal".[47]

39. In *SPKB v Minister for Immigration and Multicultural and Indigenous Affairs*, the Full Federal Court referred with approval to the above comments of French J in *WAIS*, before stating that "[t]he appellant seeks to create a situation where there is no reasonable likelihood of his removal in the foreseeable future by withholding his cooperation to his removal to Iraq. This he cannot do".[48]

40. In *Rahmatullah v Minister for Immigration and Multicultural and Indigenous Affairs*, Sundberg J likewise referred with approval to the comments of French J in *WAIS* and concluded that "[i]t is clear that the detention of a detainee is not unlawful where the reason for any delay in that person's removal from Australia is the failure of that person to cooperate in facilitating their removal".[49]

<u>The balance of the appellant's submissions on ground 1</u>

41. The balance of the appellant's submissions – which are directed to the proposition that there is "no principled basis" for holding that non-cooperation means that the

---

45 [2002] FCA 1625 (***WAIS***).

46 *WAIS* [2002] FCA 1625 at [61].

47 *WAIS* [2002] FCA 1625 at [59]. The latter part of that passage was cited with apparent approval in *NZYQ* (2023) 97 ALJR 1005 at [61] (fn 72).

48 (2003) 133 FCR 532 at [17] (Carr, Finn and Sundberg JJ).

49 [2003] FCA 1573 at [13] (Sundberg J). See also *DMH20 v Minister for Home Affairs* [2022] FCA 1054, where Abraham J declined to conclude that there was no real likelihood or prospect of removal of the applicant from Australia in the reasonably foreseeable future, where the applicant refused to sign travel documents to facilitate his return to Malta (at [75]). An appeal to the Full Court was dismissed: *DMH20 v Minister for Home Affairs* (2023) 296 FCR 256.

constitutional limitation is not reached – are without foundation.

42. The primary judge did not identify an "exception" to the *Lim* principle (cf **AS [35], [49]**). The detention in question being for the purpose of removal, it falls squarely within the legitimate and non-punitive purpose accepted in *Lim*. The appellant's submissions that detention, as legislated, is not "capable" of being regarded as reasonably necessary for the purpose of removal (**AS [36]**) is inconsistent with authorities going back to *Lim*, including with the statutory construction holding in *Al-Kateb*, which this Court in *NZYQ* declined to reopen.[50]

43. The appellant's invocation of structured proportionality is misplaced (**AS [35], [37]-[38]**). As the plurality explained in *Jones v Commonwealth*, "the application of the principle in *Lim* is ultimately directed to a single question of characterisation: whether the power to impose the detriment conferred by the law is properly characterised as punitive and therefore as exclusively judicial".[51] Structured proportionality arises in a different constitutional context. It may be applied as an "analytical tool" with respect to constitutionally guaranteed freedoms that are not absolute, such that legislation may restrict those freedoms in some circumstances without being invalid. By contrast, Ch III "contains an absolute prohibition on laws which involve the exercise of the judicial power of the Commonwealth", with the consequence that "[q]uestions of proportionality cannot arise under Ch III".[52]

44. In so far as the appellant submits that his detention is "disproportionate to, in the sense of not being reasonably capable of being seen as necessary for",[53] the purpose of removal from Australia, the submission should be rejected for the reasons already addressed above: the objective purpose of his detention is removal. The existence of statutory non-compellable powers to grant a visa or alternatives to detention does not negate that purpose (**cf AS [37]-[38]**). Again, the argument is contrary to the statutory construction holding in *Al-Kateb*, which this Court in *NZYQ* declined to reopen.[54]

45. Nor is it the case that the primary judge's reasons proceed on any assumption or speculation that the appellant might in future decide to cooperate (**cf AS [3], [46], [47]**).

---

50 (2023) 97 ALJR 1005 at [19]-[23].

51 (2023) 97 ALJR 936 at [43] (Kiefel CJ, Gageler, Gleeson and Jagot JJ). See also at [78] (Gordon J). Those passages were cited with approval in *NZYQ* (2023) 97 ALJR 1005 at [44].

52 *Falzon* (2018) 262 CLR 333 at [32] (Kiefel CJ, Bell, Keane and Edelman JJ).

53 *NZYQ* (2023) 97 ALJR 1005 at [52]. See also [54].

54 (2023) 97 ALJR 1005 at [19]-[23].

No argument to that effect was (or is) advanced by the Commonwealth (**CAB 9 [7]**). The proposition is that detention remains for the objective purpose of removal, and cannot be characterised as punitive if the duration of that detention is extended because the non-citizen chooses to frustrate the removal that would bring that detention to an end.

46. The appellant's claims that the primary judge's approach calls for judicially made "political value judgments" in individual cases (**AS [44]**), or requires the courts to consider whether an applicant for the writ of *habeas corpus* comes to Court with "clean hands" (**AS [52]**), are without foundation (although that criticism is relevant to the test preferred by Kennett J in *AZC20*). Consistently with *NZYQ*, the primary judge focused upon whether the objective purpose of detention was removal, giving no weight to any subjective motivations an unlawful non-citizen may have for refusing to cooperate (**CAB 23-24 [64]-[65]**).

47. For the above reasons, ground one should be dismissed.

B. Issue two: Subjective fear of harm (grounds 2 and 3(b))

48. The substance of grounds 2 and 3(b) is the proposition that – even if ground 1 is rejected – the constitutional limitation in *NZYQ* will be transgressed if a non-citizen's refusal to cooperate is caused by a genuine subjective fear of harm if removed to the place where it is proposed to remove them.

49. The Act contains a detailed and prescriptive scheme by which non-citizens may have protection claims considered and determined.[55] As part of that scheme, Parliament has provided that the duty to remove an unlawful non-citizen under s 198 applies irrespective of Australia's non-refoulement obligations[56] unless a protection finding has been made in respect of a particular country through that statutory scheme[57] (cf **AS [45]**). Importantly, the statutory scheme directs attention not just to whether a non-citizen has a genuine subjective fear of harm, but to whether the Minister is satisfied either that the non-citizen has a well-founded fear of suffering persecution[58] or that there is otherwise a real risk that the non-citizen will suffer significant harm.[59] That is, in order to obtain a protection

---

55 Act, ss 5H, 5J, 35A, 36, 37A, 91A-91X. See *Applicant S270/2019 v Minister for Immigration and Border Protection* (2020) 94 ALJR 897 at [34] (Nettle, Gordon and Edelman JJ).

56 Act, s 197C(1) and (2).

57 Act, ss 197C(1)-(3), 197D.

58 Act, s 36(2)(a), read with ss 5H(1) and 5J.

59 Act, s 36(2)(aa), read with 36(2A).

finding, a non-citizen must satisfy the Minister both that they have a genuine subjective fear of persecution if returned to a particular country and that this fear is objectively well-founded.[60] In the context of that statutory scheme, it would not "fit uncomfortably with the Act to suggest that a person's subjective fear … is not a 'good reason' for them to refuse to consent" to their removal (**cf IS [46]**). To the contrary, if a non-citizen could secure release into the Australian community by justifying non-cooperation with removal on the basis of nothing more than a genuine subjective fear, that would "ignore[] the choice Parliament made about the extent to, and manner in, which Australia's international non-refoulement obligations are incorporated into the *Migration Act*".[61] That is even more true if the non-citizen were permitted to rely upon a subjective fear of harm that a non-citizen chose not to advance through the statutory protection visa process, because such a claim, by definition, cannot result in a "protection finding" for the purposes of s 197C[62] (see also **CAB 23 [61]**).

50. Consistently with the above, in *Re Minister for Immigration and Multicultural Affairs; Ex parte E*, Hayne J said that, where an unlawful non-citizen has been refused a protection visa but nevertheless asserts that s 198 does not permit removal to a particular country where they fear harm, the duty to remove them "must … be approached on the assumption that he [or she] is not entitled to a protection visa"[63] and that to read s 198 as not permitting removal in such a case "would, in effect, require the [Minister] to exercise his [or her] power to permit the applicant to remain in Australia despite his [or her] having been refused refugee status".[64] To similar effect, in *WAIS*, French J observed that "[t]he lawfulness of [the applicant's] continuing detention cannot be defined by reference to issues relating to whether he has a well-founded fear of persecution if returned to Iraq, that having already been the subject of … administrative and judicial review processes".[65] Other decisions of Full Courts of the Federal Court likewise recognise that whether an

---

60 See, eg, *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379; *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559 at 571-573 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ); *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473 (***Appellant S395***) at [72] (Gummow and Hayne JJ).

61 *Plaintiff M1/2021 v Minister for Home Affairs* (2022) 275 CLR 582 at [34] (Kiefel CJ, Keane, Gordon and Steward JJ).

62 In any event, the argument goes nowhere on the facts, as the primary judge did not accept that the appellant's non-cooperation was the result of a genuine subjective fear, and concluded instead that it was an attempt to procure his release into Australia: **CAB 37-38 [115]-[118]**; **cf IS [40]**.

63 (1998) 73 ALJR 123 at [16]; see also at [19].

64 (1998) 73 ALJR 123 at [19]; see also at [17]-[18].

65 *WAIS* [2002] FCA 1625 at [60].

unlawful non-citizen fears harm in their receiving country does not bear upon the question whether removal is "reasonably practicable".[66]

51. In light of the above, the primary judge was correct to conclude that "the practicability of removal is not altered by the subjective state of mind of the person being detained" (**CAB 20 [53]**). As his Honour noted, that conclusion is supported by the focus in *Plaintiff M47*[67] "upon whether there was good reason for being incapable of cooperating rather than simply upon whether there was good reason for the plaintiff's failure to cooperate" (**CAB 21-22 [56]** (emphasis added)). There is no occasion in this appeal to determine the application of the *NZYQ* limitation to a non-citizen who is incapable of cooperating, given the primary judge's unchallenged finding that the appellant is capable of cooperating (**CAB 16 [37]**). It follows that grounds 2 and 3(b) should also be dismissed.

C. Issue three: no subjective fear of harm in this case (grounds 3(a) and 4)

52. Grounds 3(a) and 4 only arise if the appellant is unsuccessful on ground 1, but successful on grounds 2 and 3(b). These grounds (as pleaded) seek to overturn factual findings made by the primary judge which were substantially based on his assessment of the appellant's credibility. They therefore call for the application of well-established principles of appellate restraint where factual findings turning on the credibility of witnesses are challenged, such that this Court should not disturb such findings unless they are demonstrated to be wrong by "incontrovertible facts or uncontested testimony" or they are "glaringly improbable" or "contrary to compelling inferences".[68] The appellant advances no submissions that come close to establishing that those tests are satisfied, such that grounds 3(a) and 4 should fail on that basis alone. Further, the ABFM includes evidence, referred to in his written submissions, which was either not admitted, or was admitted subject to limitations pursuant to s 136 of the *Evidence Act 1995* (Cth).[69]

---

66 *M38/2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 131 FCR 146 at [70]-[80] (Goldberg, Weinberg and Kenny JJ); *NATB v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 133 FCR 506 at [53]-[67] (Wilcox, Lindgren and Bennett JJ).

67 (2019) 265 CLR 285 at [30], [32] (Kiefel CJ, Keane, Nettle and Edelman JJ).

68 *Fox v Percy* (2003) 214 CLR 118 at [28]-[29] (Gleeson CJ, Gummow and Kirby JJ); *Lee v Lee* (2019) 266 CLR 129 at [55] (Bell, Gageler, Nettle and Edelman JJ).

69 **Annexure B** to these written submissions contains a table setting out the evidentiary rulings which were made by the primary judge at trial. The underlying materials are: Rulings Judgment (20 December 2023) (**RBFM 29**); Joint List of Objections filed 18 December 2023 (**RBFM 30**).

53. The first factual matter sought to be challenged is the primary judge's rejection of the appellant's claim to fear harm in Iran in relation to his sexuality. Contrary to **AS [61]-[62]**, the primary judge did not mischaracterise the appellant's claim. The basis on which that fear of harm was put was by reason of events that were alleged to have occurred in Iran (ie his claim to have been found in bed by his wife with another man, and the consequences of that event).[70] The primary judge was correct to conclude that the appellant's claim to have a genuine subjective fear of harm in Iran based on bisexuality "depended upon his account as to events that occurred in Iran" (**CAB 42 [130]**) and he was correct to reject that account (**CAB 32-37 [96]-[113]**).

54. Notwithstanding the prominence given to his bisexuality in his submission in this Court (eg **AS [2], [24], [26], [61]**), the appellant never claimed to fear harm in Iran on the basis that, if he is returned to Iran, he would engage in sexual activity with men. While of course the appellant would be under no obligation to live discreetly if returned to Iran,[71] that does not change the fact that, before he could establish a well-founded fear of persecution on the basis of his sexuality, factual findings would need to be made about how he would behave in Iran, and why he would so behave (specifically, whether he would refrain from sexual activity with men due to a fear of harm).[72] In the absence of any evidence with respect to those matters, the judge did not err by rejecting his claim based on his bisexuality on the sole basis upon which it had been put (cf **AS [62]**).

55. The second factual matter sought to be challenged is the primary judge's refusal to draw an inference from the fact of the appellant's choice to remain in detention that he had a genuine subjective fear of harm on return to Iran (**AS [63]-[64]**). The primary judge directly confronted this submission (**CAB 37-38 [115]-[118]**) and gave a cogent explanation as to why this inference would not be drawn.

56. That Ministerial intervention requests were made does not support the inference that the appellant had a proper reason for withholding assistance with his removal to Iran (cf **AS [65]**). They are equally explicable simply on the basis of his lengthy detention. It is also not correct to say that the primary judge did not deal with this evidence (**CAB 38 [116]**).

---

70 Second Affidavit of the Appellant affirmed on 13 December 2023 at [10]-[15] (**ABFM 119-120**).

71 *Appellant S395* (2003) 216 CLR 473 at [50] (McHugh and Kirby JJ), [80], [82] (Gummow and Hayne JJ); *DQU16 v Minister for Home Affairs* (2021) 273 CLR 1 at [3] (Kiefel CJ, Keane, Gordon, Edelman and Steward JJ).

72 *Appellant S395* (2003) 216 CLR 473 at [35] (McHugh and Kirby JJ), [88] (Gummow and Hayne JJ).

D. Proposed intervenor

57. AZC20 (**IS**) should not be granted leave to intervene or to be heard as an *amicus curiae*. He accepts that his legal interests are not directly affected by this appeal (**IS [2]**). But nor are they otherwise substantially affected, as is a precondition for intervention.[73] The asserted effect of this appeal on his liberty is speculative (cf **IS [2]**). At present, AZC20 is at liberty on a bridging visa (**IS [8]**). At most, any indirect effect of this appeal on his legal interests could arise via the precedential significance of this Court's decision. An effect of that kind does not provide an interest that is sufficient to support intervention (save in the case of a party to pending litigation).[74] "The assumption is that the Court will determine the law correctly … The exercise of this Court's jurisdiction to determine controversies between parties is not, and could not be, conditioned on allowing intervention by all those whose interests are susceptible to affection by the Court's judgments".[75] If AZC20 is re-detained, he can again bring proceedings for *habeas corpus*, and his interests will be determined in that proceeding in the ordinary way. Importantly, if that occurs, he will no doubt argue (as he does in **IS [44]**) that his situation is distinguishable from that of the appellant on the basis of the facts summarised in **IS [5.3]**. That is, he will seek to show that his interests are not governed by any judgment in this appeal. That highlights the speculative and insubstantial nature of his claimed interest.

58. In any event, there is no discretionary reason to permit AZC20 to intervene or to appear as *amicus*. The appellant is represented by experienced counsel, and is just as well placed to address the issues that arise on the appeal as is AZC20 (cf **IS [12]**). AZC20 has no institutional expertise of the kind ordinarily possessed by those permitted to appear in this Court as *amicus*. "Where the Court has parties before it who are willing and able to provide adequate assistance to the Court it is inappropriate to grant the application [to be heard as *amicus curiae*]".[76] That is the position here. The Commonwealth should not be required to meet a separate case, advanced by a litigant with no better interest in the outcome of the appeal than many other non-citizens, particularly as to do so will require it to divert limited time for oral argument to addressing arguments some of which do not

---

73 See *Rinehart v Hancock Prospecting Pty Ltd* (2019) 267 CLR 514 at [55] (Kiefel CJ, Gageler, Nettle and Gordon JJ).

74 *Roadshow Films Pty Ltd v iiNet Ltd [No 1]* (2011) 248 CLR 37 at [2] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ); *Levy v Victoria* (1997) 189 CLR 579 at 602 (Brennan CJ).

75 *Levy v Victoria* (1997) 189 CLR 579 at 603 (Brennan CJ).

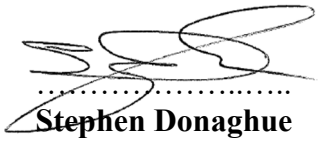
76 *Levy v Victoria* (1997) 189 CLR 579 at 604 (Brennan CJ), quoting the ruling of the entire Court in *Kruger v Commonwealth* (1997) 190 CLR 1.

properly arise on the facts (eg **IS [36], [44], [47], [52]**), and others of which raise comparative and customary international law materials concerning different standards and legislative provisions (**IS [39]**) that are of at most peripheral relevance to the constitutional question before the Court.

PART VI ESTIMATE OF HOURS

59. The Commonwealth estimates that 2.25 hours will be required for the presentation of its oral argument.

Dated: 28 March 2024



Stephen Donaghue
Solicitor-General of the Commonwealth
T: (02) 6141 4139
stephen.donaghue@ag.gov.au

Bora Kaplan
Nine Wentworth
T: (02) 8815 9249
bdk@ninewentworth.com.au

Naomi Wootton
Sixth Floor Selborne/Wentworth
T: (02) 8915 2610
nwootton@sixthfloor.com.au

IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

BETWEEN: **ASF17**
Appellant

AND

COMMONWEALTH OF AUSTRALIA
Respondent

10

Annexure A to the Respondent's Submissions

Pursuant to paragraph 3 of the *Practice Direction No 1 of 2019*, the Applicant set out below a list of the particular statutes referred to in the submissions.

	Statute	Provision(s)	Version
1.	*Commonwealth Constitution*	Ch III	Current (Compilation No 6, 29 July 1977 – present)
2.	*Evidence Act 1995* (Cth)	s 136	Current (Compilation No 34, 1 September 2021 – present)
3.	*Judiciary Act 1903* (Cth)	s 78B	Current (Compilation No 49, 18 February 2022– present)
4.	*Migration Act 1958* (Cth)	ss 5H, 5J, 35A, 36, 37A, 91A-91X, 189, 196, 197C, 198	Current (Compilation No 159, 20 March 2024 – present)

20

30

40

IN THE HIGH COURT OF AUSTRALIA
PERTH REGISTRY

BETWEEN: **ASF17**
Appellant

AND

COMMONWEALTH OF AUSTRALIA
Respondent

10

Annexure B to the Respondent's Submissions: Table of Evidence Rulings

Evidence	Ruling	Reference
Affidavit of Edward Jones affirmed 18 November 2024 (Exhibit 3)		
[40]	Not admitted	T13.3-5 (RBFM 25).
Second Affidavit of the Appellant affirmed 13 December 2023 (Exhibit 7)		
[20], first sentence, the words "and I may have a chance of getting a visa"	Not admitted	Rulings Judgment (RBFM 29).
[22], last sentence	Not admitted	Rulings Judgment (RBFM 29).
Second Affidavit of the Appellant affirmed 13 December 2023 (Exhibit 8)		
[9], second sentence, "where a bit more interest was shown" and "serious"	Evidence admitted as evidence of the appellant's perception/belief only	Rulings Judgment (RBFM 29).
[9], last sentence, "as it was part of their job" to "asked me"		Rulings Judgment (RBFM 29).
[11], first sentence, and second sentence, "I am aware that the police sent letters and also attended our family home to arrest me"		Rulings Judgment (RBFM 29).
[12] (whole)		Rulings Judgment (RBFM 29).
[13], second sentence		Rulings Judgment (RBFM 29).
[14], first sentence, and second sentence, "[m]y brothers hate me even more"		Rulings Judgment (RBFM 29).
[15], second sentence, "which they consider a crime against God and is punishable by death in Iran"		Rulings Judgment (RBFM 29).
[16(b)], "do not enjoy" to "authorities"		Rulings Judgment (RBFM 29).
[21], first sentence, "case managers" to "released"		T82.9-14 (RBFM 27)

Evidence	Ruling	Reference
[22], second sentence, "and they" to "to"		Rulings Judgment (RBFM 29).
[23], first sentence, "acknowledging" to "case"		Rulings Judgment (RBFM 29).
[23], second sentence		Rulings Judgment (RBFM 29).
[27], first sentence, "which is what immigration detention really is"		Rulings Judgment (RBFM 29).