Ref: UKSC/2026/0039

IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

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

BETWEEN:

THE KING (on the application of CHK)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

STATEMENT OF FACTS AND ISSUES

Pursuant to UKSC Rule 27(1)

PROCEDURAL NOTE

(i) This Statement of Facts and Issues ("SFI") is filed by the Appellant pursuant to the Registrar's direction of 16 July 2026, by which each party was permitted to file its own SFI by 21 July 2026, the parties having been unable to agree a single document.

(ii) Facts which appear from the Respondent's own draft SFI are recorded as common ground, with a reference to the relevant paragraph of that draft. In accordance with the Registrar's direction of 21 May 2026, where the parties' accounts differ, the relevant paragraph is followed by a note provided within square brackets identifying the point of difference and recording the Respondent's position, so far as it can be discerned from her draft SFI and her correspondence, together with the Appellant's explanation.

(iii) Save as so noted, the facts stated below are matters of record drawn from the documents and orders in the proceedings below.

PART 1: THE FACTS

A. The Appellant's Immigration History

1. The Appellant is a Brazilian national. It is common ground that he arrived in the United Kingdom in August 2003 with entry clearance as the spouse of an EU citizen exercising free movement rights (Respondent's draft SFI, §1). He was granted indefinite leave to remain ("ILR") on 10 December 2005. That ILR has never been revoked.

   [*Respondent's position* (draft SFI, §1): ILR was granted on 15 November 2005 "as the spouse of a settled person". *Appellant's position:* ILR was granted on 10 December 2005 on the basis of his marriage to an EU citizen exercising free movement rights; the basis of the grant is material to Issues 7, 10 and 11.]

2. The Respondent has confirmed in writing on four occasions — by letters dated 19 October 2018, 10 December 2018, 30 September 2019 and 24 January 2020 — that the Appellant retains indefinite leave to remain.

3. On 26 November 2012, the Appellant was convicted at the Crown Court of serious offences. On 21 December 2012, he was sentenced to a total of 10 years' imprisonment. It is common ground that the Appellant is a "foreign criminal" within the meaning of section 32(1) of the UK Borders Act 2007 (Respondent's draft SFI, §2).

LEG/12 s32 p1590

4. On 26 August 2015, while serving his sentence, the Appellant claimed asylum.

B. The Deportation Order and the May 2017 Decision

D/01 p723

5. On 23 December 2016, the Appellant was served with a notice of decision to deport.

6. On 12 May 2017, the Secretary of State made a deportation order under section 3(5)(a) of the Immigration Act 1971 and simultaneously refused the Appellant's asylum and human rights claims. The Secretary of State certified both claims as "clearly unfounded" under section 94 of the Nationality, Immigration and Asylum Act 2002 and separately certified the human rights claim under section 94B of that Act, restricting the Appellant's right of appeal to an out-of-country appeal only (together, "**the May 2017 Decision**").

D/02 p750

LEG/07 s3 p1547

7. On 8 June 2017, the deportation order, the refusal decision and an out-of-country appeal form (IAFT-7) were served on the Appellant together, under a single covering letter, as a single integrated decision package. The decision letter recorded that the deportation order had been made pursuant to the refusal and "is enclosed with this decision".

   [*Respondent's position* (draft SFI, §8): the deportation order is a distinct instrument which "remains lawfully in force and has not been revoked". *Appellant's position:* the manner of service and the terms of the covering letter and decision letter are matters of record; their legal consequence is Issue 6 below.]

C. The Withdrawal Following Kiarie & Byndloss

D/26 p2000

8. On 14 June 2017 — 33 days after the deportation order was made — the Supreme Court handed down judgment in *R (Kiarie & Byndloss) v Secretary of State for the Home Department* [2017] UKSC 42, holding that the certification regime under section 94B, as operated, was unlawful.

D/26 p2000

9. It is common ground that, following *Kiarie & Byndloss*, the Secretary of State withdrew the May 2017 Decision (Respondent's draft SFI, §7). The withdrawal letter of 17 July 2017 states: "the decision of 12 May 2017 … has been withdrawn."

D/01 p723
D/03 p752

[*Respondent's position* (draft SFI, §8): the deportation order itself was not withdrawn and remains in force. *Appellant's position:* the order could not survive the withdrawal of the decision upon which it was founded; that question is Issue 6 below.]

10. No new deportation order has been made at any time since. The deportation order of 12 May 2017 is the sole instrument relied upon by the Respondent as authority for the continuing restraint on the Appellant's liberty.

11. On 17 July 2017, the Secretary of State issued a new refusal decision with an in-country right of appeal (the "**July 2017 Decision**"). It is common ground that the July 2017 Decision remade the May 2017 Decision "in substantially the same terms", save that it was not certified (Respondent's draft SFI, §7). The Appellant's forensic analysis, which was before the courts below and has not been answered by any counter-analysis, established that the July 2017 Decision is 97.8% textually identical to the withdrawn May 2017 Decision in its core reasoning sections (Court of Appeal judgment at [7]).

F/05 p994

D. Detention and Bail

E/01 p887

12. On 6 November 2017, the Secretary of State issued an authority to detain (form IS.91). It is common ground that, upon completion of the custodial part of his sentence, the Appellant was placed in immigration detention (Respondent's draft SFI, §9); he was detained at Morton Hall Immigration Removal Centre from 25 November 2017.

13. On 11 May 2018, the First-tier Tribunal granted the Appellant immigration bail. It is common ground that he has remained on immigration bail continuously since May 2018, living in the community and subject to conditions which have varied over time, and that he was originally subject to an electronic monitoring condition, removed in November 2021 (Respondent's draft SFI, §9).

14. The Appellant remains subject to: (a) mandatory fortnightly reporting in person to a police officer; (b) mandatory digital reporting (Immigration Bail Digital Reporting); (c) a prohibition on employment; and (d) a prohibition on international travel. The Respondent's draft SFI (§§11–12) records that a "Bail 201" form generated on 29 January 2026 sets out the Appellant's bail conditions as at that date as including that he is not allowed to work, must report to a police officer fortnightly, and must report digitally. Restrictions of this character have been in force, in varying combinations, for approximately nine years, in addition to the preceding period of physical detention.

E. The EU Permanent Residence Point

15. The Appellant acquired the right of permanent residence in 2008 under Article 16(2) of Directive 2004/38/EC, having resided lawfully in the United Kingdom as the family member of an EU citizen exercising Treaty rights for a continuous period of five years. Those rights are protected by Article 20 of the EU Withdrawal Agreement.

EU/02 p1616

[*Respondent's position:* her draft SFI does not address the acquisition of permanent residence; she refused the Appellant's application under the EU Settlement Scheme on 17 October 2025, and that refusal is under appeal to the FTT (draft SFI, §17). *Appellant's position:* the right of permanent residence arises by operation of law upon completion of the qualifying period and does not depend on documentation or on any grant by the Respondent.]

LEG/07 s3 p1547

16. Section 3(5A) of the Immigration Act 1971 prohibits the Secretary of State from deeming a relevant person's deportation conducive to the public good under section 3(5) where such deportation would breach the United Kingdom's obligations under the Withdrawal Agreement. The Appellant contends that the deportation order was made in breach of that or similar prohibition and without application of the mandatory protections in Articles 27 and 28 of the Directive. The Respondent's draft SFI does not address section 3(5A). This is Issue 7 below.

F. The FTT Proceedings

17. Three linked appeals are pending before the First-tier Tribunal (Immigration and Asylum Chamber): PA/07245/2017 (protection), EU/75179/2025 (EUSS) and HU/69645/2025 (human rights). It is common ground that determinations of the FTT have twice been set aside by the Upper Tribunal (on 15 May 2019 and 18 January 2023) and the appeal twice remitted (Respondent's draft SFI, §13). No court or tribunal has at any time determined the lawfulness of the deportation order.

18. On 7 May 2026, the FTT gave directions in the linked appeals and listed them for substantive hearing on 1 and 2 June 2026. On 12 May 2026, the FTT refused the Appellant's application for a stay of the linked appeals pending determination of this appeal. The substantive hearing has since taken place as listed, and a decision is currently pending.

G. The Habeas Corpus Application

19. On 1 September 2025, the Appellant applied for a writ of habeas corpus pursuant to CPR Part 87, contending on six grounds that the deportation order dated 12 May 2017 (the "Deportation Order") was void *ab initio* and that all consequent restraints upon his liberty were unlawful:

LEG/03 p1514

(i) that the Deportation Order was founded upon a refusal decision that was subsequently withdrawn following **R (Kiarie and Byndloss) v Secretary of State for the Home Department** [2017] UKSC 42 ("*Kiarie & Byndloss*"), and bore the signature of an unidentified person;

D/26 p2000

(ii) that the Deportation Order was a jurisdictional nullity, applying **Anisminic Ltd v Foreign Compensation Commission** [1969] 2 AC 147 ("*Anisminic*") and

D/05 p1675

D/35A p2204 **Pearlman v Keepers and Governors of Harrow School** [1979] QB 56 ("*Pearlman*");

(iii) that the Appellant's continuing immigration bail conditions and other restraints upon his liberty could not lawfully subsist if the Deportation Order was void, applying **Lumba (WL) v Secretary of State for the Home Department** [2011] UKSC 12; [2012] 1 AC 245 ("*Lumba*") and **R (DN (Rwanda)) v Secretary of State for the Home Department** [2020] UKSC 7 ("*DN (Rwanda)*");

D/29 p2037

D/12 p1793

(iv) that the refusal decision dated 17 July 2017 was itself a nullity because it was not a fresh determination but a materially identical re-issue of the withdrawn decision of 12 May 2017;

D/01 p723

(v) that the Deportation Order was made in breach of permanent residence rights acquired under **Directive 2004/38/EC** and preserved by Part Two of the **Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community** ("the EU Withdrawal Agreement"); and

EU/01 p1609

EU/02 p1616

(vi) that the IS.91 Authority to Detain dated 6 November 2017 was void because it had been issued whilst the Appellant remained in prison custody and was predicated upon the Deportation Order, applying **Anisminic**, **Lumba**, and **DN (Rwanda)**.

D/05 p1675

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20. On 12 September 2025, Lang J directed the Secretary of State to file her response to the application within 21 days, i.e. by 3 October 2025.

21. On 29 September 2025, the Appellant filed an application to amend Ground 1 of his application, introducing a four-limb void ab initio argument. That application was never sealed, processed or determined.

22. On 2 October 2025, the Respondent applied for an extension of time to 17 October 2025 to file her response. On 3 October 2025, the Appellant filed and served a 16-page opposition to that application, enclosing five exhibits, for determination on the papers in accordance with paragraph 2 of Lang J's order. It is common ground that the Respondent filed her response on 14 October 2025 (Respondent's draft SFI, §22), eleven days after the deadline fixed by Lang J.

B/04 p171

23. On 17 October 2025, the Appellant filed a 50-page Reply at approximately 13:18. At 17:00 the same day, Deputy High Court Judge Benjamin Douglas-Jones KC refused the habeas corpus application on the papers under CPR 87.4(f). The Deputy Judge granted the Respondent's application for an extension of time, applied a test of physical detention, and held that the Appellant was not detained for habeas corpus purposes. His reasons made no reference to the amendment application of 29 September 2025, to the 50-page Reply, or to the Appellant's opposition of 3 October 2025. He made no order as to costs.

H. The Parallel Judicial Review Claim

24. By a claim sealed on 10 October 2025, the Appellant separately applied for judicial review of two case-management decisions of the FTT, naming the FTT as defendant and the Secretary of State as interested party (Respondent's draft SFI, §25).

25. By order dated 13 October 2025, Foster J directed at paragraph 2: "The requirement for an Acknowledgement of Service shall be dispensed with."

26. On 17 October 2025, the same Deputy Judge refused permission to apply for judicial review and certified the application as totally without merit. Paragraph 5 of the reasons in the judicial review order states: "I have considered the Acknowledgement of Service filed on behalf of the Defendant and the Statement of Defence." The habeas corpus order made the same day cross-refers to the judicial review order.

[*Respondent's position* (draft SFI, §26): an Acknowledgement of Service and a statement of defence were filed in the judicial review proceedings on 16 October 2025. *Appellant's position:* Foster J had dispensed with the requirement for an Acknowledgement of Service by court order; no such documents were served on the Appellant; the accuracy of the recital at paragraph 5 of the judicial review order, and its bearing on the safety of both orders made on 17 October 2025, is relevant to Issue 9 below.]

B/25 p407

I. The Court of Appeal

27. The Appellant appealed to the Court of Appeal under section 15(1) of the Administration of Justice Act 1960. It is common ground that no permission to appeal was required (Respondent's draft SFI, §24).

28. The appeal was heard on 26 February 2026 before Zacaroli LJ, Lewis LJ and Peter Jackson LJ. The Appellant appeared in person; the Respondent was represented by counsel. Following the Appellant's oral submissions, the Court indicated that it did not need to hear from the Respondent, announced that the appeal was dismissed, and stated that written reasons would follow.

29. At the hearing, the Appellant handed up to the Court the four letters referred to at paragraph 2 above, confirming the continuing existence of his indefinite leave to remain, which had not been included in the appeal bundle (CoA Written Case, §24). The Respondent did not object to the letters being handed up. The judgment does not refer to the letters at any point. The Court's ruling on fresh evidence at [18] concerned a separate application to rely on a second witness statement dated 4 February 2026 (N244 Application), and did not address the letters.

30. On 3 March 2026, the Court of Appeal handed down its judgment ([2026] EWCA Civ 207). At [28], the Court held that, to the extent that the established line of authority—including *In re Amand* [1943] AC 147, *R v Spilsbury* [1898] 2 QB 615, *R v Secretary of State for India in Council, ex p Ezekiel* [1941] 2 KB 169 and *Re Caborn-Waterfield* [1960] 2 All ER 178—permitted an applicant on bail to use habeas corpus to challenge the decision on which the detention was based, that proposition was "no longer good law" by reason of **The Father v Worcestershire County Council** [2025] UKSC 1 ("Worcestershire").

D/04 p1654
D/45 p2418
D/13 p1810
D/07 p1731
D/48 p1812

31. At [36]–[39], the Court assessed the severity of the Appellant's bail conditions and concluded that they were not sufficiently restrictive to engage habeas corpus.

32. At [40], the Court expressly declined to determine the Appellant's substantive arguments, including whether the deportation order is void ab initio, stating: "it is therefore unnecessary to deal with the other principal ground on which CHK appeals." The lawfulness of the deportation order accordingly remains undetermined by any court or tribunal.

33. At [53], Peter Jackson LJ described the application as "absurd"; at [54] he characterised it as "an attempt to abuse the remedy"; and at [56] he stated that "if permission to appeal to this court had been required, it would have been refused and the application would have been certified to be totally without merit."

KB/05 p117 34. On 12 March 2026, the Court of Appeal ordered the Appellant to pay the Respondent's costs, summarily assessed in the sum of £16,000.

J. The Respondent's Position and the Respondent's Notice

35. The Secretary of State contends that: (a) the Appellant is not detained within the meaning required for habeas corpus; and (b) the deportation order remains in force and provides a lawful basis for the bail conditions. The Appellant disputes both contentions; his position is that the deportation order is ***void ab initio*** and that the restraints on his liberty are without lawful authority.

36. In the Court of Appeal, the Respondent filed a Respondent's Notice approximately three months out of time, seeking to advance additional grounds, including that the proper avenue for challenging the deportation order was judicial review or the FTT
D/48 p1812 proceedings, and that *Worcestershire* precluded habeas corpus where alternative remedies exist. The Court of Appeal made no order on the Respondent's application for an extension of time, finding it "not necessary to deal with for the reasons contained in the judgment" (order, paragraph 4). It is common ground that the additional reason advanced by the Respondent "was not determined by the Court of Appeal" (Respondent's draft SFI, §35).

[*Respondent's position* (draft SFI, §35): the Respondent will invite this Court to dismiss the appeal for the reasons given by the Court of Appeal and for that additional reason. *Appellant's position:* the additional grounds were never formally admitted before the Court of Appeal; whether, and on what terms, they may be advanced in this Court is a matter for this Court.]

K. The Appeal to this Court

37. On 1 April 2026, the Appellant served his Notice of Appeal, advancing 15 grounds. It is common ground that the appeal lies as of right under section 15 of the
LEG/01 p1507 Administration of Justice Act 1960 (see also Supreme Court Practice Direction 3, §3.70) and that no permission is required (Respondent's draft SFI, §33). The Respondent filed a Notice of Acknowledgement on 15 April 2026. An anonymity order is in force, and the Appellant is to be referred to as "CHK" pursuant to that order.

PART 2: THE ISSUES

The Respondent's SFI, §36, advances only three issues limited to the meaning of "detention" / "restraint" and the availability of the writ against what is described as an extant deportation order. The Appellant maintains that the issues arising on the appeal are those set out below, which reflects his grounds of appeal.

The following issues arise for determination by this Court:

I. The Threshold: The Meaning of "Restrained" (Grounds 1–4)

38. **Issue 1:** Does the word "restrained" in section 1 of the Habeas Corpus Act 1816 extend to legally enforceable restrictions on liberty imposed by the State, including immigration bail conditions backed by the threat of criminal prosecution and re-detention; or is it limited to physical incarceration or its near-equivalent?

D/04 p1654 39. **Issue 2:** Is the principle established by the House of Lords in *In re Amand* [1943] AC 147 — that a person released on bail remains entitled to seek habeas corpus — still good law; and was the Court of Appeal entitled to declare it "no longer good law" on D/48 p1812 the basis of *Worcestershire* [2025] UKSC 1, a decision which did not mention *Re Amand* and which expressly reserved the question of administrative detention?

40. **Issue 3:** Does the reasoning in *Worcestershire* — concerning the availability of habeas corpus where detention is pursuant to a court order and alternative remedies exist — apply to administrative detention under immigration powers; and does the D/25 p1943 *Khawaja* "precedent fact" exception, expressly preserved in *Worcestershire* at [69], apply where the applicant contends the administrative order authorising restraint is *void ab initio*?

41. **Issue 4:** Where a person has been physically detained by the State under an administrative order, and is subsequently released on bail conditions deriving their sole legal authority from that same order, does the chain of State custody remain legally continuous for the purposes of habeas corpus?

II. The Lawfulness of the Deportation Order (Grounds 5, 5A and 14)

42. **Issue 5:** Where a person subject to restraint of liberty under an administrative order contends that the order is void ab initio, and that question has never been determined by any court or tribunal, is the court constitutionally required to determine the lawfulness of the order in habeas corpus proceedings; or may it decline to do so on the basis that the applicant's conditions of restraint do not meet the threshold for the writ?

43. **Issue 6:** Where a deportation order is made as part of a single integrated decision package with the refusal decision and section 94/94B certifications, and those D/26 p2000 decisions are later withdrawn following *Kiarie & Byndloss* [2017] UKSC 42, is the deportation order inevitably tainted and ***void ab initio***, or does it survive as an independent instrument?

44. **Issue 7:** Where a person who has acquired the right of permanent residence under EU/01 p1609 Article 16(2) of Directive 2004/38/EC is made the subject of a deportation order

without application of the mandatory protections in Articles 27 and 28 of the Directive, in breach of section 3(5A) of the Immigration Act 1971, does the writ of habeas corpus lie to test the lawfulness of the resulting restraint on the ground that the deportation order was made without statutory authority?

LEG/07 s3 p1547

D/25 p1943

III. The Khawaja Burden (Ground 6)

45. **Issue 8:** In habeas corpus proceedings where the applicant demonstrates a *prima facie* case that the order underlying the restraint is ***void ab initio***, is the court constitutionally required to compel the detaining authority to discharge the *Khawaja* burden before the application may be dismissed; and does the failure to require discharge of that burden constitute a jurisdictional error?

IV. Natural Justice (Grounds 7 and 13)

46. **Issue 9:** Whether the availability of a reconsideration procedure under CPR 87.4(2) is capable of curing a failure by the judge to consider material documents filed by the applicant in habeas corpus proceedings; and whether the court was required to determine the pending application to amend before ruling on the habeas corpus application.

V. Statutory Construction: ILR and Bail (Grounds 8 and 9)

47. **Issue 10:** Where a person subject to immigration bail holds subsisting indefinite leave to remain, does paragraph 1(8) of Schedule 10 to the Immigration Act 2016 operate automatically to terminate that bail; and does section 3(1)(c) of the Immigration Act 1971 confine the power to impose conditions to persons with limited leave, such that conditions imposed on a person with ILR are void?

VI. Article 8 and Structural Compatibility (Grounds 10 and 12)

48. **Issue 11:** Where the State imposes ongoing restraint on the basis of a decision asserting compliance with Article 8(2) ECHR that has never been independently adjudicated, does the Article 8(2) burden remain undischarged; and is the automatic deportation framework under section 32 of the UK Borders Act 2007 structurally incompatible with Article 8(2)?

LEG/12 s32 p1590

VII. The Instrument of Restraint (Ground 11)

49. **Issue 12:** In habeas corpus proceedings where a person is subject to restraints imposed pursuant to an administrative order alleged to be void, does the writ require the court to examine the lawfulness of the underlying order; or is the court's inquiry confined to the immediate conditions of restraint?

VIII. Procedural Framework and Characterisation (Ground 15)

50. **Issue 13:** Whether habeas corpus proceedings may properly be approached by analogy with the permission stage of judicial review; and whether the exercise of the statutory right of appeal under section 15 of the Administration of Justice Act 1960 can be characterised as an "abuse" of the habeas corpus remedy.

CHK

Appellant in Person

Dated: 21 July 2026

This Statement of Facts and Issues is filed pursuant to the Registrar’s directions of 21 May 2026 and 16 July 2026, and is served on the Respondent.