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

AMENDED APPELLANT'S CASE

Filed pursuant to Rule 27(3) of the Supreme Court Rules 2024 and Practice Direction 5

Amended on 8 October 2026, subject to the permission of the Court. The amendments are confined to paragraph 12 ("two" witness statements becomes "three"), new paragraphs 42A
J/02 p1121 *to 42G (incorporating the Appellant's Supplemental Note of 23 September 2026) and new paragraphs 140A to 140E, each marked by a line in the left margin. No other part of the Case has been altered.*

B/04 p171 *An anonymity order made by Lang J on 12 September 2025 and continued by the Court of Appeal is in force. The Appellant is to be referred to as "CHK". Nothing in this Case or in the Appendix may be reported in any manner that would identify him or any member of his family.*

PART A — INTRODUCTION AND SUMMARY OF ARGUMENT

Two questions

1. Before turning to what happened to the Appellant, this Case invites the Court to consider two questions. Neither describes his case. Both test the principle on which it turns.

2. **The first.** Suppose the State draws a boundary and tells a man: you are not detained; you may move as you please within it, but cross it and you will be seized. Suppose it adds that he must sleep at an address of its choosing, present himself to police officers at fixed intervals, report electronically between those occasions, and not work. Is that man restrained of his liberty? If the answer turns on how large the area is, the reach of the Great Writ becomes a function of the executive's generosity in drawing the line. That cannot be what Parliament meant when it legislated in the disjunctive in 1816.

3. **The second.** Suppose those same conditions are imposed with no lawful authority whatsoever: no valid order, no statutory power, nothing. Must the man first persuade a court that his conditions are severe enough, before any court will ask whether the State had authority to impose them at all? If severity comes first, a restraint imposed with no authority escapes scrutiny provided the executive keeps it mild, and the writ protects only those the State has chosen to treat harshly.

4. The length of the leash is not the issue. The issue is whether there is lawful authority to hold it.

The appeal

5. **What this appeal is about.** This appeal is not about how burdensome the Appellant's bail conditions are. It is about whether the State can point to lawful authority for imposing any of them. Habeas corpus does not ask how much liberty has been taken; it asks whether there was the right to take any, and it puts the burden of answering on the State. The severity of the conditions arises only if that question is answered in the Respondent's favour, and the Appellant addresses it, in the alternative, at Part D4 below.

E/07 p913 6. For more than eight years — since 11 May 2018 — the Appellant has lived under restrictions imposed by the executive: where he must live, when and where he must attend a police station, that he must report digitally, and that he may not work. For

six months before that he was detained. For six months after his release he was confined to Approved Premises. Every one of those restraints derives from a single instrument, a deportation order signed on 12 May 2017. **No court or tribunal has ever determined whether that instrument is lawful.**

D/02 p750

7. The Court of Appeal dismissed the appeal on one ground: that the Appellant is "not detained at all" ([3]) and that his bail conditions fall "far short" of the threshold ([36]). Having so held, it declined at [40] to decide whether there was any lawful authority for the restraint.

8. The judgment below contains five errors of principle.

9. **First, the Court never construed the statute that confers the jurisdiction.** Section 1 of the Habeas Corpus Act 1816 applies where a person is "confined **or** restrained of his or her liberty". The Court proceeded throughout on the assumption that the writ requires detention or its near-equivalent ([3], [20], [36], [39]), reading the second limb out of a constitutional statute. The meaning of "restrained" has never been determined by this Court.

LEG/05 s1 p1528

10. **Second, the Court purported to abolish a line of authority it had no power to touch.** At [28] it declared *In re Amand* [1943] AC 147, with *R v Spilsbury* [1898] 2 QB 615, *Ex p Ezekiel* [1941] 2 KB 169 and *Re Caborn-Waterfield* [1960] 2 All ER 178, "no longer good law", on the strength of *The Father v Worcestershire County Council* [2025] UKSC 1. *Worcestershire* does not mention *Amand*. It concerned detention under a court order made after contested proceedings. It preserved the *Khawaja* precedent-fact exception at [69]. It reserved the position of detention ordered by officials at [70] to [72]. And at [73] it recorded, without a word of disapproval, an authority in which an applicant on bail was treated as detained. An intermediate appellate court cannot overrule the House of Lords, and this one had no material on which to try.

D/04 p1654
D/45 p2418
D/07 p1731
D/13 p1810
D/48 p1812
D/25 p1943

11. **Third, the Court inverted the order of inquiry.** It measured severity and then declined to examine legality. A lawful restraint may be insufficient to engage the writ. An unlawful restraint engages it whatever its degree, because the writ tests authority, not discomfort. By assessing severity on the unstated assumption that the conditions were lawfully imposed, and then refusing to test that assumption, the Court assumed its own conclusion.

12. **Fourth, the Respondent has never been required to justify anything.** In habeas corpus the burden lies on the party restraining liberty: *R v SSHD, ex p Khawaja* [1984] AC 74. Across two courts, and at no point since these proceedings began on 1 September 2025, has she filed a witness statement or sworn evidence of any kind. No official has attested on oath that the order is valid, that the person who signed it had authority to do so, that the protections owed to the Appellant were applied, or that his leave has been invalidated. The Appellant's three witness statements, verified by statements of truth, stand uncontradicted.

D/25 p1943

13. **Fifth, the statute answers this case, and no court has yet been asked to read it.** The deportation order states on its face that the Secretary of State must make it under section 32(5) of the UK Borders Act 2007. Section 79(3) of the Nationality, Immigration and Asylum Act 2002 disapplies the ordinary prohibition for such an order. Section 79(4) then provides that an order made in reliance on section 79(3) **"does not invalidate leave to enter or remain, in accordance with section 5(1) of the Immigration Act 1971, if and for so long as section 78 above applies"** — that is, for so long as an in-country appeal is pending. The Appellant's in-country appeals have been pending, twice set aside for error of law, since 2017. His indefinite leave to remain was therefore never invalidated. That is why the Respondent's own department confirmed in writing, four times after the order was made, that his leave subsists. If his leave subsists he is not liable to detention, there is no gateway into Schedule 10, and there is no power to impose a single condition upon him.

LEG/10 s79 p1574
LEG/12 s32 p1590

LEG/07 s5 p1552

LEG/08 p1563

14. If the decision below stands, every person on immigration bail in the United Kingdom — a class numbering many thousands — is outside the protection of the writ, however unlawful the instrument restraining him, unless and until the executive chooses to make his conditions severe enough to resemble imprisonment. Parliament did not legislate for that in 1816, and this Court did not decide it in *Worcestershire*, where the writ was described as of the highest constitutional importance and where the legislative policy of placing minimum procedural obstacles before a person contending that there is no justification for his restraint was recognised at [77].

D/48 p1812

15. The Appellant advances fifteen grounds. Grounds 1 to 4 concern the threshold and come first. The remainder follow once the threshold is crossed. The Appellant invites the Court to determine them under section 40(5) of the Constitutional Reform

Act 2005 rather than return an inquiry already deferred for more than eight years to the court that declined to conduct it.

16. The Appellant is a litigant in person. He applied for a representation order and was refused. He is prohibited by the conditions under challenge from working and is in receipt of Universal Credit.

PART B — PRACTICE DIRECTION 5 MATTERS

The issues before the Court

17. There is no agreed Statement of Facts and Issues ("**SFI**"). By direction of the Registrar dated 16 July 2026, the parties having been unable to agree, each filed its own by 21 July 2026. The Appellant's SFI identifies thirteen issues. The Respondent, in her own SFI, identifies only three.

KB/01a p10

18. The issues before the Court are those raised in the Notice of Appeal issued on 31 March 2026 and in the Respondent's Notice of Acknowledgement. This is an appeal as of right under section 15(1) of the Administration of Justice Act 1960. There is no permission stage, and so no grant of permission by which the issues have been confined. The Respondent cannot narrow the appeal by declining to agree to the contents of a document.

LEG/01 p1507

Points abandoned (PD 5.10)

19. **No point taken in the courts below is abandoned.** Two matters are relied upon at Parts K and L as part of the case on procedural fairness and costs rather than as independent routes to allowing the appeal: the Deputy Judge's differential treatment, on the same day, of two applications by the same litigant, only one of which he certified as totally without merit (judgment, [46]); and his grant of an extension of time to the Respondent without reference to *Denton v TH White Ltd* [2014] EWCA Civ 906 (judgment, [49]). The application for expedition is not pursued, the appeal now being listed.

KB/07 p132

D/11 [49] p1791

Departure from precedent (PD 5.12) — special attention is drawn to this paragraph

20. **The Appellant does not invite the Court to depart from any decision of this Court or of the House of Lords.** His position is that *In re Amand* [1943] AC 147 remains good law and that the Court of Appeal had no power to hold otherwise; and

D/04 p1654

D/48 p1812 that *Worcestershire* does not bear the meaning attributed to it below. It is the Respondent who must persuade this Court to depart from settled authority, and she has not asked it to.

New points (PD 5.10)

21. There is no point in this case which was not argued below. Arguments already advanced are developed more fully, in particular the statutory route under sections
LEG/10 s78 p1573 78 and 79 of the 2002 Act at Part I. Grounds 10 and 12 were advanced in the Court of Appeal and were not determined ([40]). A declaration under section 4 of the
LEG/06 s4 p1536 Human Rights Act 1998 is sought; the Crown is a party in the person of the Respondent, and the Appellant will comply with any direction as to notice under section 5.

Correction of the record

22. In the application for a writ of habeas corpus filed on 1 September 2025, in the Applicant's Reply of 16 October 2025, and in the Skeleton Argument filed in the
D/12 p1793 Court of Appeal, passages were attributed to *R (DN (Rwanda)) v Secretary of State for the Home Department* [2020] UKSC 7 in quotation marks which do not appear in that judgment. The Appellant withdraws those passages and does not rely on them. No point is withdrawn with them: the proposition for which they were cited is established by what the Court did say, at [18] and [19], and is set out at Part H1 below. The passage relied on is at the end of [19]: "the lawfulness of the detention is always referable back to the legality of the decision to deport. If that is successfully challenged, the edifice on which the detention is founded crumbles." The error was the Appellant's own, made in the course of conducting this litigation in person. Every authority cited in this Case has been checked against the judgment.

Anonymity

23. The anonymity order is in force and the Respondent does not object to its continuation. Members of the Appellant's family in Brazil have been killed, including a nephew killed shortly after evidence concerning him was placed before the First-tier Tribunal in 2021. A bundle filed by the Respondent in the Court of Appeal on 2 February 2026 did not observe the order. The Appellant applies for its continuation and asks that it be observed.

The pending First-tier Tribunal decision (PD 5.11)

24. Three linked appeals are pending before the First-tier Tribunal (PA/07245/2017, EU/75179/2025 and HU/69645/2025). They were heard by Judge Curtis on 1 and 2 June 2026. By directions of 3 August 2026 he recorded that his decision would "not now be promulgated until at least early September 2026". It has not been promulgated. If it is promulgated before the hearing the Appellant will notify the Court and, if appropriate, apply under Practice Direction 7 to adduce it.

25. By her response to the First-tier Tribunal dated 10 August 2026 the Respondent stated that paragraph 1 of her Statement of Facts and Issues in these proceedings is in error and indicated that she intends to apply to amend it. No application has been made.

PART C — THE LEGAL FRAMEWORK

LEG/05 s1 p1528 26. **Habeas Corpus Act 1816, section 1** — jurisdiction where a person is "confined or restrained of his or her liberty". The Act extended the writ beyond the criminal cases covered by earlier legislation and empowered the court to inquire into the truth of the facts returned.

LEG/03 p1514 27. **CPR Part 87** — no permission stage; the judge makes or refuses an order for release, with a right to request oral reconsideration under CPR 87.4(2): D/48 [77] p1832 *Worcestershire* at [77].

LEG/01 p1507 28. **Administration of Justice Act 1960, section 15(1)** — appeal as of right against refusal of an order for release; no permission required: Practice Direction 3, §3.70.

LEG/02 p1510 29. **Constitutional Reform Act 2005, section 40(5)** — power to determine any question necessary for doing justice in an appeal.

LEG/07 p1545 30. **Immigration Act 1971** — section 3(1)(c) (conditions attach to **limited** leave); sections 3(5) and 5(1); section 3(5A) (prohibition where deportation would breach EU/02 p1616 Withdrawal Agreement obligations; inserted after the transition period); Schedule 3, paragraph 2.

LEG/12 p1590 31. **UK Borders Act 2007** — section 32(4) and (5) (the duty to make a deportation order against a foreign criminal); section 33 (exceptions); section 36 (detention).

LEG/10 p1573 32. **Nationality, Immigration and Asylum Act 2002** — section 78; section 79(1), (3) and (4); sections 94 and 94B; section 117C.

LEG/08 p1563 33. **Immigration Act 2016, Schedule 10** — paragraph 1(1) and (2) (bail for a person detained or **liable to detention**); paragraph 1(5); paragraph 1(8) (bail ends on a grant of leave); paragraph 2(1).

34. **Immigration (European Economic Area) Regulations 2016** — regulations 27 and 32; in force in May 2017 and until the end of the transition period.

EU/01 p1609 EU/02 p1616 35. **Directive 2004/38/EC** — Articles 16(2), 27 and 28; Article 20 of the Withdrawal Agreement.

PART D — THE JURISDICTIONAL GATEWAY (GROUNDS 1 TO 4)

D1. The statutory question was never asked

KB/07 p132 36. The Deputy Judge held that habeas corpus is "intended to secure a person's release from **physical detention**" and that "[t]he Applicant in this case is not detained" (order, paragraph 14; judgment, [14]).

37. The Court of Appeal recorded at [22] the submission that "restrained of liberty" is broader than detention. The submission is recorded. It is not answered. At [3], [20], [36] and [39] the Court organised its reasoning around a comparison with a detained person — a comparison that is only apt if detention is the statutory touchstone. Whether it is, is the question this appeal raises.

D2. The construction of section 1

38. Parliament used two terms joined by the disjunctive. The second is not surplusage. "Confined" describes physical containment. "Restrained of his liberty" describes legally enforceable requirements, imposed by the State and backed by coercion, which prevent a person doing what he would otherwise be free to do.

LEG/05 p1528 39. That reading answers the mischief of the 1816 Act, which was passed to widen the writ's reach in non-criminal cases. A construction confining it to incarceration narrows the very remedy the Act enlarged.

40. It also answers the function of the writ. The writ does not compensate for discomfort. It requires the person responsible for a restraint to come to court and

show his authority. Severity bears on whether the court will intervene and on the relief that follows. It has nothing to do with whether the State may be called upon to justify itself.

LEG/05 p1528 41. **The meaning of bail when Parliament legislated.** The 1816 Act falls to be read against the legal understanding of bail then obtaining, recorded in the standard practitioner text of the period, Highmore's *A Digest of the Doctrine of Bail in Civil and Criminal Cases* (1783), published thirty-three years before the Act. A person's bail sureties were regarded as his gaolers, to whose custody he was committed; a person on bail was not regarded by the law as at large or free, the contrast being with mainprize, under which he genuinely was at his own liberty. When Parliament conferred jurisdiction over a person "confined or restrained of his or her liberty", the legal meaning of bail available to it was not release(d) into liberty but the substitution of one custodian for another. The institution has changed; the principle has not. The custodial power that in 1783 lay with the sureties lies today directly with the State, in the power of arrest and re-detention standing behind every condition imposed on the Appellant. The person to whose custody he is committed is the Secretary of State.

X/01 p2487

42. A person is "restrained of his liberty" within section 1 where the State has imposed upon him, and maintains against him by the threat of arrest, detention or prosecution, legally enforceable requirements as to where he must live, where and when he must present himself to officials, and whether he may work. That opens the gateway.

D2A. The text, preamble and mischief of the 1816 Act

42A. The Appellant reaches the same conclusion by two independent routes, and the Court need accept only one. **Route A**: a person admitted to bail in place of detention remains in custody for the purposes of the writ. **Route B**: if he is not in custody, he is nonetheless "restrained of his liberty" and within the "custody or power" of the person who holds him to the terms of his release. Neither route contends that every interference with freedom engages the writ. Both are confined to the case in which the State has detained a person, released him on terms, and holds him to those terms by the power to detain him again.

42B. **Section 1 and the preamble.** Section 1 was framed as a power to award the writ "in vacation time", but it is Parliament's own description of the class of non-criminal cases to which the writ runs, and the remedial provisions in sections 2 and 3 attach

to that class. The Court of Appeal took it as the governing text at [22]. The preamble recites that "extending the Remedy of such Writ ... will be advantageous to the Public", and that the Habeas Corpus Act 1679 "only extend[s] to cases of Commitment or Detainer for criminal or supposed criminal matter". A preamble is part of the context of the enacting words, although it cannot cut down words that are clear: *Attorney General v Prince Ernest Augustus of Hanover* [1957] AC 436. Two points follow. First, Parliament's declared object was "extending the Remedy". Secondly, having described the reach of the 1679 Act as "Commitment or Detainer", Parliament did not repeat those words when it defined the class to which the extended remedy would apply; it chose "confined or restrained of his or her liberty". A deliberate change of vocabulary within a single enactment is the clearest textual indication that the new words are not a synonym for the old. The recital that the writ restores a person "unjustly deprived" of liberty describes its general function; the enacting words define the class of case, and where the two differ the enacting words govern.

D/05A p1685

42C. **Route A: section 3.** Where it appears doubtful whether the facts in the return are true, section 3 empowers the judge to "let to bail the said person so confined or restrained". Parliament thus provided, within the Act itself, for the section 1 subject to be released on bail while the court remained seized of the lawfulness of his restraint. On the law of bail as Parliament understood it (paragraph 41 above), that person had not left custody: custody had passed to sureties answerable to the court, and the writ continued to run. The Act treats bail and a live habeas jurisdiction as compatible because bail was a mode of custody, not its end, and nothing in it makes the character of bail depend on who granted it. The modern scheme has the same structure. Immigration bail may be granted only to a person who is detained or liable to be detained (Schedule 10, paragraph 1(1), (2) and (5)); its conditions are imposed under paragraph 2(1); breach exposes him to arrest and re-detention. It is custody on terms. That is how the authorities have treated it (paragraphs 43, 44 and 54 to 62), and how this Court recorded it in *Worcestershire* at [73]: in *Jane v Westminster Magistrates' Court* [2019] EWHC 394 (Admin) the applicant "was in fact released on bail, but it was assumed that this qualified as detention". On Route A severity does not arise. Custody is a status, not a degree.

LEG/08 p1563

D/48 [73] p1831

42D. **Route B: "restrained" and "custody or power".** Section 1 contains two disjunctions: the subject is "confined or restrained of his or her liberty", and the writ goes to the person in whose "custody or power" he is. They are not a drafting

doublet. Parliament had "Commitment or Detainer" to hand in its own preamble and chose different words; Blackstone described personal liberty as the power of locomotion "without imprisonment or restraint, unless by due course of law" (*Commentaries*, Book I, ch 1); and "custody or power" is not a doublet on any view. "Power" was the word by which the law described control exercised without a gaol. In the infant cases the writ decided who was lawfully entitled to the custody of a child who was not imprisoned at all: *R v De Manneville* (1804) 5 East 221; *R v Greenhill* (1836) 4 Ad & E 624. The question was the lawfulness of the title to control, not the severity of any confinement. "Power" does not extend to every exercise of public power; it denotes a relationship of control sufficient to require justification. A person who may be detained at will under the instrument he challenges, and who is held to requirements as to residence, reporting, work and travel by the threat of that detention, is in the power of the person who holds that instrument. The Court of Appeal did not construe these words; it organised its analysis around detention ([3], [20], [36], [39]). Detention is the paradigm of confinement, but it does not exhaust restraint. Physical custody is the paradigm of custody, but it does not exhaust power.

D/11A p1780

D/14A p1849

42E. **The mischief.** The Report from the Select Committee on Writs of Habeas Corpus ad Subjiciendum (20 June 1815), on which the Bill was founded, may be referred to in order to identify the mischief: *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591. It does not use the word "restrained", and it is not relied on for the width of section 1. It is relied on for two things. First, it identifies the mischief as the court's inability to go behind a return sufficient on its face: in the case of Elizabeth Woodward the return asserted that she was not in the respondent's "custody or power" and was "free from his control", and the judge considered that he could not inquire into the truth of that assertion. Section 3 was Parliament's answer. The concern of the Act was that a restraint should not escape examination of its lawfulness, which is what has happened here by a different route: having held the conditions insufficiently severe, the Court of Appeal declined at [40] to consider whether the deportation order is lawful. Secondly, the Committee recommended power "to discharge the person imprisoned or detained, on bail, during such examination or inquiry". Parliament enacted that in section 3, describing the person to be bailed not in the Committee's words but in those of section 1: "the said person so confined or restrained".

42F. **The parliamentary records.** The Appellant does not rely on the debates of 1814 to 1816 as an aid to construction (*Darwall v Dartmoor National Park Authority* [2025] UKSC 20 at [39] to [43]; *Pepper v Hart* [1993] AC 593). He intends to include in the bundle of authorities three records only: the Select Committee Report (Hansard (1st series), HC Deb 20 June 1815, vol 31, cc 891 to 893); its Minutes of Evidence (cc 893 to 901); and the entry headed "Bill for Securing the Liberty of the Subject" (HC Deb 14 February 1816, vol 32), recording that Mr Serjeant Onslow had the Report read and obtained leave to bring in the Bill. They are relied on to identify the mischief and for the historical fact that the Report was the foundation of the Bill, and not as statements made in Parliament for the purpose of construing the Act. By his procedural application of 8 October 2026 the Appellant has asked the Court to direct whether they may be included and, if permission is required, to grant it.

42G. On either route, severity does not govern the gateway. The question is whether the Respondent has lawful authority for the restraint, which is the question the Act of 1816 was passed to ensure could be examined.

D3. This Court has already treated bail as custody for these purposes

D/30 p2032 43. In *Lukaszewski v The District Court in Torun, Poland*, reported with *Pomiechowski v District Court of Legnica, Poland* [2012] UKSC 20; [2012] 1 WLR 1604, Lord Mance JSC stated at [25] that "it is established for the purposes of a challenge to extradition under domestic law that **an applicant for habeas corpus is to be treated as effectively in custody, even if released on bail**": citing *R v SSHD, Ex p Launder (No 2)* [1998] QB 994, 1000G–1001G and 1011G–H. At [26] he drew the distinction expressly, between a person who "is in custody" and one who, "even if he is not, he is to be treated as if he were for the domestic law purposes of a challenge to the proceedings by writ of habeas corpus".

D/28 p2020

44. This Court thus recorded the proposition as established law in 2012 — thirty-five years after the procedural reform on which *Worcestershire* relied, and by reference to authority of the 1990s, not the nineteenth century. It was not cited in the judgment below. The Respondent may say the statement was made in an extradition context. The deeming is a rule about who may invoke the writ, not a rule of extradition procedure; and for the reasons at paragraph 73 below no principled distinction separates a person on extradition bail from a person on immigration bail.

D/48 p1812

D/20 p1875 45. *R (Jalloh) v SSHD* [2020] UKSC 4 makes the same point from the other direction. A person subject to an overnight curfew was falsely imprisoned at common law, and

this Court refused to assimilate the common law concept to the Convention concept of deprivation of liberty. The absence of physical incarceration does not place a State-imposed restriction beyond the law's concern.

D4. The Court of Appeal applied its own chosen test wrongly

46. The Court of Appeal assumed, without deciding, the standard of "a significant curtailment of the freedom to do those things which in this country free men are entitled to do" (*Re SA (Vulnerable Adult with Capacity: Marriage)* [2005] EWHC 2942 (Fam) at [51], citing *Re C (Mental Patient: Contact)* [1993] 1 FLR 940, 944), and recognised at [35] that *Kaitey* [2021] EWCA Civ 1875 at [122] contemplates the writ being available to a person on bail. It then held at [36] that the Appellant's conditions fell far short. It applied that standard wrongly, in three respects.

D/38 p2291

D/23 [122] p1928

47. **It measured the wrong object.** At [37] and [38] the Court compared a fortnightly reporting obligation with the eight-hour nightly curfew in *Jalloh*, and asked whether the Appellant was free to come and go from his residence. *Re SA* does not ask only about movement from a dwelling. It asks about the freedom to do those things which free men are entitled to do. Free men in this country are entitled to work for a living, to leave and re-enter the country of their long residence, and to live without a standing liability to arrest without warrant. The analysis at [36] to [39] does not engage with the prohibition on employment, though the Court had recorded it at [10]; nor with the prohibition on international travel; nor with the restraints flowing from the deportation order which the Court had itself identified at [21]. A man forbidden to work, forbidden to leave the country, required to present himself to police at fixed intervals and liable to arrest without warrant is not inconvenienced in his movements. He is disabled from a substantial part of ordinary civic life.

D/20 p1875

48. **It assessed the conditions one at a time, at a single moment.** Eight years of continuous, State-enforced residence restriction, reporting, digital reporting and employment prohibition, each backed by the power of arrest and re-detention, is a different thing in kind from any one of them viewed in isolation on a single afternoon.

49. **That the method must be cumulative, and that duration counts, is settled at the highest level.** In *SSHD v JJ* [2007] UKHL 45 at [16] Lord Bingham held that account must be taken of the nature, duration, effects and manner of implementation of the measure; that there may be no deprivation of liberty if a single feature is taken on its own, but the combination of measures considered

D/22 [16] p2370

together may have that result; and that, because the whole situation must be considered, it is inappropriate to draw a sharp distinction between confinement which will and will not qualify. Reviewing *Guzzardi v Italy* (1980) 3 EHRR 333 he identified as material the possibilities of obtaining work, the obligation to report, the liability to arrest for breach, and the period over which the restrictions had operated. Every one of those features is present here, and the last on a scale six times greater than in *Guzzardi*, where the restrictions had run sixteen months. **The sharp distinction Lord Bingham held inappropriate is precisely the distinction the Court of Appeal drew at [37] and [38].**

S/03 p2460

D/22 p2345

50. The Respondent will answer that *JJ* was an Article 5 case. It is relied on for its method, which is a method of assessing restraint and is not confined to any one source of law: the whole situation, not the itemised parts; work, reporting, arrest liability and duration all material; no bright line. On any view those propositions govern the *Re SA* inquiry the Court below purported to conduct, and it did not conduct it in that way.

D/38 p2291

51. **The Court below also used only half of the standard it adopted.** The formulation in *Re SA* is disjunctive. The writ runs "if it prevents someone being at liberty freely to go at all times to all places whither he will **or** amounts to a significant curtailment of the freedom to do those things which in this country free men are entitled to do". A man who may reside only at an address the Respondent approves, and who may not leave the United Kingdom, satisfies the first limb on its face. Neither court below addressed it. The disjunctive reading of section 1 for which the Appellant contends at Part D2 is thus reflected within the very test the Court of Appeal assumed in her favour.

D5. Article 5 and section 1 ask different questions

S/01 p2446

S/02 p2451

52. The Respondent relies on the Strasbourg line distinguishing deprivation of liberty from restriction on movement — *Guzzardi*; *Austin v United Kingdom* (2012) 55 EHRR 14; *De Tommaso v Italy* (2017) 65 EHRR 19 — and on the control order cases, where the line was drawn by reference to curfew hours: *JJ*; *SSHD v AP* [2010] UKSC 24.

LEG/05 s1 p1528

53. That line of authority is beside the point, because Article 5 and section 1 of the 1816 Act ask different questions. Article 5 asks whether the State has deprived a person of liberty, so that the deprivation must be brought within a closed list or be unlawful. Section 1 asks whether a person is confined or restrained, so that the person

responsible may be required to return the cause. The first is a substantive prohibition. The second is a procedural mechanism for compelling justification. To
LEG/05 p1528 import the Convention threshold into the 1816 Act is to make a remedy that predates the Convention by centuries to depend on a test devised in the twentieth
D/20 p1875 century for an entirely different purpose. This Court refused that move in *Jalloh*, and should refuse it here.

D/04 p1654 **D6. *In re Amand* (Ground 2)**

54. At [28] the Court of Appeal held that, to the extent the *Amand* line permitted an applicant on bail to use habeas corpus to challenge the decision on which detention
D/48 p1812 was based, it is "no longer good law" by reason of *Worcestershire*. That holding is wrong for five reasons, each independent.

D/13 p1810 D/45 p2418 55. **First**, *Worcestershire* does not mention *Amand*, *Spilsbury*, *Ezekiel* or *Caborn-Waterfield*, did not purport to overrule any of them, and did not decide anything about bail.

56. **Second**, *Worcestershire* concerned children detained under care orders made in contested family proceedings before an independent tribunal in which the applicant participated. Its reasoning on alternative remedies was directed at that context and no other.

D/25 p1943 57. **Third**, at [69] to [72] this Court preserved the *Khawaja* precedent-fact exception and reserved the question whether its reasoning extends to orders made by officials rather than courts. At [71] the first reason given why the precedent-fact analysis did not arise there was that the order was made by a court and not a government official. At [70] the Court said the question might have to be addressed in a future suitable case. **This is that case.**

58. **Fourth**, *Worcestershire* is not silent on bail. At [73] this Court examined *Jane v Westminster Magistrates' Court* [2019] EWHC 394 (Admin) and recorded, in parenthesis, that the applicant there "was in fact released on bail, but it was assumed that this qualified as detention". It proceeded on that footing without criticism. A judgment which itself treats an applicant on bail as within the reach of the writ cannot be read as having abolished, by implication and without argument, the line of authority to that effect. *Jane* failed for an entirely different reason, and one which underlines the distinction the Appellant draws: the authority for the detention there was an order of a court, and as Singh LJ explained, "a complete

answer to the writ of habeas corpus would be provided by the fact that there is lawful authority for his detention. That authority is provided by the order of a court." Here there is no order of any court. There is an instrument made by the Respondent about her own case.

59. **The limiting condition this Court itself stated is not satisfied.** At [65] the rule was expressed in terms: "**where a court has made a detention order** in respect of an individual, **in circumstances where they had a fair opportunity to participate in the proceedings leading to the making of that order**, an attempt to bypass the usual procedures ... is not justified." Two conditions, and neither holds here. No court made this order. And the Appellant had no proceedings in which to participate — only the opportunity to write to the decision-maker who was also his opponent.

60. **Fifth**, the Court of Appeal cannot overrule the House of Lords. Only this Court may depart from *Amand*, and only under the *Practice Statement (Judicial Precedent)* [1966] 1 WLR 1234.

D/04 p1654
D/36 p2218

D/30 p2032

61. *Lukaszewski* completes the answer. Decided in 2012, long after the 1977 reforms, this Court applied the bail and custody principle without qualification. There is no basis for holding that *Worcestershire* impliedly overruled *Amand* when this Court itself applied the same principle, without demur, three decades after the reforms said to have undermined it.

D/48 p1812

62. The Court of Appeal's reasoning at [28] — that the *Amand* line is an example of using habeas corpus to challenge an underlying decision — does not meet the point. In each of those cases the court proceeded on the footing that a person on bail was **a person to whom the writ was available**, and that footing was assumed in the House of Lords. Holding that the writ may not be used as a substitute for judicial review is a limit on the **use** of the remedy. Holding that a person on bail is outside its reach is a limit on **standing**. *Worcestershire* imposed the first. The Court of Appeal used it to impose the second.

D7. Administrative detention, and why this is a precedent-fact case (Ground 3)

63. The distinction between administrative and judicial detention is the organising distinction of *Worcestershire* itself. At [63] this Court held that the position may be different where a person acts on their own authority, rather than under an order of a court, to detain an individual, so that habeas corpus may be used to challenge the decision to detain as well as the detention, without the need for a quashing order —

D/25 p1943 citing *Khawaja*. At [69] it confirmed that where the power exercised by an official depends on the objective existence of a precedent fact, habeas corpus may be used as the procedural vehicle to challenge the lawfulness of the order on the ground that the fact does not exist.

64. This order was made by an official of the Respondent's department, on paper, without any hearing, and without any court or tribunal adjudicating anything. The Appellant was invited to make representations and made them; but representations to the Respondent are not the same as adjudication by an independent tribunal. The party asserting that the Appellant should be deported was the party that D/48 p1812 decided it. The care order in *Worcestershire* was made by a court after contested proceedings. This order was made by the executive about its own case. It is the paradigm of the administrative order this Court left open.

D/48 [69] p1829 65. **This is a precedent-fact case.** At *Worcestershire* [69] this Court explained the D/33 p2097 exception in terms: in *Muboyayi* Lord Donaldson "put to one side challenges to the lawfulness of an order for detention **made by an official** where the power exercised by the official depends upon the objective existence of some precedent fact, of which *Khawaja* is the classic example. In such cases an application for habeas corpus can be used as a procedural vehicle to bring a challenge to the lawfulness of the order for detention on the basis that the precedent fact does not exist, as an alternative to seeking a quashing order". The Court recorded that this had been D/25 101 · p1970 accepted in *Khawaja* by Lord Wilberforce at pp 101–102, Lord Scarman at p 110, Lord Bridge at pp 122–123 and Lord Templeman at p 128; and that, as Glidewell LJ D/33 266 · p2119 explained in *Muboyayi* at p 266, "**the detaining officer is under an obligation to prove by evidence the existence of the precedent facts** in order to justify the detention, which is not the case where the power to detain depends upon the officer making a rational evaluative judgment or exercising discretion". The facts on which this case turns fall on the objective side of that line and admit of no evaluative judgment at all:

a. whether the Appellant holds subsisting indefinite leave to remain — either it was invalidated or it was not, and the Respondent's own department confirmed four times that it was not;

b. whether his in-country appeals remain pending, so as to engage sections LEG/10 s78 p1573 78 and 79(4) of the 2002 Act — provable from the tribunal record;

D/01 p723
D/03 p752

c. whether the decision of 12 May 2017 was withdrawn in its entirety — evidenced by the Respondent's own letter of 17 July 2017;

d. whether any deportation order was made after 17 July 2017 in discharge of the duty that decision says arose — a matter of record, and the answer is that none was;

e. whether the Respondent addressed regulations 27 and 32 of the Immigration (EEA) Regulations 2016 at all before making the order — a matter of record, provable by producing the decision, on which she has filed no evidence whatsoever.

D/25 p1943

66. Each is a fact of exactly the character which in *Khawaja* the detaining authority was required to prove. Lord Scarman's approach in that case governs: given the jealous care the law devotes to the liberty of those subject to its jurisdiction, he found it impossible to read a statute so as to take a power in restraint of liberty out of the precedent-fact category, and held that if Parliament intends to exclude effective judicial review of the exercise of a power in restraint of liberty it must make its meaning crystal clear. Nothing in Schedule 10, and nothing in the 1816 Act, comes near that clarity.

LEG/05 p1528
LEG/08 p1563

67. **The Appellant identifies precisely what he does not ask this Court to do.** He does not invite the Court to review any evaluative judgment, to substitute its own assessment for the Respondent's on any question of degree, or to decide whether his conduct represented a genuine, present and sufficiently serious threat within regulation 27. Those would be matters of judgment, and they fall on the other side of the *Muboyayi* line. His case is confined to the anterior objective conditions on which the existence of the power depended, and to whether they were satisfied.

D/33 p2097

68. **Nor does the exception depend on the official having failed to turn his mind to the question.** If it did, a precedent fact could be defeated whenever an official asserted that he had considered it, and *Khawaja* would have been decided the other way: the immigration officer there had considered the question and concluded that Khawaja was an illegal entrant, and the House of Lords nonetheless held that the court must determine it for itself on evidence. Whether a condition is a precedent fact turns on what the statute makes the condition of the power, not on how much thought the official gave it. The Respondent cannot place a jurisdictional condition beyond the reach of the writ by asserting that she considered it, any more than she can by asserting that she did not.

69. **A case which raises questions of both kinds is not thereby taken outside the exception.** At *Worcestershire* [70] this Court recorded that "in some cases there may be potential grounds of challenge both by reference to precedent facts and by reference to the exercise of discretionary power", habeas corpus being available as to the first and judicial review as to the second, and observed that the validity of the distinction "might have to be addressed in future in some suitable case". The Appellant relies on the first. To the extent that any part of his case engages the second, he does not advance it by this route.

D/48 [70] p1830

D8. The Respondent has already accepted this route

70. In *R (Sheehan) v SSHD* [2025] EWHC 1617 (Admin), Sweeting J, 9 June 2025, the claimant was detained under a deportation order made under section 32 of the UK Borders Act 2007 — the same automatic deportation provision under which this Appellant's order was made. He contended the order was a nullity because he was an Irish citizen, to whom section 32 could not apply. **The Respondent accepted that habeas corpus was available to determine the power to detain; that whether the claimant was an Irish citizen was a precedent fact for the court itself to determine; and that if he was, the deportation order and the detention power would fall away.** The claimant was released.

D/41 p2401

LEG/12 s32 p1590

71. That was **five months after *Worcestershire*** and three months before this application was filed. It is recent authority, in the immigration deportation context, that the route the Court of Appeal declared closed remains open. The Respondent did not merely fail to resist the proposition. She advanced it.

72. *Sheehan* also exposes what the threshold below produces. Had the Respondent released that claimant onto immigration bail rather than detaining him, the writ would, on the Court of Appeal's reasoning, have been unavailable to him, though the underlying order was equally void. **The availability of the Great Writ cannot turn on the executive's choice of custodial mode.**

D9. The extradition anomaly

73. In extradition proceedings habeas corpus is routinely available to persons on bail: the authorities are surveyed in *Kaitey* at [122], and *Worcestershire* at [73] records *Jane* on that footing. No principled distinction separates a person on extradition bail from a person on immigration bail; both are subject to State-imposed conditions on pain of re-detention, pending a process that may end in removal. To grant the writ

D/23 [122] p1928
D/48 [73] p1831

to one and deny it to the other is arbitrary discrimination in access to a constitutional remedy.

D10. *De facto* control

D/34 p2159 74. At [23] to [25] the Court of Appeal treated *R (O'Brien) v Secretary of State for Home*
D/37 p2228 *Affairs* [1923] 2 KB 361 and *R (Rahmatullah) v Secretary of State for Defence* [2012] UKSC 48 as concerned only with the addressee of the writ. Atkin LJ's reasoning in *O'Brien* at p.398 proceeds from the proposition that "custody or control" is what matters and that actual physical custody is not essential. In *Rahmatullah* Lord Kerr at [41] to [43] stated as a matter of general principle that the writ issues as of right where the State exercises control over an individual's liberty, and that its effectiveness would be substantially reduced if it were unavailable merely because the respondent lacked physical custody. The concept at the heart of the writ is the State's control of the individual, not the walls around him.

D11. Continuity of custody (Ground 4)

75. The Appellant was detained under immigration powers from 25 November 2017 at Morton Hall Immigration Removal Centre until the First-tier Tribunal granted bail on
E/07 p913 11 May 2018, after which he was required to reside in Approved Premises for over six months. He has been on immigration bail continuously since.

76. The Court of Appeal treated him as "a person on bail" ([3], [38]) without asking whether the State's custody ever ended. It did not. Bail is not the alternative to restraint; it is the alternative to detention. A person on immigration bail is by definition a person liable to detention — that is the condition of the power in
LEG/08 para1 p1563 paragraph 1(1) and (2) of Schedule 10. The grant of bail suspends the physical incidents of custody on terms; break the terms and they resume without further process. The chain is unbroken. **The Appellant is not free. He is detained in a different mode.**

D/04 p1654 77. The historical authorities say the same. In *Spilsbury*, *Ezekiel*, *Amand* and *Caborn-*
D/13 p1810 *Waterfield* the applicant had been detained and was on bail, and in each the court
D/45 p2418 proceeded as though custody continued. Viscount Caldecote CJ in *Amand*: "that makes no difference and we have to deal with the application as if he were still detained in custody."

D12. The conditions

KB/07 p132 78. At the date of the Deputy Judge's order the Appellant was subject to compulsory residence at a specified address, reporting to a police or immigration officer, and restriction on international travel. He is now subject to compulsory residence, fortnightly reporting in person, digital reporting, and for the first time a prohibition on employment, each backed by the power of arrest and re-detention. Restrictions of this character have been in force, in varying combinations, for over eight years. The variation of individual conditions over time does not alter the character of the restraint: whichever conditions apply at any moment, they derive their sole authority from the same deportation order.

79. The observation at [38] that the Appellant "is free to come and go as he pleases from his main residence" states the position far too widely. He is not free to live elsewhere. He is not free to be absent when required to report. He is not free to leave the United Kingdom. He is not free to work.

PART E — LEGALITY BEFORE SEVERITY (GROUNDS 5, 11 AND 15)

80. The Court of Appeal asked whether the restraint was severe enough, answered no at [39], and then held at [40] that it was "therefore unnecessary" to deal with whether the deportation order was an active and lawful instrument, expressly declining to address Grounds 2, 9 and 10 to 12.

81. That sequence is available only if severity is logically prior to legality. It is the reverse. Severity is relevant to whether a restraint that **is** authorised nonetheless requires intervention, and to relief. It has no bearing on whether an **unauthorised** restraint engages the writ, because a restraint imposed without lawful authority is the very wrong the writ exists to remedy, and it is no answer that the wrong is a mild one.

82. Test it. The Secretary of State requires a man against whom she holds no order of any kind to report weekly to a police station, and enforces it by the threat of arrest. On the approach below he cannot invoke the writ, weekly reporting being no significant curtailment. The writ plainly lies, because the State is exercising coercive power with no authority at all. Once that is accepted, authority comes first in every case.

83. The reasoning below is therefore circular. In holding the conditions too slight, the Court necessarily treated them as lawfully imposed conditions of a lawfully granted bail. Whether they were lawfully imposed was the question it was asked to decide and refused to reach.

The instrument is the source of every restraint (Ground 11)

84. The structure is not in dispute. Bail may be granted under paragraph 1(1) and (2) of
LEG/08 para1 p1563 Schedule 10 to a person detained or liable to be detained. The Appellant's liability
KB/07 p132 to detention is said to arise from the deportation order. The Deputy Judge said so in terms: the order "constituted ... an active and lawful instrument, which provided a clear legal basis for the imposition of bail conditions", the conditions being mandatory under paragraph 2(1), and the restrictions being "direct, necessary and legally required consequences of a valid deportation order" (judgment, [15]).

85. On the Respondent's own analysis, therefore, if the order is not valid there is no liability to detention, no power to grant bail and no power to impose any condition. The restraints do not become milder. They become unauthorised.

D/06C p1700 86. That the bail power presupposes a power to detain is established by *B (Algeria) v SSHD* [2018] UKSC 5, and follows from the Court of Appeal's own reasoning at [44]. Answering the Appellant's point that the Respondent cannot deny he is detained while subjecting him to a scheme that applies only to persons liable to be detained, the Court observed that the relevant paragraphs do not use the phrase "treated as if detained". That does not engage with the structure of the Schedule. Paragraph 1(1) and (2) permits bail only for a person detained or liable to detention; paragraph 1(5) permits it to continue only while that liability persists. **The bail framework is on its face conditional on a lawful power to detain.**

D/23 p1895 87. *Kaitey* does not assist the Respondent. It held that the Schedule 10 power operates independently of whether detention would at the time be lawful under *R v Governor*
D/16 p1856 *of Durham Prison, ex p Hardial Singh* [1984] 1 WLR 704. It concerned a man whose status undoubtedly rendered him liable to detention under an extant and unimpeached power, whose detention had become impermissible in its exercise. It says nothing about a case where the instrument said to generate the liability never validly existed, or where statute preserves the person's leave. *Kaitey* answers whether liability survives a *Hardial Singh* impediment. It does not answer whether liability can arise from nothing.

88. The vice of the approach below was identified by Stuart-Smith LJ in *SSHD v First-tier Tribunal (Asylum Support)* [2025] EWCA Civ 1654 at [40]: an inquiry confined to whether the foundational decision had in fact been made leaves little or nothing of value to decide. That is exactly what happened here. The courts below satisfied themselves that a deportation order existed and had not been revoked, and treated that as the end of the matter. **The existence of an instrument is not its lawfulness, and it is lawfulness the writ exists to test. A jurisdiction that can confirm only that a piece of paper exists is not a jurisdiction at all.**

The procedural framework (Ground 15)

KB/07 p132
LEG/03 p1514
D/48 [77] p1832

89. At [14] the Court of Appeal described the Deputy Judge's decision as "refusing permission". Habeas corpus has no permission stage: CPR 87.2 and 87.4; *Worcestershire* at [77]. The misdescription is not a slip. It reveals that the Court approached the case through the lens of judicial review, and it explains why it treated the restraint question as a threshold filter and never reached the substance.

90. At [2] the Court warned against the writ being "misused, taking up valuable court time on a priority basis". At [53] Peter Jackson LJ described the application as "absurd", at [54] as "an attempt to abuse the remedy", and at [56] said that had permission been required "it would have been refused and the application would have been certified to be totally without merit".

91. This Court has already answered that, in terms, in the very judgment on which the Court of Appeal relied. At *Worcestershire* [77] Lord Sales and Lord Stephens said: "**It cannot be said that seeking habeas corpus is in itself an abuse of process.** It is a remedy specifically designed to secure the release of an individual if it is said that there is no lawful authority to justify their detention. **It is difficult to think of something which could be more important than that** and as a matter of policy, reflected in legislation, **a minimum of procedural impediments are to be placed in the way of someone who seeks to argue that there is no justification for their detention.**"

92. Parliament gave effect to that policy in section 15 of the 1960 Act by conferring an appeal without permission. An observation that a statutory appeal exercised in accordance with that policy would have been certified totally without merit had the policy been otherwise cannot stand with the policy itself, or with what this Court said at [77].

D/46 [13] p2435 93. Nor would the certification standard be met. In *Wasif v SSHD* [2016] EWCA Civ 82 at [13] to [16] Underhill LJ held that certification is reserved for a sub-set of cases in which permission would be refused: there is a real difference between a claim that is not arguable and one that is bound to fail, the latter confined to cases where the judge can see no rational basis on which the claim could succeed. An appeal resting on a decision of the House of Lords and a decision of this Court at the threshold, raising a question of lawful authority no court has determined in eight years, and advancing a procedural route the Respondent herself had accepted four months earlier in *Sheehan*, is not such a case. **A submission the Respondent advanced in June 2025 cannot be an abuse of the remedy when advanced by a litigant in person in September 2025.**

D/41 p2401

PART F — THE BURDEN OF JUSTIFICATION (GROUND 6)

D/25 p1943 94. In *Khawaja* the House of Lords established that where the liberty of the subject is at stake it is for the executive to justify the restraint, and for the court to satisfy itself as to the existence of the facts on which the power depends. This Court preserved that principle in *Worcestershire* at [69]. **The Respondent does not dispute it.** In her response filed in the Administrative Court on 14 October 2025 she pleaded, at paragraph 11: “The common law places the burden on the detaining authority, if challenged, to justify the detention to the court: *R v Secretary of State for the Home Department Ex p Khawaja* [1984] AC 74 at 112, per Lord Scarman.”

D/48 [69] p1829

D/25 112 · p1981

KB/07 p132 95. The Respondent has never been required to discharge it. The Deputy Judge dismissed the application on the papers hours after the Reply was filed. The Court of Appeal dismissed the appeal without calling on her at all, and declined at [40] to consider whether lawful authority existed.

96. That the burden operates in this way, in this statutory context, against this Respondent, is not a matter of inference. In *Sheehan* the court held that where the right to detain depends on a precedent fact, the detention may be challenged by habeas corpus and the detaining authority must prove the existence of the precedent facts to the required standard; and that it was for the Secretary of State to satisfy herself that the claimant could continue to be detained. She did not dispute the principle. She accepted it.

97. The approach below reversed the burden, requiring the Appellant to establish a threshold of severity before the State would be asked to explain its authority.

98. **The evidence.** Across the whole of these proceedings the Respondent has filed **no witness statement and no sworn evidence of any kind** — an unsworn response of some eight to nine pages in the High Court, and a skeleton argument in the Court of Appeal. Those are submissions of counsel. They are unverified by any statement of truth and carry no penalty for falsehood.

99. There is accordingly no evidence before any court that the deportation order is valid; that the person whose signature appears on it had authority to sign it; that regulations 27 and 32 of the 2016 Regulations were applied; that the withdrawal of 17 July 2017 was intended to leave the order standing; or that the Appellant's leave has been invalidated.

LEG/09 reg27 p1568

D/03 p752

100. Every document capable of answering this case is in the Respondent's exclusive possession: the deportation order file; the identity and authority of the signatory; the instructions behind the withdrawal; the 2003 entry clearance application; and the correspondence confirming the Appellant's leave. He has sought disclosure and been refused. Where a party raises a case to answer and the material capable of answering it lies within the exclusive control of the other party, the evidential burden shifts, and an unexplained failure to produce it founds an adverse inference: *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324; *Kerr v Department for Social Development* [2004] UKHL 23.

D/24 p1938
D/47 p2441

101. In habeas corpus the Appellant does not need that principle, because the burden does not shift — it lies on the detaining authority from the outset. The general principle simply explains why her silence speaks against her. In proceedings concerning the restraint of liberty over nearly a decade, in which the applicant has raised a prima facie case that the authorising instrument is a nullity, no court can dismiss the application without requiring the detaining authority to justify the restraint by evidence.

PART G — THE RESPONDENT'S ADDITIONAL REASON: ALTERNATIVE REMEDIES

102. The Respondent's Reasons for Requesting Dismissal, dated 14 April 2026, advance a reason not decided below: that the Appellant is subject to an extant

deportation order providing a prima facie lawful basis, not appropriately challenged by habeas corpus where a statutory appeal to the First-tier Tribunal or judicial review is available.

103. **The Respondent has already conceded the answer to this argument.** In her response filed in the Administrative Court on 14 October 2025 she pleaded, at paragraph 12: “The Secretary of State acknowledges that the remedy in habeas corpus **is not discretionary**, and where the application is made out **the writ must issue**: *Greene v Secretary of State for Home Affairs* [1942] AC 284, at 302.” An objection founded on the availability of an alternative remedy is a discretionary bar. If the writ must issue where the application is made out, the availability of another route cannot defeat it. The Appellant adopts the Respondent’s concession and her authority.

D/14 302 · p1846

104. **First**, the *Khawaja* exception applies, for the reasons at paragraphs 63 to 69. It is an exception to the alternative-remedy principle, not something displaced by it.

D/25 p1943

105. **Second**, *Cheblak* [1991] 1 WLR 890 and *Muboyayi*, approved at *Worcestershire* [67] to [68], were decided against the background of a judicial review jurisdiction that was available and adequate to test the impugned decision. That premise does not hold here.

D/08 p1738
D/33 p2097
D/48 [67] p1829

106. **Third, the Respondent has already run this argument and lost it.** In *SSHD v First-tier Tribunal (Asylum Support)* she submitted that a decision to treat an asylum claim as withdrawn was a separate "prior decision", immune from examination in proceedings challenging its consequence. Stuart-Smith LJ rejected it. At [41] the division was "wholly artificial and unreal". At [39] she could not render a decision immune from challenge by forming her view before making the decision under appeal, and neither a minute nor a matter of hours, days or weeks should make the difference of jurisdiction for which she contended. At [45], applying *R (DN (Rwanda)) v SSHD* [2020] UKSC 7 at [17] to [18], the consequential decision was "inevitably tainted" by any public law error in the decision underlying it. Bean LJ and Peter Jackson LJ agreed. That decision was handed down on 18 December 2025. The judgment now under appeal was handed down on 3 March 2026 by a constitution presided over by Peter Jackson LJ, and makes no reference to it, nor to *DN (Rwanda)*, nor to *Lukaszewski*, nor to section 79(4). **The Appellant's facts are stronger than those: here the order and the decision bear the same date, were served in the same envelope under a single covering letter, and are cross-**

D/12 [17] p1795

C/10 p633

D/30 p2032

referenced in the decision letter itself. If a gap of weeks could not create the separation she needed there, a gap of none cannot create it here.

107. **Fourth, neither suggested alternative will answer the question.** The First-tier Tribunal cannot determine it. The Tribunal is a creature of statute with no inherent jurisdiction, and has only the jurisdiction Parliament conferred upon it: *Evans v Bartlam* [1937] AC 473, 480; *Da Silva Pinho (FtT — jurisdiction)* [2025] UKUT 00317 (IAC), headnote (b) and at [32]. That jurisdiction, under section 82 of the 2002 Act, is to determine an appeal against the refusal of a protection or human rights claim. It confers no power to determine the validity of a deportation order and no power to grant any public law remedy. This is not a question of how any judge has chosen to proceed. It is a question of what the Tribunal is. The tribunal's own record confirms the consequence:

D/12A 480 · p1808

D/10 p1776

LEG/10 s82 p1575

a. On 22 January 2026, refusing a stay, Judge Curtis held at paragraph 19 of his directions that he did "not consider ... that success at the Court of Appeal or the Supreme Court in relation to the writ of habeas corpus will automatically lead to the invalidation of the three decisions under appeal", and maintained that position on 12 May 2026. The statutory appeals are being conducted on the footing that these proceedings will not determine them.

H/02 p1060

H/03 p1073

b. The Appellant's judicial review of the Tribunal's case management decisions was refused and certified totally without merit on 17 October 2025, on the footing that the Upper Tribunal was the proper venue.

108. On the Respondent's case, therefore, the lawfulness of the instrument by which the Appellant has been restrained for more than eight years is justiciable in no forum at all: not in the First-tier Tribunal, which will not look at it; not in judicial review, which has been refused; and not in habeas corpus, because she says the writ does not reach him. **A remedy is not "alternative" if it does not answer the question.**

109. **Fifth**, the Court of Appeal's reliance at [42] on the Appellant's not having requested reconsideration under CPR 87.4(2) is the judicial review lens again. Section 15 of the 1960 Act gave him an appeal as of right against the refusal; Parliament imposed no requirement that he first invite the same court to think again. The Deputy Judge had applied a test of physical detention, which is an error of law, and an error of law is corrected on appeal. As for the judicial review that was certified totally without merit, it concerned two case management decisions of the Tribunal. It did not

LEG/03 p1514

KB/07 p132

concern the validity of the deportation order, and its fate says nothing about the availability of the writ to test that validity.

PART H — THE DEPORTATION ORDER IS VOID (GROUNDS 5, 5A AND 14)

110. This Part sets out the questions the courts below refused to determine. The Appellant invites the Court to determine them under section 40(5) of the Constitutional Reform Act 2005.

LEG/02 s40 p1510

H1. The foundation was withdrawn and the edifice fell with it

D/01 p723

111. The facts are common ground or matters of record. On 12 May 2017 the Respondent (a) refused the Appellant's protection and human rights claims, (b) certified both under section 94 and the human rights claim under section 94B, restricting him to an out-of-country appeal, and (c) made a deportation order. The decision letter recorded that section 32(5) of the 2007 Act required the making of an order and that "[a] deportation order has been made against you **and is enclosed with this decision**." On 8 June 2017 the order, the refusal decision and an IAFT-7 out-of-country appeal form were served together under a single covering letter. They were one act, done for one purpose: to remove the Appellant from the United Kingdom before he could exercise any in-country right of appeal.

LEG/12 s32 p1590

D/26 p2000

112. On 14 June 2017 — thirty-three days later — this Court held in *R (Kiarie & Byndloss) v SSHD* [2017] UKSC 42 that the section 94B regime as operated was unlawful. On 17 July 2017 the Respondent withdrew the decision of 12 May 2017. Her letter states: "the decision of 12 May 2017 … has been withdrawn." **No new deportation order has been made at any time since.**

D/03 p752

D/12 [17] p1795

113. **The governing principle is that of this Court in *R (DN (Rwanda)) v SSHD* [2020] UKSC 7.** Lord Kerr held at [17] that there is "no difference between a detention which is unlawful because there was no statutory power to detain and a detention which is unlawful because the decision to detain was made in breach of a rule of public law"; that "[w]ithout the existence of a deportation order, the occasion for (much less the validity of) detention would simply not arise"; and that "[t]o divorce the detention from the deportation would be, in my view, artificial and unwarranted".

114. At [18] he identified the structure that governs this case: "The making of a deportation order is ... a two-stage process, involving (a) notice of a decision to deport and (b) the making of the deportation order. **Detention at both of these stages is entirely dependent on the decision to deport. Without that decision the question of detention could not arise, much less be legal.**" And at [19]: "the lawfulness of the detention is always referable back to the legality of the decision to deport. **If that is successfully challenged, the edifice on which the detention is founded crumbles.**"

115. Here the decision was not merely challenged. It was withdrawn by the Respondent herself, in its entirety. On Lord Kerr's analysis the edifice has nothing left to stand
D/12 p1793 on. And the Appellant's case is stronger than *DN (Rwanda)* on its facts: there the deportation order was made under an invalid statutory instrument; here the order was made **within** the decision, **enclosed with** it, and **served under the same cover** as it, for the sole purpose that decision identified.

116. **The withdrawal puts the Appellant's case higher than *DN (Rwanda)*, not merely on a par with it.** In *DN (Rwanda)* the decision to deport existed throughout; the only thing wrong with it was that it was legally defective, and even so the edifice came down. Here the decision does not exist. It was withdrawn in its entirety by the only person with power to withdraw it. If a decision which exists but is flawed cannot sustain an order made in execution of it, a decision which has ceased to exist cannot sustain one either. Lord Kerr's reasoning at [18] does not depend upon a successful challenge. It turns on the absence of the decision: "**Without that decision the question of detention could not arise, much less be legal.**" A successful challenge is one route to that absence. Withdrawal is another, and the shorter one. **It follows that the Respondent's reasons for withdrawing are**
D/26 p2000 **immaterial.** Whether she withdrew in consequence of *Kiarie & Byndloss*, or for any
D/03 p752 other reason, the legal position after 17 July 2017 is the same: there was no
D/02 p750 decision to deport, and there was nothing on which the order of 12 May 2017 could stand.

117. *DN (Rwanda)* is not confined to detention. In *SSHD v First-tier Tribunal (Asylum Support)* [2025] EWCA Civ 1654 at [45] Stuart-Smith LJ applied it to a consequential administrative decision, holding that to divorce the consequential decision from the decision that gave rise to it would be artificial and unwarranted, and that the consequential decision is inevitably tainted by any public law error in

the decision underlying it. The principle is one of general application to executive acts built upon vitiated foundations.

D/29 p2037 118. **The consequence is nullity, not mere challengeability.** In *R (Lumba) v SSHD* [2011] UKSC 12 this Court held that there is no difference between detention which is unlawful because there was no statutory power, and detention which is unlawful because the decision was made in breach of a rule of public law. An executive act forming part of a package vitiated by public law error is not rendered merely
D/05 p1675 voidable; it is deprived of legal effect: *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147. A withdrawn decision has no legal existence at all, and an order made in execution of it can have no greater standing than the thing it executed.

119. The Respondent has never cited any authority for the survival of a deportation order after the total withdrawal of the decision from which it was made. There is none.

LEG/07 s5 p1552 120. She will say that section 5(1) of the 1971 Act empowers a deportation order independently of any certification, that the order followed a notice of decision dated 23 December 2016 to deport the Appellant, and that section 32(5) required it. The
D/01 p723
D/03 p752 withdrawal letter withdrew "the decision of 12 May 2017", not the certifications alone, and said nothing whatsoever to preserve the order. The order was not made in the abstract. It was made in execution of the decision withdrawn, as the decision letter itself records. **She has given three different accounts of what she withdrew.** Her letter of 17 July 2017 states that “the decision of 12 May 2017 … has been withdrawn”. Her response in the Administrative Court states at paragraph 9 that “the Notice of Decision and appeal form, not the deportation order, were withdrawn”, and at paragraph 28 that she “withdrew the decision to refuse and certify the appellant’s asylum and human rights claims under sections 94 and 94B
LEG/10 s94 p1577 of the 2002 Act”. Two of those three appear in the same document. The party on whom the burden of justification lies has not been able to state consistently what it was that she withdrew.

H2. The July 2017 decision asserted a duty that was never discharged

121. There is a second and independent route to the same conclusion, which arises on the Respondent's own account of what she did in July 2017.

LEG/12 s32 p1590 122. Section 32(5) of the UK Borders Act 2007 imposes a **duty**: the Secretary of State "must make a deportation order in respect of a foreign criminal", subject to the

exceptions in section 33. The statutory sequence is fixed. The exceptions are considered; if none applies the duty arises; the duty is discharged by making an order. An order cannot be made in discharge of a duty that has not yet arisen.

D/03 p752 123. The decision of 17 July 2017 conducted that exercise afresh. That was its purpose. It considered the protection claim, the Refugee Convention, Article 3, Article 8, and the exceptions in paragraphs 399 and 399A of the Immigration Rules, and reached fresh conclusions on each. Its operative section reads:

> "As explained above, your protection and human rights claim has been refused. As such, it is not accepted that you fall within any of the
LEG/12 s33 p1591 exceptions to deportation at section 33 of the UK Borders Act 2007. **Therefore, section 32(5) of the same Act requires the Secretary of State to make a deportation order against you. A deportation order has been made against you.**"

124. The first sentence states a duty arising **from the decision just taken**. The second reports that the duty has already been performed. But nothing was done on 17 July 2017 or at any time since. The only order in existence was made sixty-six days earlier, in execution of a decision the Respondent withdrew on the very day she issued the new one. And where the May decision had said an order "has been made against you **and is enclosed with this decision**", the July decision omits those words. Nothing was enclosed, because nothing was made.

125. The Respondent is on the horns of a dilemma, and neither horn assists her. **If the decision of 17 July 2017 was a genuine fresh exercise of the section 33 assessment** — as its terms assert, and as she must maintain, since it is the decision against which she gave an in-country right of appeal and on which nine years of tribunal proceedings have been conducted — then the duty under section 32(5) arose anew upon it and has never been discharged. A duty arising in July is not performed by an act done in May under an assessment that by then had no legal existence. **If it was not a fresh exercise**, it is the withdrawn decision reissued with the certifications removed, it cannot confer jurisdiction under section 82 of the
LEG/10 s82 p1575 2002 Act, and the case at paragraphs 111 to 120 is made out on her own account.

D/03 p752 126. She cannot rely on the July 2017 decision as fresh and lawful for the purposes of the appeal rights it conferred and the tribunal proceedings it generated, while treating the duty it says arose from it as discharged before it was taken.

127. The point may be tested simply. Had the Appellant lodged an appeal against the
D/01 p723 decision of 12 May 2017 after 17 July 2017, the First-tier Tribunal would have had no jurisdiction to entertain it. There would have been no extant decision to appeal. That is not in dispute, and it is why the Respondent did not merely strike the certificates out of the May decision but issued a fresh one in July; it is also why every tribunal proceeding of the last nine years has been conducted against the July decision and not the May.

128. The Respondent nonetheless invites this Court to treat that same May decision as spent for the purposes of the Appellant's rights, and as subsisting for the purposes of her own power to restrain him. **A decision cannot be a nullity when the subject relies on it and an effective instrument when the State does.**

D/32 p2073 129. **The Respondent will rely on *R (MM) v SSHD* (effect of withdrawal section 94B) [2025] UKUT 00385 (IAC).** The Appellant addresses it directly, and invites the Court to hold that the construction of section 79(4) adopted in that case is wrong and should not be followed.

130. *MM* held that where, the Secretary of State withdraws a section 94B certification after making an order under section 32(5), the order continues to have effect and need not be revoked. The route by which the Upper Tribunal reached that conclusion matters, because it is the construction of section 79(4) rather than the survival of the order which is in issue here. At [56] Judge Kebede stated the
LEG/12 s32 p1590 principle: "a deportation order made in accordance with section 32(5) of the UK Borders Act 2007 **does not invalidate leave to enter or remain if, and for so long as, section 78 applies**, i.e. if there is a pending appeal under section 82(1), which has been brought whilst the appellant is in the UK. **In such a case the deportation order would run alongside the appellant's leave until the appeal is finally (unsuccessfully) determined.**"

131. At [57] she applied it: "if the applicant's human rights claim had been refused **with an in country right of appeal**, he could not have been removed from the UK whilst his appeal was pending and **his ILR would not have been invalidated by the making of a deportation order** pending the outcome of that appeal. **However, since his human rights claim had been certified under section 94B so that he**

did not have a right of appeal exercisable from inside the UK, the protection in section 79(4) did not apply and the respondent was permitted ... to make a deportation order under section 32(5), as she did, which in turn invalidated his ILR."

132. The Upper Tribunal thus read section 79(4) as tested once and for all at the date the deportation order was made: a certification in force on that date disapplied the protection permanently, and its later withdrawal restored nothing. On that construction the Appellant's leave was invalidated on 12 May 2017, and nothing that happened on 17 July 2017 made any difference to it.

D/03 p752

D/32 p2073

133. **But *MM* does not reach this case, because it proceeded on a footing which is the opposite of the Appellant's in every material respect.** At [52] Judge Kebede recorded that counsel for the applicant "stressed that he was not suggesting that the deportation order issued in 2016 was a nullity or void ab initio and accepted that, **there having been no challenge to the order, it must be regarded as continuing to have legal effect**". At [78] she recorded that there was nothing in the materials to suggest that the section 94B certificate "was withdrawn because it was unlawfully made", nothing to suggest "that it was unlawful ab initio", and that it "had never been challenged by the applicant". It was on that footing — an unchallenged order and an unchallenged certificate, both assumed lawful — that she applied *R (Majera) v SSHD* [2021] UKSC 46.

D/31 p2060

134. Every one of those premises is reversed here. The Appellant does contend that the deportation order is void ab initio, and Part H above sets out why. The order **is** challenged: these proceedings are that challenge, and they are the first in which its lawfulness has ever been examined by any court or tribunal. And here the materials do what *MM* found the materials in that case did not, because the Respondent has pleaded it herself. In her response filed in the Administrative Court on 14 October 2025 she states at paragraph 9 that the withdrawal was made “in light of the judgment in *R (Kiarie & Byndloss) v SSHD* [2017] UKSC 42”, and at paragraph 28 that “[f]ollowing the decision of the Supreme Court in *R (Kiarie & Byndloss)*, the Secretary of State withdrew the decision to refuse and certify the appellant’s asylum and human rights claims under sections 94 and 94B of the 2002 Act”. The certificate was issued under the very regime this Court held unlawful thirty-three days later, and on her own pleaded case it was withdrawn in consequence. That is the very feature *MM* found to be absent. *Majera* governs the legal effect of administrative acts which have **not** been challenged. It has nothing to say about an act which is challenged in the very proceedings before the court.

D/26 p2000

LEG/10 s94 p1577

135. The consequence is one of order. If the deportation order is void, section 5(1) of the Immigration Act 1971 never operated upon the Appellant's leave at all, because there was no valid order to operate: there was no leave-invalidating event, and the question under section 79(4) does not arise. Part I therefore arises only if, contrary to Part H, the order was validly made. On that alternative footing the construction of section 79(4) falls to be decided, and the Appellant says the construction adopted in *MM* is wrong, for five reasons.

LEG/07 s5 p1552

D/32 p2073

136. **First, the words are words of continuing condition.** Section 79(4) provides that such an order "does not invalidate leave to enter or remain ... **if and for so long as** section 78 above applies". Section 78 applies while an in-country appeal is pending. The natural reading of "if and for so long as" is that the protection attaches whenever that condition is satisfied and endures while it continues. It is not the language of a single test applied at the instant the order is signed and lost forever if the condition is then absent. Had Parliament intended that, it would have said "if, at the time the order is made, section 78 applies". It did not.

137. **Second, the Respondent's own department read the provision that way.** Immigration Enforcement Criminal Casework confirmed the Appellant's indefinite leave to remain in writing on 19 October 2018, 10 December 2018, 30 September 2019 and 24 January 2020, every one of those letters more than a year after the order. The first records that his leave will be revoked only if his appeal is dismissed and he becomes appeal rights exhausted. That is section 79(4) applied as a continuing condition, by the Respondent, to this Appellant. On the construction adopted in *MM* her department was wrong four times over a period of fifteen months and never noticed.

D/08 p834
D/09 p840

138. **Third, the contrary construction produces a result Parliament cannot have intended.** On that reading the Secretary of State may extinguish a person's indefinite leave to remain by the simple expedient of a certificate which she afterwards withdraws. The certificate disapplies the protection in section 79(4); the deportation order then invalidates the leave; and the withdrawal of the certificate restores nothing. The certificate in this case was issued under the very regime this Court held unlawful in *Kiarie & Byndloss* thirty-three days later, and on the Respondent's own pleaded case it was withdrawn following that judgment, the decision which replaced it restoring the in-country right of appeal the certificate had removed. A settled resident cannot be left, permanently deprived of leave granted in 2005 and never revoked by an unlawful act of the State which the State has itself

D/26 p2000

abandoned. Section 79(4) is a protective provision. It should not be construed so as to become the instrument of the very loss it was enacted to prevent.

139. **Fourth, the principle of legality forbids it.** Fundamental rights are not to be overridden by general or ambiguous words, and the removal of a right of this kind "would require a very clear provision in primary legislation": *R v SSHD, Ex p Simms* [2000] 2 AC 115 at 131; *Worcestershire* at [56], citing *R (Hilali) v Governor of Whitemoor Prison* [2008] UKHL 3; [2008] 1 AC 805 at [21]. Section 79(4) contains no such provision. It says the opposite: it is cast in terms of preservation, not of forfeiture.

D/44 131 · p2410

D/18 p1866
D/48 [56] p1826

140. **Fifth, the Respondent cannot take section 78 for one purpose and disclaim it for another.** Section 78 applies while an in-country appeal is pending. The Respondent accepts that it applies: it is why the Appellant has not been removed since July 2017, and why nine years of in-country appeal proceedings have been conducted against the decision of 17 July 2017, up to and including the hearing before Judge Curtis on 1 and 2 June 2026. Section 79(4) is engaged by that same condition, in the very next subsection, in terms: the order "does not invalidate leave to enter or remain ... **if and for so long as section 78 above applies**". The Respondent relies upon section 78 to explain why the Appellant remains in the United Kingdom and to confer the jurisdiction in which she has litigated against him for nine years, while denying that the identical condition preserves his leave. Sections 79(3) and 79(4) are a single scheme. Parliament permitted an order to be made notwithstanding a pending appeal precisely because it preserved the leave while that appeal ran. The Respondent seeks the benefit of the first without the burden of the second.

D/03 p752

140A. The construction for which the Appellant contends is not novel. The Upper Tribunal applied it in *AM (Afghanistan) v SSHD* (PA/12938/2017; Upper Tribunal Judge Blundell; promulgated 24 February 2022), on facts materially indistinguishable from these. *MM* does not refer to it.

D/02 p1624

D/32 p2073

140B. AM held indefinite leave to remain. On 21 December 2016 the Secretary of State refused his human rights claim, certified it under section 94B, and on the same day made a deportation order which stated on its face that it was made under section 32(5) ([42]–[43]). Following *Kiarie & Byndloss* she withdrew the refusal and its certification, and on 23 November 2017 refused his claims afresh with an in-country right of appeal ([42]). It was submitted that section 79(4) applied and that AM's

D/26 p2000

leave continued while his appeal was pending; the Secretary of State "offered no response to that submission" ([41]).

140C. Judge Blundell held that the order engaged section 79(3), and that "[g]iven the chronology I have set out, the deportation order did not have the effect of invalidating the appellant's ILR under s5(1) of the Immigration Act 1971 because s79(4) of the 2002 Act applies. I therefore find that the appellant continues to enjoy ILR to the present day" ([43]).

LEG/07 p1545

LEG/10 p1573

140D. That is section 79(4) applied as a continuing condition, by the Upper Tribunal, in a case where — exactly as in *MM*, and exactly as here — a section 94B certificate was in force on the day the order was made. On the construction adopted in *MM*, AM's leave was invalidated on 21 December 2016; on the construction applied in *AM*, it never was. The two decisions cannot stand together, and *MM* was decided without reference to the earlier one. This Court is free to choose between them, and should prefer *AM*: it gives effect to the words "if and for so long as" (paragraph 136), it accords with the Respondent's own reading of the provision in this case (paragraph 137), and it avoids the result described at paragraph 138.

D/32 p2073

140E. The Appellant acknowledges that *AM* is unreported, that the point was not contested there, and that the Tribunal treated the human rights claim, rather than an appeal, as pending between the withdrawal and the fresh decision ([42]). *AM* is relied on not as binding authority but to show that the Upper Tribunal has read section 79(4) as the Appellant reads it on materially identical facts, that the Secretary of State did not contend otherwise when the point was put to her, and that *MM* adopted the contrary construction without considering it.

141. The headnote in *MM* is drafted on the same assumption, and it exposes it. Paragraph (3) provides that withdrawal does not have the effect of "reinstating or resurrecting any leave to enter or remain **which was invalidated by the deportation order**". That presupposes invalidation. The Appellant does not ask this Court to resurrect anything. His leave was never invalidated at all.

142. *MM* is also silent on the question at Part H2 — when the section 32(5) duty arises, and by what act it is discharged. It records at [57] that it would have been open to the Secretary of State "to have revoked the deportation order at that point and then made a fresh deportation order once the applicant's human rights claim had been reconsidered and refused again (but not certified)". In the present case she did not take that course either.

D/32 p2073 143. Finally, *MM* is a decision of the Upper Tribunal. It binds neither this Court nor the courts below, and it cannot displace *Lumba* and *DN (Rwanda)*. The construction of sections 78 and 79 of the 2002 Act is directly in issue on this appeal, because it determines whether the Appellant holds subsisting leave and therefore whether any gateway into Schedule 10 was ever open to the Respondent. The Appellant gives notice, so that the Respondent may meet it, that he invites this Court to hold that *MM* was wrongly decided on that point.

D/12 p1793
D/29 p2037
LEG/10 s78 p1573
LEG/08 p1563

H3. Continuing reliance for a purpose abandoned in 2017

144. Even on the footing that the order retains some formal existence, reliance on it today is unlawful. It was made on 12 May 2017 for one purpose: to give effect to removal under the certification made the same day. That certification, and the decision of which it formed part, were withdrawn two months later and never remade. The purpose for which the order was made has not existed since July 2017. A power conferred for a specific statutory purpose may not be exercised, or continued to be relied upon, for a purpose unconnected with the one for which Parliament conferred it: *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997.

D/35 p2200

H4. The protections owed to the Appellant were never applied (Ground 14)

145. The Appellant acquired the right of permanent residence under Article 16(2) of Directive 2004/38/EC. That right arises by operation of law on completion of the qualifying period. It does not depend on documentation, or on any grant by the Respondent.

EU/01 p1609

146. At the date the order was made the domestic instrument giving effect to the Directive was the Immigration (European Economic Area) Regulations 2016, in force until the end of the transition period. Regulation 27 required any decision to deport a person in the Appellant's position to be based exclusively on his personal conduct, representing a genuine, present and sufficiently serious threat to a fundamental interest of society, and afforded enhanced protection by reason of permanent residence. Regulation 32 required procedural safeguards, including the right to make representations directed to those matters. **The Respondent applied none of it.** Neither the decision of 12 May 2017 nor that of 17 July 2017 addresses the 2016 Regulations at all, and she has filed no evidence explaining why not.

D/01 p723
D/03 p752
LEG/09 p1568

147. She was on notice. The Appellant entered on 7 August 2003 with entry clearance as a spouse. In the visa application documentation she herself produced, his then wife's nationality is recorded as Irish. In her Statement of Facts and Issues in these proceedings, settled by counsel on instructions, she stated that he arrived "with entry clearance as the spouse of an EU citizen exercising free movement rights".

148. The Appellant states this ground with precision, because the two questions are easily conflated. **He does not ask this Court to decide what conclusion regulation 27 required.** Whether his conduct represented a genuine, present and sufficiently serious threat, and whether expulsion was proportionate, would be evaluative questions. His case is the anterior one: that the Regulations imposed conditions on the existence of the power, that she never addressed them at all, and that the power therefore never arose. Whether a decision-maker addressed a mandatory statutory condition is a question of historical fact, answerable by reading the decision. It is not a question of judgment, and it does not become one because the condition, once addressed, would have called for judgment.

149. So put, the point engages the writ by two routes, and the Appellant relies on both. It is a jurisdictional fact within the *Khawaja* exception preserved at *Worcestershire* [69]. And it is an exercise of power by an official "on their own authority" without the authority existing at all, which is the category this Court identified at *Worcestershire* [63] as one where habeas corpus may be used to challenge the decision to detain as well as the detention. Neither route has ever been taken by any court in this case.

D/25 p1943
D/48 [69] p1829
D/48 [63] p1828

150. Independently, section 3(5A) of the Immigration Act 1971, in force since the end of the transition period and giving effect to Article 20 of the Withdrawal Agreement, prohibits the Respondent from deeming the Appellant's deportation conducive to the public good where that would breach Withdrawal Agreement obligations. Whatever the position in 2017, her continuing reliance on the order today is separately barred.

LEG/07 s3 p1547
EU/02 p1616

H5. Two matters on which no evidence has ever been filed

151. The deportation order bears a signature the Appellant has been unable to identify or trace, and which is not that of any official shown to have made either the May or the July 2017 decisions. He has never been told who signed it or under what authority. The IS.91 authority to detain was issued on 6 November 2017 and served on 9 November 2017, while he was still serving the custodial part of his criminal

D/03 p752
E/01 p887

sentence, and was wholly predicated on the deportation order. On neither matter has the Respondent produced a document or a witness.

PART I — INDEFINITE LEAVE TO REMAIN AND THE BAIL FRAMEWORK (GROUNDS 8 AND 9)

152. This Part contains the shortest answer to the question this appeal poses, and the one the Respondent cannot answer at all, because it turns on no disputed fact and on no characterisation of the Appellant's conduct. **If a person who holds indefinite leave to remain may be restrained regardless of that leave, indefinite leave protects nothing.**

LEG/10 s79 p1574 **Route one: section 79(4) of the 2002 Act**

153. Section 79(1) of the Nationality, Immigration and Asylum Act 2002 prohibits the making of a deportation order while an in-country appeal could be brought or is pending. Section 79(3) disapplies that prohibition for "a deportation order which
LEG/12 s32 p1590 states that it is made in accordance with section 32(5) of the UK Borders Act 2007". Section 79(4) then provides:

> "But a deportation order made in reliance on subsection (3) does not invalidate leave to enter or remain, in accordance with section 5(1) of
> LEG/07 s5 p1552 the Immigration Act 1971, if and for so long as section 78 above applies."

D/02 p750 154. **The deportation order of 12 May 2017 states on its face that it is made under section 32(5).** It recites that the Appellant "is a foreign criminal as defined by section 32(1) of the UK Borders Act 2007" and that "[t]he Secretary of State must make a deportation order in respect of a foreign criminal under section 32(5) of the UK Borders Act 2007". Section 79(3) is engaged, and with it section 79(4).

155. Section 78 applies for so long as an appeal under section 82(1) which may be brought or continued from within the United Kingdom is pending. The Appellant's
D/03 p752 appeal against the decision of 17 July 2017 has been pending since 2017: dismissed on 2 March 2018 and set aside by the Upper Tribunal on 15 May 2019;

dismissed again on 10 May 2021 and set aside on 18 January 2023; heard on remittal on 1 and 2 June 2026, decision reserved.

156. **On the plain words of the statute the deportation order has not at any time invalidated the Appellant's indefinite leave to remain.** That conclusion does not depend on the order being void. It holds whether the order is valid or not. It is a consequence Parliament provided for in terms.

157. It is also the only explanation for conduct on the Respondent's side that is otherwise inexplicable. Immigration Enforcement Criminal Casework confirmed in writing, by letters of 19 October 2018, 10 December 2018, 30 September 2019 and 24 January 2020 — every one more than a year after the order — that the Appellant retains indefinite leave to remain. The letter of 19 October 2018 records that his leave will be revoked only if his appeal is dismissed and he becomes appeal rights exhausted. That is section 79(4) in operation. Her own department was applying the statute correctly.

D/08 p834
D/09 p840

158. Those letters were handed up to the Court of Appeal on 26 February 2026 without objection. The judgment does not mention them.

159. The Respondent has never contended, in either court below, that the letters were issued in error. If that case is advanced now it is a new case, never put to the Appellant and never tested; and it would not touch section 79(4), which operates by statute and not by concession.

LEG/08 para1(8) p1564

Route two: paragraph 1(8) of Schedule 10

160. Paragraph 1(8) of Schedule 10 to the Immigration Act 2016 provides that a grant of immigration bail ends when the person is granted leave to enter or remain. The Appellant's leave subsists. His bail ended by operation of statute, and every condition imposed since is unlawful restraint.

LEG/07 s3 p1547

Route three: section 3(1)(c) of the 1971 Act (Ground 9)

161. Section 3(1)(c) authorises the imposition of conditions where a person is given **limited** leave. The Appellant holds indefinite leave. Conditions purportedly imposed on him are void for want of statutory authority, independently of the validity of the order.

Paragraph 1(5) supplies no answer

LEG/08 para1(5) p1564 162. Paragraph 1(5) of Schedule 10 permits a grant of bail to continue where the person remains liable to detention under a gateway in paragraph 1(1), or where the Secretary of State is considering whether to make a deportation order under section 5(1) of the 1971 Act. The second limb is temporal, concerned with a decision under active consideration; it cannot describe an order made in 2017 and never varied or reconsidered since. It presupposes a person who may lawfully be detained — the same premise as paragraph 1(1) and (2) — which a holder of subsisting indefinite leave is not. And if it were read as an independent licence to restrain a holder of indefinite leave for as long as the Secretary of State asserts that she is considering a deportation order, indefinite leave would afford no protection against restraint at all: restraint could be maintained indefinitely on an assertion with no statutory end-point, no evidential threshold and no means of testing whether the consideration is genuine or current. Fundamental rights are not overridden by general or ambiguous words: *R v SSHD, ex p Simms* [2000] 2 AC 115 at 131. Paragraph 1(5) applies only to a person independently liable to detention within paragraph 1(2).

LEG/07 s5 p1552

D/44 131 · p2410

D/09 p840 163. The Respondent's own letter of 19 October 2018 records that Schedule 10 accommodation support was unavailable to the Appellant **because he held indefinite leave to remain**. A department that believed he had no leave would have had no basis to exclude him from support designed for persons without leave, on the ground that he held leave.

LEG/07 sch3 p1557 164. It follows that paragraph 2(3) of Schedule 3 to the Immigration Act 1971, which permits detention pending deportation only where a deportation order is in force, cannot found a liability to detention — still less the derivative liability on which Schedule 10 bail depends — while the order's effect on the Appellant's leave is statutorily suspended. The same follows from section 36 of the UK Borders Act 2007, the detention power Parliament created for automatic deportation cases, which operates by applying the same framework.

LEG/12C s36 p1602

165. **Whether the Appellant's leave subsists because section 79(4) preserves it, because the Respondent's own letters confirm it, or because the order is void, the result is identical: there is no lawful gateway into Schedule 10 open to her in respect of him, and there never has been.**

166. Both grounds were before the Court of Appeal and were not determined ([40]). They are questions of pure construction with systemic consequences for every person on immigration bail who holds subsisting leave.

PART J — ARTICLE 8 (GROUNDS 10 AND 12)

167. These grounds were advanced in the Court of Appeal and were not determined ([40]).

Ground 10: the undischarged Article 8(2) burden

168. Article 8(2) permits interference only where it is in accordance with the law, pursues a legitimate aim within the closed list, and is necessary in a democratic society. In D/19 p1869 *Huang v SSHD* [2007] UKHL 11 the House of Lords confirmed that it is for the State to justify the interference and for the appellate authority to decide for itself whether it is proportionate.

169. The Respondent's assertion that the interference with the Appellant's private and family life is justified has never been independently adjudicated. The First-tier Tribunal dismissed his appeal on 2 March 2018; set aside. It dismissed his appeal again on 10 May 2021; set aside. The remitted appeal was heard on 1 and 2 June 2026 and the decision is reserved. **There is no extant determination of any tribunal upholding the Respondent's Article 8 case, and there never has been.**

170. Throughout more than eight years of restraint, therefore, the burden of justification has remained undischarged. Restraint maintained across that period on the strength of the State's own unadjudicated assertion is arbitrary, and lacks the quality of legality Article 8(2) requires.

Ground 12: structural incompatibility

LEG/12 s32 p1590 171. Section 32 of the UK Borders Act 2007 requires the Secretary of State to make a deportation order against a foreign criminal, subject only to the exceptions in LEG/10 s117 p1588 section 33. Section 117C of the 2002 Act provides that the more serious the offence the greater the public interest in deportation, and requires a person sentenced to four years or more to show "very compelling circumstances" over and above Exceptions 1 and 2.

172. That framework is structurally incompatible with Article 8(2). It requires the measure to be imposed automatically upon conviction, without any individualised assessment at the point of imposition of whether the interference is necessary in a democratic society. And it reverses the burden: instead of requiring the State to justify the interference, it requires the individual to bring himself within a statutory exception, and where the sentence is four years or more to surmount a threshold expressed in terms of very compelling circumstances. A general legislative presumption of public interest is not the closed and cumulative justificatory structure Article 8(2) demands, and interference produced by substituting the one for the other is not "in accordance with the law".

D/01 p1620 D/17 p1862 D/27 p2007

173. *Hesham Ali v SSHD* [2016] UKSC 60, *R (Agyarko) v SSHD* [2017] UKSC 11 and *KO (Nigeria) v SSHD* [2018] UKSC 53 do not answer the point. Each concerned the application of the framework to the question of **removal**, in appeals in which a tribunal was conducting the proportionality balance and reaching a decision. None addressed whether the framework supplies a lawful basis for **continuing restraint of liberty over a period of years** in a case where no tribunal has ever completed that balance. That question is open, and it is squarely raised here.

174. The incompatibility is at its starkest where, as here, the person holds subsisting indefinite leave to remain and is nonetheless restrained on the basis of criminal facts already adjudicated and exhausted through the criminal process, the sentence having been served in full and the licence period expired.

LEG/06 s4 p1536

175. The Appellant seeks a declaration under section 4 of the Human Rights Act 1998 in the terms at Part M.

PART K — PROCEDURAL FAIRNESS (GROUNDS 7 AND 13)

B/04 p171

176. On 12 September 2025 Lang J directed the Respondent to file a response within 21 days, by 3 October 2025. On 29 September 2025 the Appellant filed an application for permission to amend Ground 1, introducing the analysis on which he principally relied; **that application was never sealed, never processed and never determined.** On 2 October 2025 the Respondent applied for an extension to 17 October; on 3 October the Appellant filed a 16-page opposition with five exhibits for determination on the papers under paragraph 2 of Lang J's order. On 14 October the Respondent filed her response, eleven days after Lang J's deadline and before

her extension application had been determined. The same day the Appellant notified the Court that he would file a Reply by 17 October and asked that no determination be made until the Court had it. On 17 October he filed a 50-page Reply with a supplementary bundle. The order refusing the application was made three hours and forty-two minutes later. Its reasons make no reference to the amendment application, to the Reply, or to the opposition. They do grant the Respondent her extension.

177. The Court of Appeal dismissed the complaint at [42] on two grounds: that the
LEG/03 p1514 Appellant could have requested reconsideration under CPR 87.4(2), and that the point was immaterial given its primary conclusion. The availability of a fresh determination before a different judge does not cure a failure to consider materials properly filed before the first: one is a remedy for an unsatisfactory outcome, the other a defect in the process that produced it. And the second ground is contingent on the primary conclusion; if that conclusion is wrong, the contingency falls away.

The two orders of 17 October 2025

178. Three features of that afternoon fall to be considered together.

179. The habeas corpus order was made three hours and forty-two minutes after the Reply was filed and makes no reference to it, to the amendment application filed eighteen days earlier and never sealed, or to the opposition of 3 October. It cross-refers to a second order made the same day in the parallel judicial review claim. That second order recites: "I have considered the Acknowledgement of Service filed on behalf of the Defendant and the Statement of Defence" — documents which
B/25 p407 Foster J, by order dated 13 October 2025, had directed need not be filed at all, paragraph 2 providing that "[t]he requirement for an Acknowledgement of Service shall be dispensed with." And the two applications, brought by the same litigant and determined on the same day, were treated differently on certification without any explanation of the difference.

180. Where an order concerning liberty is made in those circumstances, this Court cannot be satisfied that the materials filed were considered. **Ground 13** puts the point as one of principle: where an applicant in habeas corpus proceedings files an application to amend introducing the primary argument on which he relies, the court must determine that application before determining the substantive application, and a failure to do so in proceedings concerning liberty vitiates the resulting order.

The treatment of the parties

181. The pattern is relevant to the exercise of this Court's discretion on disposal and, at Part L, on costs. In the Administrative Court: the Respondent filed eleven days late, before her extension application had been determined and without reference to
D/11 p1784 CPR 3.9 or *Denton*; the extension was granted retrospectively in the same order that dismissed the application; no sanction followed; the Appellant's own application was never processed and his opposition is not mentioned. In the Court of Appeal: she obtained two extensions for her skeleton argument; she filed a Respondent's Notice approximately three months out of time with a reservation that none was required, and the Court made no order on her application for an extension; her supplementary bundle of 2 February 2026 did not observe the anonymity order, and nothing followed. After judgment: she twice sought extensions for her costs schedule, the second granted with the express direction that no further extension would be granted, and filed at 15:59 on the final day; she then amended the schedule unilaterally by email, without applying for an extension or for relief from sanctions, increasing the sum claimed by £4,301.23. The Appellant twice asked that the order be sealed on the paragraphs which were agreed so that the 42-day period for this appeal could run; both requests were refused, and the only consequence was delay to his exercise of a statutory right of appeal.

PART L — COSTS

KB/05 p117 182. By order dated 12 March 2026 the Court of Appeal ordered the Appellant to pay the Respondent's costs, summarily assessed at £16,000. Permission to appeal on
C/15 p655 costs, and a stay, were refused on 13 March 2026.

183. The Respondent was directed on 5 March 2026 to file a costs schedule by 09:00 on 9 March. She obtained two extensions, the second with the express direction that no further extension would be granted, and filed at 15:59 on the final day.

184. The schedule was an N260 in which **the certification that the costs claimed do not exceed the costs the receiving party is liable to pay, and the certification that counsel's fees had been incurred in the amounts stated, were both struck through.** No fee agreements, fee notes or other evidence of expenditure were produced. The schedule of work done on documents was blank. A summary assessment cannot be conducted on such a document. The certifications exist so

that the paying party and the court may rely on the figures without disclosure of the retainer; delete them and the foundation of the exercise is gone.

185. All solicitor work was attributed to a single grade, Grade C at £244 per hour, though four solicitors were listed. **CPR PD 44, paragraph 9.5(2) requires the statement of costs to show separately, for each item of work, the grade of fee earner who carried it out.** It was impossible on the face of the schedule to know who did what, or at what rate. The Government Legal Department's published inter-departmental charging rate for a Grade 7 lawyer is £126 per hour (FOI response reference 24_519, 25 April 2024).

186. The Appellant filed submissions on the schedule at 19:23 the same day. The Respondent then sought to amend it unilaterally by email, without applying for an extension or for relief from sanctions, admitting errors in counsel's fees and in the grand total and increasing the sum claimed by £4,301.23, from £21,146.72 to £25,447.95. By 11 March the Court was seeking clarification, a fourth version being said to be in preparation.

187. The order was made against a litigant in person in receipt of Universal Credit, prohibited from working by the very conditions under challenge in the proceedings in which it was made, on an appeal Parliament provided he might bring as of right, and in which the Respondent was not called upon to make oral submissions. The Appellant relies also on the matters at paragraph 181.

188. The Appellant invites the Court to set aside the costs order, alternatively to reduce it, alternatively to remit the assessment.

PART M — RELIEF

189. The Appellant seeks:

KB/05 p117 190. **(1)** That the order of the Court of Appeal dated 12 March 2026 be set aside.

KB/07 p132 191. **(2)** That the order of Deputy High Court Judge Benjamin Douglas-Jones KC dated 17 October 2025 be set aside.

192. **(3)** That the writ of habeas corpus do issue.

D/02 p750 193. **(4)** Declarations that the deportation order dated 12 May 2017 is void ab initio; alternatively that its effect on the Appellant's leave to remain has at all material
LEG/10 s79 p1574 times been suspended by section 79(4) of the Nationality, Immigration and Asylum Act 2002; and that all restraints imposed pursuant to it are and have at all material times been unlawful.

194. **(5)** That all restraints deriving from the deportation order cease.

LEG/02 s40 p1510 195. **(6)** That the Court determine, under section 40(5) of the Constitutional Reform Act 2005, the questions in Parts H, I and J.

LEG/06 s4 p1536 196. **(7)** A declaration under section 4 of the Human Rights Act 1998 that sections 32 of
LEG/12 s32 p1590 the UK Borders Act 2007 and 117C of the Nationality, Immigration and Asylum Act 2002 are incompatible with Article 8 of the Convention to the extent set out in Part J.

197. **(8)** In the alternative to (3) to (6), that the matter be remitted to the Administrative Court for determination by a different judge, applying the correct legal test and considering the Appellant's application to amend dated 29 September 2025 and his Reply dated 17 October 2025.

KB/05 p117 198. **(9)** That the costs order of 12 March 2026 be set aside or reduced, or the assessment remitted.

199. **(10)** That the anonymity order be continued.

200. **(11)** Costs, and such further or other relief as the Court considers just.

PART N — SUMMARY OF REASONS (PD 5.15)

201. The appeal should be allowed for the following reasons.

LEG/05 s1 p1528 202. **(1)** Section 1 of the Habeas Corpus Act 1816 confers jurisdiction where a person is "confined **or** restrained" of his liberty. Neither court below construed the second limb, which on the legal meaning of bail available to Parliament in 1816 cannot be equated with liberty.

203. **(2)** This Court has already proceeded on the footing that an applicant for habeas
D/30 p2032 corpus released on bail is regarded as in custody: *Lukaszewski* [2012] UKSC 20 at

D/48 p1812 [25]. That decision post-dates the reforms on which *Worcestershire* relied and was not cited below.

D/38 p2291 204. **(3)** The Court of Appeal adopted the *Re SA* standard and then applied it to the wrong object, one condition at a time, and without regard to duration, contrary to the D/22 [16] p2370 method Lord Bingham held to be required in *SSHD v JJ* [2007] UKHL 45 at [16].

D/04 p1654 205. **(4)** It was not open to the Court of Appeal to declare *In re Amand* [1943] AC 147 no longer good law. Only this Court may depart from a decision of the House of Lords.

206. **(5)** *Worcestershire* did not have that effect. It did not mention *Amand*; it concerned D/25 p1943 detention under a court order; it preserved the *Khawaja* precedent-fact exception at [69]; it reserved the position of administrative detention at [70] to [72]; and at [73] it recorded without disapproval an authority in which an applicant on bail was treated as detained.

D/33 p2097 207. **(6)** This is a precedent-fact case within *Muboyayi* as approved at *Worcestershire* D/48 [69] p1829 [69]. Whether subsisting leave exists, whether in-country appeals remain pending, whether the foundational decision was withdrawn in its entirety, whether any order LEG/09 p1568 was made after 17 July 2017, and whether the 2016 Regulations were applied, are D/03 p752 objective facts the detaining authority must prove.

D/41 p2401 208. **(7)** In *R (Sheehan) v SSHD* [2025] EWHC 1617 (Admin), five months after *Worcestershire*, the Respondent accepted that habeas corpus was available to determine the power to detain under a section 32 deportation order and that the validity question was a precedent fact for the court. She cannot now deny that the inquiry is open at all.

209. **(8)** The writ tests lawful authority, not severity. An unlawful restraint engages it whatever its degree. By assessing severity and refusing to examine authority, the Court of Appeal assumed the validity of the instrument under challenge.

210. **(9)** Every restraint derives from the deportation order. If the order is void, or its effect on the Appellant's leave statutorily suspended, there is no liability to detention, no power to grant bail, and no power to impose conditions.

211. **(10)** The *Khawaja* burden has never been placed on the Respondent, who has filed no sworn evidence at any stage, while every document capable of answering the case lies in her exclusive possession and disclosure has been refused.

212. **(11)** The suggested alternative remedies answer nothing: the First-tier Tribunal has held it will not determine the validity of the order, and has held that these proceedings will not determine the statutory appeals.

213. **(12)** The Respondent cannot insulate the foundation of a restraint by calling it a separate prior instrument — the argument she advanced and lost in *SSHD v First-tier Tribunal (Asylum Support)* [2025] EWCA Civ 1654 at [39] to [41], on facts less favourable to her than these.

214. **(13)** The deportation order was made within, enclosed with, and served under the same cover as a decision the Respondent withdrew in its entirety. In *DN (Rwanda)* [2020] UKSC 7 this Court held at [18] that detention at both stages of the deportation process "is entirely dependent on the decision to deport", and at [19] that where the decision is successfully challenged "the edifice on which the detention is founded crumbles". Here the decision was not challenged but withdrawn by the Respondent herself. Applying *DN (Rwanda)*, *Lumba* [2011] UKSC 12 and *Anisminic* [1969] 2 AC 147, the order is a nullity.

D/12 [18] p1796

D/29 p2037

D/05 p1675

215. **(14)** The decision of 17 July 2017 states that, the section 33 exceptions having been rejected, section 32(5) "requires the Secretary of State to make a deportation order against you". The duty it asserts arose upon that decision, and no order has been made since. Either the July decision was a fresh exercise, in which case the duty is undischarged, or it was not, in which case it is the withdrawn decision reissued.

D/03 p752

216. **(15)** Continued reliance on an order made to give effect to a certification withdrawn in 2017 is an exercise of the power for a purpose Parliament did not confer: *Padfield* [1968] AC 997.

D/35 p2200

217. **(16)** The protections required by regulations 27 and 32 of the Immigration (EEA) Regulations 2016 were never applied, and section 3(5A) of the Immigration Act 1971 independently bars continued reliance on the order today.

LEG/07 s3 p1547

218. **(17)** The deportation order states on its face that it is made under section 32(5) of the UK Borders Act 2007. By sections 79(3) and (4) of the 2002 Act such an order does not invalidate leave to enter or remain for so long as section 78 applies. The Appellant's in-country appeals have been pending throughout. His indefinite leave to remain was never invalidated — which is why the Respondent's own department confirmed it four times after the order was made.

LEG/10 s79 p1574
LEG/12 s32 p1590

LEG/08 para1(8) p1564
LEG/07 s3 p1547

219. **(18)** The leave subsisting, paragraph 1(8) of Schedule 10 ended the bail, section 3(1)(c) of the 1971 Act affords no power to impose conditions, and paragraph 1(5) supplies no basis for restraining a holder of indefinite leave indefinitely on an unresolved assertion.

220. **(19)** The Article 8(2) burden has remained undischarged throughout, no tribunal determination upholding the Respondent's case being extant, and the automatic deportation framework is incompatible with Article 8(2) to the extent set out in Part J.

221. **(20)** The order below was made without consideration of an undetermined application to amend or of a Reply filed the same afternoon; it cross-refers to a second order reciting documents the Court had dispensed with; and the proceedings were conducted throughout on a footing that accommodated the Respondent's defaults while leaving the Appellant's applications unprocessed.

LEG/01 p1507
D/46 p2434

222. **(21)** Habeas corpus has no permission stage, and the exercise of an unfiltered statutory right of appeal conferred by section 15 of the Administration of Justice Act 1960 cannot be an abuse of the remedy; nor would the certification standard in *Wasif* be met.

223. **(22)** The costs order was made on a schedule whose certifications had been struck through, which did not comply with CPR PD 44 paragraph 9.5(2), and which claimed rates unsupported by any evidence, against an impecunious litigant in person prohibited from working by the conditions under challenge.

224. For these reasons the Appellant invites the Court to allow the appeal and grant the relief sought at Part M.

CHK

Appellant in Person

Dated: 16 September 2026

Amended: 8 October 2026