IN THE SUPREME COURT OF THE UNITED KINGDOM **Ref: UKSC/2026/0039**

ON APPEAL FROM

THE COURT OF APPEAL (CIVIL DIVISION)

KB/06 p121 **Neutral Citation [2026] EWCA Civ 207**

B E T W E E N

THE KING (on the application of CHK)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

AMENDED STATEMENT OF FACTS AND ISSUES

(Rule 27(1))

A. THE FACTS

Factual background

1. CHK is a Brazilian national who arrived in the UK in August 2003 with entry clearance (a visa) as the ~~spouse~~ fiancé of ~~an EU citizen exercising free movement rights~~ a British citizen (to whom he was later married on 22 November 2003). CHK was granted Indefinite Leave to Remain on ~~15 November~~ 10 December 2005 as the spouse of a ~~settled person~~ British citizen.

2. On 21 October 2011, CHK was convicted at Hull Crown Court of assaulting a person thereby occasioning them actual bodily harm and damaging property. On 26 November 2012, at Hull Crown Court he was convicted of sexual assault on a female by penetration and false imprisonment. On 21 December 2012, he was sentenced to a

total of 10 years' imprisonment for his various offences. It is common ground that he
LEG/12 p1590 is therefore a "foreign criminal" within the meaning of s.32(1) of the UK Borders Act 2007.

3. Whilst serving his sentence, the CHK claimed asylum on 26 August 2015.

D/01 p723 4. On 12 May 2017 the Respondent ("**the Secretary of State**") refused CHK's claim for asylum and his associated human rights claim and certified the claims under s.94 and
LEG/10 p1573 s.95B of the Nationality, Immigration and Asylum Act 2002 (the "**May 2017 Decision**"). The consequence of certification was that CHK could only exercise a right of appeal against the Secretary of State's decision after having been deported from the UK.

D/02 p750 5. On the same date (i.e. 12 May 2017), the Secretary of State made a deportation order (the "**Deportation Order**").

6. By the Deportation Order, the Secretary of State required CHK to leave the UK and prohibited him from entering the UK for so long as the order was in force (once any right of appeal under s.82(1) of the 2002 Act had been exhausted, or CHK had no right of appeal which may be exercised from within the UK).

D/26 p2000 7. Following the decision of the Supreme Court *in R (Kiarie & Byndloss) v SSHD* [2017] UKSC 42; [2017] 1 WLR 2380, the Secretary of State withdrew the May 2017
D/03 p752 Decision, but remade it in substantially the same terms on 17 July 2017, save that it was not this time certified (the "**July 2017 Decision**").

8. The Secretary of State's position is that the Deportation Order remains lawfully in force and has not been revoked. CHK contends that the Deportation Order is void.

9. CHK was initially placed in immigration detention upon completion of his custodial sentence but was released on immigration bail in May 2018. He has remained on bail and living in the community, subject to conditions which have varied over time. CHK was originally subject to an electronic monitoring condition, but this was removed in November 2021.

10. The Court of Appeal judgment records that CHK's bail conditions at the time of the consideration of the *habeas corpus* application before Benjamin Douglas-Jones KC DHCJ (see further §§22-25 below) were as follows:

i. CHK was allowed to work;

ii. CHK was to reside at a specified address; and

iii. CHK was required to report to a police officer/immigration officer on a monthly basis.

E/12 p934 11. The Court of Appeal judgment records that CHK's bail conditions were varied on 29 January 2026 as follows:

i. CHK is not allowed to work;

ii. CHK must report to a police officer fortnightly;

iii. CHK must report digitally by complying with Immigration Bail Digital Reporting ("*IBDR*").

12. In fact, CHK's bail conditions were not varied on 29 January 2026. Rather, a "Bail 201" form was generated on 29 January 2026 (setting out the Appellant's bail conditions as at that date) and then sent to the Appellant; this formed part of the evidence before the Court of Appeal.

FTT proceedings

D/03 p752 13. CHK appealed against the July 2017 Decision. On 2 March 2018 that appeal was dismissed by the First-Tier Tribunal ("**FTT**"). On 15 May 2019 the Upper Tribunal ("**UT**") set aside the FTT's determination and remitted the appeal to the FTT. On 10 May 2021 the FTT again dismissed CHK's appeal against the July 2017 Decision. That determination of the FTT was set aside by the UT on 18 January 2023, and the matter was remitted again to the FTT.

14. That re-hearing was scheduled to take place on 22 October 2025. As part of the process of listing the re-hearing, directions were issued on 26 June 2025 which *inter alia* required the Secretary of State to conduct a review of the CHK's evidence within 28 days. After that deadline was missed, the Secretary of State sought and obtained an extension of time until 24 September 2025 by Order of Duty Judge Swaney as relayed to CHK in emails dated 27 August 2025.

15. By a document dated 23 January 2025, CHK applied to strike out his immigration appeal, contending that the FTT lacked jurisdiction to hear the appeal or, in the alternative, that the Tribunal's jurisdiction had been lost due to apparent bias and procedural unfairness, rendering a fair hearing impossible. CHK also contended that

D/01 p723 the Deportation Order was void owing to the withdrawal of the May 2017 Decision, and that it did not bear an identifiable signature.

16. On 29 September 2025, Resident Judge Hughes dismissed CHK's strike-out application and emphasised that CHK's immigration appeal remained listed for 22 October 2025 pending any further case management decisions.

D/03 p752 17. Alongside the FTT appeal of the July 2017 Decision, CHK has an outstanding appeal against the refusal of his application for leave to remain under the EU Settlement Scheme ("**EUSS**"). CHK applied for leave to remain under the EUSS in June 2021. That application was refused by the Secretary of State on 17 October 2025.

18. The hearing scheduled to take place on 22 October 2025 was converted into a case management hearing to review the progress of the appellant's EUSS appeal and the Court of Appeal proceedings, following which a substantive hearing would take place. Sealed directions were given in relation to both appeals on 24 October 2025 by FTT Judge Chinweze. In summary, the directions were that CHK must clarify the basis on which he is entitled to settlement under the EUSS, evidence any retained rights that satisfy Regulation 10 (4)(5) and (6) of the Immigration (EEA) Regulations 2016, and the parties were ordered to make any applications and submissions relating to costs sought.

19. CHK's FTT appeals have now been linked (PA/07245/2017, EU/75179/2025 &
H/04 p1077 HU/69645/2025). On 7 May 2026, IJ Curtis made further directions in relation to the linked appeals. In summary, CHK was ordered to file any further evidence in relation to the appeals by 4pm on 8 May 2026 and the substantive hearing of the appeals was listed for 1 and 2 June 2026.

20. CHK uploaded an application to the Supreme Court portal on 8 May 2026 seeking a
H/03 p1073 stay of his linked FTT appeals behind the Supreme Court hearing. On 12 May 2026, IJ Curtis issues directions on 12 May 2026, refusing CHK's application for a stay. CHK's FTT appeals remain listed for 1 and 2 June 2026.

Proceedings below

Habeas corpus application in the Administrative Court

LEG/03 p1514 21. On 1 September 2025, CHK applied for a writ of habeas corpus under CPR Part 87.

22. On 14 October 2025, the Secretary of State filed a response to the Appellant's application for a writ of *habeas corpus*. CHK filed a reply to the response on 17 October 2025.

23. On 17 October 2025, Benjamin Douglas-Jones KC DHCJ dismissed CHK's application for a writ of *habeas corpus* on the papers under CPR 87.4(f).

24. CHK elected not to exercise his right under CPR 87.4(2) to request that the dismissal of his *habeas corpus* application on the papers be reconsidered at an oral hearing. Instead, he appealed directly to the Court of Appeal. By virtue of s.15 of the
LEG/01 p1507 Administration of Justice Act 1960, no permission to appeal was required.

Judicial review proceedings at the Administrative Court

25. CHK made a separate application to apply for judicial review which was sealed on 10 October 2025. CHK sought judicial review of the decisions of Judge Swaney and Judge Hughes referred to above, naming the FTT as the respondent to the application and naming the Secretary of State as an Interested Party. The judicial review claim was accompanied by an application for urgent consideration and for a stay of all steps in the Appellant's immigration appeal including the hearing listed for 22 October 2025.

26. The Secretary of State filed an Acknowledgement of Service and a statement of defence in the judicial review proceedings on 16 October 2025, inviting the Court to refuse permission and certify the application as totally without merit.

27. On 17 October 2025, Benjamin Douglas-Jones KC DHCJ refused the application for interim relief, refused permission to apply for judicial review and certified the latter application as totally without merit. CHK did not apply for permission to appeal.

Court of Appeal proceedings

28. The Court of Appeal heard CHK's *habeas corpus* appeal on 26 February 2026.

29. By way of submissions, the Court of Appeal had before them CHK's skeleton argument running to 17 pages, enumerating 12 grounds of appeal, further written submissions running to 56 pages, and a 32 page "written case" handed up on the day of the hearing setting out the submissions he wished to make orally. The Court retired briefly to consider CHK's written case and CHK made further short oral submissions on what he considered to be key aspects of it.

30. The Secretary of State relied on her skeleton argument running to 21 pages.

31. The Court of Appeal announced their decision to dismiss the appeal at the conclusion of CHK's oral submissions, indicating that it did not need to hear oral submissions from the Secretary of State and the accompanying reasons were handed down in the Court of Appeal's written judgment dated 3 March 2026.

KB/07 p132 32. The Court of Appeal found (in summary) that the Deputy Judge was correct to find that CHK is neither detained nor subject to restrictions (less than detention) on his liberty sufficient to warrant applying for habeas corpus, and that this was sufficient to dispose of the appeal.

Appeal to the Supreme Court

33. CHK now exercises his right of appeal to the Supreme Court, again without any
LEG/01 p1507 requirement for permission, under s.15 of the Administration of Justice Act 1960 (see also Supreme Court Practice Direction 3, §3.70).

34. CHK served the Notice of Appeal on the Secretary of State 1 April 2026. CHK advances 15 grounds of appeal.

35. The Secretary of State filed a Notice of Acknowledgement on 15 April 2026. The Secretary of State requests that the appeal be dismissed for the reasons given by the Court of Appeal and for an additional reason which was advanced by the Secretary of State in the Court of Appeal but which was not determined by the Court of Appeal as it was considered unnecessary in light of the Court's conclusions that CHK was neither detained nor subject to restrictions on his liberty to warrant an application for *habeas corpus*.

B. THE ISSUES

36. The issues are:

LEG/03 p1514

i. What is the meaning of "detention" for the purposes of an application for a writ of habeas corpus for release under CPR Part 87 and, in particular, is physical incarceration required?

ii. If physical incarceration is not required for the purposes of an application for a writ of habeas corpus for release under CPR Part 87, what degree of curtailment of an individual's liberty is sufficient to warrant such an application, and did the Court of Appeal err in holding that any such threshold was not satisfied on the facts of this case?

iii. To what extent (if at all) may the writ of habeas corpus for release under CPR Part 87 be used to challenge the lawfulness of detention (or of a sufficiently serious curtailment of liberty) pursuant to an extant deportation order issued by the Secretary of State?

Amended on 4 September 2026

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