

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
ADMINISTRATIVE COURT

CO/88/2018

BETWEEN

THE QUEEN  
On the Application of  
(1) AJS  
(2) AJU (Acting by her litigation friend AJS)

Claimants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant



ORDER

UPON the parties agreeing to the attached statement of reasons.

AND UPON the parties having agreed to the terms set out in the schedule hereto.

IT IS DECLARED THAT:

1. The First Claimant was unlawfully detained in breach of published policy relating to detention and Family Separation from the outset on 21 June 2017 and at all material times until his release from detention on 21 September 2017. The said unlawful detention constituted a false imprisonment for which the First Claimant is entitled to substantive damages and just satisfaction under Article 5 ECHR.
2. The disruption to existing contact with the Second Claimant and the failure to facilitate any contact between the First and Second Claimants for the entirety of the said detention was unlawful as a breach of section 55 Borders, Citizenship and Immigration Act 2009, Article 8 ECHR and the said published policy.

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3. The electronic monitoring and the curfew imposed on the First Claimant from 26 September 2017 to 23 January 2018 was unlawful. The curfew constituted a false imprisonment during the material times of day for which the Claimant is entitled to substantive damages.
4. The unlawful acts above at 1 – 3 also constituted a breach of the First and Second Claimants' Article 8 ECHR family life rights for which the Claimants are entitled to compensatory damages by way of just satisfaction.

**IT IS ORDERED THAT:**

5. The claim for judicial review is granted.
6. Upon payment of damages and costs to the Claimants by the Defendant referred to in the attached schedule all further proceedings be stayed except for the purposes of carrying the terms of this order and schedule into effect.
7. The Defendant do pay the Claimants' reasonable costs of the claim to be assessed if not agreed. £15,000 of those costs to be paid by the Defendant to the Claimants' legal representatives within 28 days from receipt of the bill of costs.

**IT IS FURTHER ORDERED THAT:**

8. The full hearing listed for 11 and 12 July 2018 be vacated: there will be a hearing for the approval of the Second Claimant's settlement pursuant to CPR 21 on 11 July 2018 at 10 am with a time estimate of 1 hour.
9. There be a detailed assessment of the costs of the Claimants' publicly funded costs.
10. There be liberty to apply as to carrying the terms set out in the schedule annexed hereto into effect.

We, the solicitors for the parties, on their behalf and upon their instructions, hereby confirm our


consent to an order on the terms set out above.

Signature:

*Bhatt Murphy*

Bhatt Murphy  
10 Tyssen Street  
London E8 2FE

Claimants' Solicitor  
Ref: JAF/7652

Signature: *Tom Ridd* - 9/7/18

Government Legal Department  
One Kemble Street  
London, WC2B 4TS

Defendant's Solicitors  
Ref: Z1730745

*[Handwritten signature]*



His Honour Judge Blair QC  
sitting as a Deputy High Court Judge

11 July 2018

*By the Court*

### Statement of Reasons

1. In January 2017 the First Claimant (C1), an Indian national and family member of an EU national, was sentenced to 20 months imprisonment for unlawful wounding. During his sentence the Second Claimant (C2), his daughter who is an EU Citizen of Lithuanian nationality who was then 3 years old, was taken into the care of the local authority (LA).
2. C1 was detained by the Secretary of State for the Home Department (SSHD) in the purported exercise of immigration powers from the conclusion of the criminal sentence on the 21 June 2017 until the 21 September 2017.
3. C2 had regular contact with C1 in prison and the LA recommended she be given an opportunity to be reunited with him, which was the only viable alternative to C2 being placed for adoption and was, therefore, in C2's best interests and welfare. These facts were known to the Secretary of State for the Home Department (SSHD) prior to the decision to detain on 21 June 2017. In July 2017 the Family Court endorsed the LA's care plan recommending reunification and provided that if C1 had not been released by 2 October 2017, an application would be made for C2 to be placed for adoption.
4. C1 was detained by the SSHD at HMP Wormwood Scrubs from 21 June 2017 until 31 July 2017 when he was transferred to the Verne Immigration Removal Centre (IRC), 250 miles from his daughter. He was served with an 'interim' decision to deport on 31 July 2017, and immediately appealed. It was recorded that this decision had been drafted (though not served) on 20 June 2017 in an attempt to enlarge the SSHD's powers of detention. No removal directions were or could be set throughout the entirety of his detention.
5. No arrangements were made to enable C1 and C2 to maintain contact from 21 June 2017. C1 was transferred to the Verne IRC and the SSHD refused to relocate him nearer his daughter, despite repeated requests.
6. The SSHD twice opposed bail and when bail was granted in principle by the First Tier Tribunal (FTT) on the 21 August 2017 the SSHD failed to provide a section 4



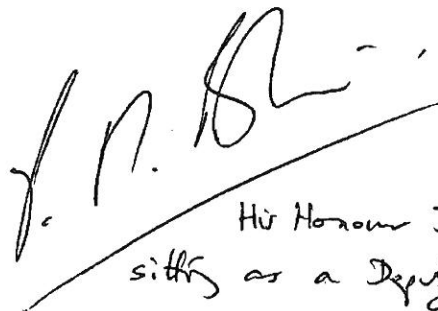
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bail address. C1 was not released until 21 September 2017, days before the deadline of 2 October 2017 for C2's proposed adoption. Upon his release SSHD imposed a residence condition, an electronic monitoring and curfew condition (7 pm-7 am), outwith the First-tier Tribunal order and which rendered the LA's care plan towards reunification impracticable.

7. The present claim for judicial review was issued on 20 December 2017. On 23 January 2018 electronic monitoring was removed. Permission was granted by Mr Justice Lewis on 23 February 2018 who directed that issues of liability and quantum should be heard at a full hearing. He also made an Order for anonymity.

#### Reasons for Order

8. The SSHD accepts that:
  - a. C1 was unlawfully detained for the entirety of the detention in breach of the SSHD's published policy relating to detention and Family Separation, s55 of the Borders, Citizenship and Immigration Act 2009 and the Claimants' Article 8 ECHR family life rights.
  - b. Electronic monitoring was unlawful and breached the Claimants' Article 8 ECHR rights.
9. The SSHD has agreed to pay the Claimants compensatory damages in the sum set out in the attached schedule in full and final settlement of the claim for damages for false imprisonment for C1 and just satisfaction for breaches of Article 8 ECHR for both Claimants.
10. The consent order and proposed settlement for C2 to be subject to the Court's approval.
11. The SSHD has agreed to pay the Claimants' reasonable costs of the claim.





His Honour Judge Blair QC  
sitting as a Deputy High Court Judge.

11/7/18

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BETWEEN

THE QUEEN

On the Application of

(1) AJS

(2) AJU (Acting by her litigation friend AJS)

Claimants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Defendant



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SCHEDULE

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1. The Defendant will pay to the First Claimant, AJS, the sum of £40,000 in full and final settlement of the First Claimant's claim within 21 days of the date of the sealed Order.
2. The Defendant will pay to the Second Claimant, AJU, the sum of £10,000 in full and final settlement of the Second Claimant's claim within 21 days of the date of the sealed Order.
3. Such sums in paragraph 2 to be paid into and retained in Court and invested for the Second Claimant as a child, in accordance with the Form 320.
4. Upon the Second Claimant attaining the age of eighteen her funds will be transferred to her and the proceeds paid to her or as she shall direct.
5. The Defendant will pay to the Claimants' solicitors the remainder of the costs payable under paragraph 7 of the order herein within 21 days of the date of the agreement on costs. Alternatively, the Defendant will pay to the Claimants' solicitors assessed costs within 21 days of the date of the assessment.

*By the Court*

*J. A. B. L.*  
A circular seal of the Administrative Court Office, S.C.I. The seal contains the text 'ADMINISTRATIVE COURT OFFICE' and 'S.C.I.' in the center.

6. Upon payment by the Defendant of the several sums and costs herein before mentioned the Defendant be discharged from all further liability to the First and Second Claimant in respect of their claims.
  
7. The Solicitors for the Claimants having undertaken to waive any claim in respect of its solicitor/client costs in respect of the Second Claimant which are not recovered from the Defendant pursuant to paragraph 7 of the Order herein and paragraph 5 above; it is hereby recorded that the entirety of the damages paid by the Defendant to the Second Claimant under paragraph 2 above shall be available for the Second Claimant and shall not be the subject of a first charge in favour of the Legal Aid Authority.

*J. A. Blair*



*His Honour Judge Blair QC  
sitting as a Deputy High Court Judge  
11/7/18*