IN THE SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Appeal)

BETWEEN: **Court File No.: 35688**

J.P. and G.J.

Appellants

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

BETWEEN: **Court File No.: 35388**

B010

Appellant

AND

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

AND BETWEEN: **Court File No.: 35685**

B306

Appellant

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

AND BETWEEN: **Court File No.: 35677**

JESUS RODRIGUEZ HERNANDEZ

Appellant

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

AND BETWEEN: **Court File No.: 35958**

FRANCIS ANTHONIMUTHU APPULONAPPA AND OTHERS

Appellants

AND

HER MAJESTY THE QUEEN

Respondent

RESPONDENT'S FACTUM IN REPLY TO THE INTERVENERS' FACTA

(Pursuant to the Order of the Honourable Justice Gascon dated November 27, 2014)

IN THE SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Appeal)

Court File No.: 35688

BETWEEN:

J.P. and G.J.

Appellants
(Respondents in Federal Court of Appeal)

AND

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent
(Appellant in Federal Court of Appeal)

AND

ATTORNEY GENERAL OF ONTARIO, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, CANADIAN COUNCIL FOR REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, AMNESTY INTERNATONAL (CANADIAN SECTION, ENGLISH BRANCH), DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

Court File No.: 35388

AND BETWEEN:

B010

Appellant
(Respondent in Federal Court of Appeal)

AND

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent
(Appellant in Federal Court of Appeal)

AND

ATTORNEY GENERAL OF ONTARIO, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, CANADIAN COUNCIL FOR REFUGEES, CANADIAN ASSOCIATION OF REFUGEE LAWYERS, AMNESTY INTERNATONAL (CANADIAN SECTION, ENGLISH BRANCH), DAVID ASPER CENTRE FOR CONSTITUTIONAL RIGHTS, CANADIAN CIVIL LIBERTIES ASSOCIATION

Interveners

Court File No.: 35685

AND BETWEEN:

B306

Appellant
(Respondent in Federal Court of Appeal)

AND

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Interveners

Court File No.: 35677

AND BETWEEN:

JESUS RODRIGUEZ HERNANDEZ

Appellant
(Respondent in Federal Court of Appeal)

AND

MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent
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Interveners

File Number: 35958

AND BETWEEN:

FRANCIS ANTHONIMUTHU APPULONAPPA
HAMALRAJ HANDASAMY
JEACHANDRAN KANAGARAJAH
VIGNARAJAH THEVARAJAH

Appellants
(Respondents)

and

HER MAJESTY THE QUEEN

Respondent
(Appellant)

and

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RESPONDENTS' ARGUMENT IN REPLY TO THE INTERVENORS

1. Pursuant to the order of the Court (Gascon J.) on November 27, 2014, the Respondents reply as follows to the written submissions of the Interveners, the United Nations High Commissioner for Refugees (UNHCR), Amnesty International (Canadian Section, English Branch) (AI), the Canadian Council for Refugees (CCR), the Canadian Association of Refugee Lawyers (CARL), the David Asper Centre for Constitutional Rights (David Asper Centre) and the Canadian Civil Liberties Association (CCLA).

A. THE INTERVENERS' FLAWED APPROACH

2. Although making passing reference to Canada's right to control its borders, the Interveners fail to acknowledge the challenges that people smuggling poses to Canada and other States. The seriousness of this problem is underscored by the very facts in the present appeals which involve two major people smuggling operations that led to the arrival, in less than one year, of two ships carrying 568 undocumented migrants.

3. Canada, like other States, has a legitimate interest and responsibility to ensure that those who wish to come to this country, for whatever purpose, do so in a lawful and orderly way. To this end, Canada has established a detailed scheme in the *Immigration and Refugee Protection Act (IRPA)* to control the admission of foreign nationals. While the *IRPA* undoubtedly gives priority to ensuring public order and safety and to maintaining the integrity of the immigration system, it seeks nonetheless to uphold Canada's commitment to protect persons in need of protection by providing various mechanisms by which protection may be accessed.

4. Importantly, the interveners neglect to mention that there are legal means by which those who wish to help persons in need of protection may do so. For example, persons in need of protection may be resettled in Canada after being referred by the UNHCR or sponsored by groups or individuals in Canada.[1]

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[1] See, for example, "*Helping to Protect the World's Most Vulnerable - Canada announces next phase of response to crises in Syria, Iraq and the broader region*": http://www.international.gc.ca/media/dev/news-communiques/2015/01/07a.aspx?lang=eng. Accessed on February 6, 2015

5. Considered as a whole, the Interveners' arguments would have the Court give *carte blanche* to individuals who deliberately assist others to illegally enter Canada to make claims for refugee protection, so long as they do not personally derive a profit from their actions. This would result in Canada relinquishing control over who comes into its territory, threaten public order and safety, and lead to a loss of public confidence in the immigration system. Such a result would obviously frustrate Parliament's objectives and the balanced approach taken in the *IRPA*. This could not have been intended.

B. THE APPROPRIATE STANDARD OF REVIEW IS REASONABLENESS

6. The Respondents refer to their arguments on the appropriate standard of review in their facta in response to the Appellants and add the following in response to the Interveners' arguments.

7. The Interveners, most notably the David Asper Center, argue that the standard of review should be correctness based largely on the premise that the inadmissibility decision at issue involves a "human rights question", insofar as, in their view, it leads to "denial of access to the refugee determination process and a risk of *refoulement*."

8. This mistaken view overstates the real import of a determination of inadmissibility under s. 37(1)(b), a provision which applies to those who have engaged in people smuggling, whether they have made a refugee claim or not. Further, this submission fails to appreciate the totality of the statutory scheme. In particular, a person who is inadmissible under s. 37(1)(b) can obtain, if merited, effective protection through other mechanisms.

C. THE IMMIGRATION DIVISION PROPERLY INTERPRETED SECTION 37(1)(B)

9. The Respondents refer to the arguments on the proper interpretation of s. 37(1)(b) in their facta in response to the Appellants and add the following in response to the Interveners' arguments.

10. The Interveners, notably the CCR, argue erroneously that the mention in s. 37(1)(b) of the words "transnational crime" "strongly suggest" that 37(1)(b) was meant to adhere to the terms of the UNTOC and its *Smuggling Protocol*.

11. If it had been the intention of Parliament to incorporate *verbatim* the contents of any of the provisions of these instruments, it would no doubt have chosen its words differently, as it has done, for instance, in s. 97(1)(a) of the *IRPA* (referencing Art. 1 of the *Convention Against Torture*) or s. 98 (referencing Articles 1E and 1F of the *Refugee Convention*, the so-called "exclusion clauses"). The fact that the legislator chose, in s. 37(1)(b), not to directly reference these instruments indicates, rather, that it did not wish to adopt *verbatim* the contents of its provisions.

12. In this context, it was reasonable for the Immigration Division (ID) to seek out the proper meaning of "people smuggling" by applying the ordinary rules of statutory interpretation, which favour a harmonious interpretation of provisions within the *IRPA*, before seeking meaning outside of its own terms.[2] As such, the ID could reasonably interpret inadmissibility for people smuggling in s. 37(1)(b) with reference to the offence in s. 117 of the *IRPA* and thus not require evidence of a financial motive or restrict the applicability of s. 37(1)(b) to persons who organize a clandestine entry into Canada.

13. The presumption of consistency with international law remains just that – a presumption.[3] It cannot supplant the clear intention of Parliament as revealed by the express terms of the provision, examined in light of the context, and the objectives of the provision. In the present case, these factors provide cogent indicators of Parliament's intent. They are barely, if at all, mentioned by the Interveners.

14. Finally, the CCR states incorrectly that the activities of money laundering and human trafficking, mentioned in s. 37(1)(b) in addition to people smuggling, "share the central defining feature that they are committed for financial benefit or profit" (par. 19). In the context of the *Criminal Code*, there is no requirement that such activities be committed for a profit.[4] No such requirement should be read into s. 37(1)(b).

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[2] For example, see *Németh v Canada (Justice)*, [2010] 3 SCR 281, 2010 SCC 56, paras 24 and 25
[3] *Kazemi Estate v Islamic Republic of Iran*, 2014 SCC 62, para 60
[4] For money laundering, see: *Criminal Code*, s 462.31; for human trafficking, see: *Criminal Code*, s 279.01 and, *a contrario*, s 279.02 (which does require a profit motive).

D. SECTIONS 37(1)(B) and 117 ARE CONSTITUTIONALLY VALID

15. The Respondents refer to their arguments on the constitutional validity of ss. 37(1)(b) and 117 in their facta in response to the Appellants and add the following in response to the Interveners' arguments.

a) Section 37(1)(b)

16. Like the Appellants, the Interveners fall into the error of assuming that s. 37(1)(b), one of the *IRPA's* inadmissibility provisions, engages s. 7 of the *Charter*.

17. As indicated already, their argument overstates the true import of a finding under s. 37(1)(b), which is concerned only with the finite question of whether a foreign national or permanent resident is inadmissible to Canada because of prior involvement in people smuggling in the context of transnational crime.

18. Section 37(1)(b) is not concerned with whether the person in question has made a refugee claim, whether his risk allegations are well-founded, or whether there are countervailing factors warranting removal despite those risks. It leaves all these questions to be dealt with within the separate processes found in Part II of the *IRPA*, "Refugee Protection." Like the Appellants, the Interveners erroneously confuse an inadmissibility proceeding under s. 37(1)(b) with these other processes.

19. As was held by this Court, the interests protected by Section 7 "…crystallize at the point at which the individual is about to be deprived of his or her life, liberty or security of the person in a manner not consonant with fundamental justice."[5] There is no such crystallization at the inadmissibility stage.

[5] *R v Stevens*, [1988] 1 SCR 1153, para 35; *R v Gamble*, [1988] 2 SCR 595, para 40

20. Contrary to CARL's submission, the extradition process supports the contention that, for *Charter* purposes, a clear distinction should be made between an inadmissibility finding and actual removal under the *IRPA*. Extradition comprises two stages. At the committal stage, the judge determines whether there is sufficient admissible evidence to make out a *prima facie* case. At the surrender stage, the Minister determines whether the individual should be surrendered, and it is at this stage, not the first, where, among other things, risks associated with surrender are considered.[6]

21. While CARL submits that s. 7 applies before the extradition judge, this is not because the person concerned has invoked risks upon return. Further, the scope of s. 7 is limited to the fairness of the Canadian proceeding.[7] By contrast, in the context of the *IRPA*, it has been held that "the deportation of a non-citizen in itself cannot implicate the liberty and security interests protected by s. 7."[8] Further, CARL's argument fails to consider this Court's holding that s. 6 of the *Charter* and "mobility issues" can only be invoked at the stage where the matter is being examined by the Minister of Justice.[9] In short, *Charter* considerations pertaining to surrender are considered at the surrender stage. The same should be true in the immigration context.

22. The Intervener David Asper Center also plead that s. 7 of the *Charter* is engaged by an inadmissibility finding under s. 37(1)(b) of the *IRPA*, pointing to s. 246(b) of the *Immigration and Refugee Protection Regulations*. This provision merely states that engagement in people smuggling is a factor to be *considered* for the purpose of evaluating whether a person constitutes a danger to the public for the purposes of a detention review. It does not state that a finding of inadmissibility under s. 37(1)(b) *must* lead to the detention of the person concerned. In these very appeals, the Appellant Hernandez was never detained under the *IRPA*, and the remaining Appellants were not detained subsequent to the findings of inadmissibility.

23. Even if s. 7 were engaged, the Respondents note that the Interveners do not seriously argue that s. 37(1)(b) is not consistent with the principles of fundamental justice. The CCLA does argue that the provision is arbitrary, but its submissions are not substantially different from

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[6] *Lake v Canada (Minister of Justice)*, 2008 SCC 23, [2008] 1 SCR 761, paras 21-33.
[7] *USA v Shulman*, 2001 SCC 21, [2001] 1 SCR 616, para 21
[8] *Medovarski v Canada (MCI)*, 2005 SCC 51, [2005] 2 SCR 539, paras 45-46
[9] *Shulman, supra*, paras 21-22;

those of the Appellants. As such, the Respondents simply rely on their written submissions in response to the Appellants. Essentially, it is not arbitrary or overbroad to render inadmissible even asylum seekers who, like the Appellants, have crossed the line into knowingly aiding and abetting a smuggling operation. They cannot claim to be exempt, as a general rule, from the *IRPA*'s provisions dealing with "people smuggling".

24. Some of the Interveners argue that the ministerial relief process under s. 42.1 entails delays, relying on information contained in access to information requests annexed by the Appellant B010 to his Books of Authorities, but which were not before the tribunal.[10] This Court has cautioned against parties "bootlegging evidence in the guise of authorities."[11] Nonetheless, as was noted by the Federal Court in *Stables*, evidence concerning the timeliness or acceptance rates of ministerial relief applications does not mean that the process is illusory and bound to fail. Much depends on the facts of each case, and if there is concern about delay, the proper course is to seek *mandamus*.[12]

b) Section 117

25. To the extent that some of the Interveners suggest that s.117 is overbroad or arbitrary, their arguments disclose the same analytical flaws as those being made by the appellants in *Appulonappa v. HMQ.* In response the Respondents refer to the Crown's written submissions in *Appulonappa, et al. v. HMQ*.[13]

26. In addition, the Respondents add the following with respect to the issue of prosecutorial discretion. While prosecutorial discretion is not an anodyne to overbreadth, nor is it irrelevant to the Court's analysis. This is particularly the case where, as here, the Appellants' overbreadth arguments rest on vague hypothetical scenarios as opposed to fully fleshed concrete facts. It is only when all the circumstances of an individual case are known that a meaningful assessment can be made as to whether, notwithstanding that the objective of s. 117(1) would be served, prosecution is or is not otherwise in the public interest.[14]

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[10] Access to Information Responses dated May, 2011 and July 26, 2012 [B010 BOA, vol 3, tab 40]
[11] *Public School Boards' Assn. of Alberta* v *Alberta (Attorney General)*, [1999] 3 SCR 845, para 3
[12] *Stables v Canada (MCI)*, 2011 FC 1319, paras 60-63
[13] *Appulonappa, et al. v. HMQ*, Factum of Her Majesty the Queen, paras 53-82
[14] See, eg. discussion of *R v Bello*, [2004] OJ No 5312 (CJ) and *R v Callahan* (1 November 2012), Thunder Bay 113204 (Ont CJ) in BCCA Judgment in *Appulonappa*, at paras 101, 103-104, and 106.

27. Further, and regarding s. 117(4) specifically, in creating an offence of organizing or assisting the illegal entry of undocumented individuals, Parliament was clearly alive to the special considerations that may arise in some instances where a s. 117(1) offence has been committed, but it may not be in the public interest to prosecute. Parliament concluded that these concerns were properly dealt with by the Attorney General in determining whether the public interest requires a prosecution based on the facts of a particular case, rather than by carving out exceptions to the offence provision itself.

E. INTERNATIONAL OBLIGATIONS NOT AT ISSUE IN THESE APPEALS

28. The Interveners, in particular the UNHCR, Amnesty and the CCR, rely on Canada's international obligations under the *Smuggling Protocol* and *Refugee Convention* to make the point that inadmissibility under s. 37(1)(b) should be limited to those who are engaged in people smuggling for a financial or material benefit. The Respondents refer to their written submissions in response to the Appellants and add the following.

29. Contrary to the UNHCR's assertion (para 29), neither the *Transnational Organized Crime Convention*, nor the *Smuggling Protocol*, require that State parties incorporate, in their domestic offences, a requirement of involvement of an "organized criminal group". In fact, the *Smuggling Protocol* contemplates that the migrant smuggling offence "could be perpetrated by one person acting alone."[15]

30. Further, the Interveners' reliance on Art. 33(2) of the *Refugee Convention*, which prohibits *refoulement* except under certain circumstances, is inapposite at this stage. The Appellants are not at the stage where a decision has been made regarding whether their risk allegations are well-founded or whether there are countervailing factors which would warrant removal despite those risks. In addition, the Appellants may also ask for their inadmissibility to be lifted under s. 42.1 of the *IRPA*.

[15] Anne T Gallagher, Fiona David, *The International Law of Migrant Smuggling*, New York: Cambridge University Press, 2014, pp 69 and 361-2

31. Like the Appellants, the Interveners make the mistake of confusing a finding of inadmissibility for immigration purposes, which is the object of s. 37(1)(b), with other processes geared towards those who make a claim for refugee protection. Any argument as to whether the Appellants' treatment is consistent with the *non-refoulement* principle is therefore premature at this point, and this principle has no effect on the interpretation of s. 37(1)(b).

32. As already indicated, while a person found inadmissible under s. 37(1)(b) is ineligible for a hearing before the Refugee Protection Division, they will have their risk allegations assessed in a Pre-Removal Risk Asssessment (PRRA) application, a process which this Court found *Charter*-compliant in *Febles*, the case of a refugee claimant who was excluded from refugee status.[16] As this Court held there, while the appellant would prefer to be granted refugee protection rather than have to make a PRRA application, "the *Charter* does not give a positive right to refugee protection."[17]

33. The Interveners incorrectly assume that the Appellants will not receive effective protection through a PRRA application because their alleged risks will be assessed against s. 97 ("person in need of protection"), and not s. 96 ("Convention Refugee") of the *IRPA*. Section 97 encompasses a wide range of potential mistreatment (torture, risk to life or of cruel and unusual treatment or punishment) and there is much overlap between the grounds in ss. 96 and 97.[18] The argument is also simply premature.

34. The question of whether the Appellants' eventual treatment is consistent with the *non-regoulement* principle will also have to take into account whether the Appellants have availed themselves of all available and effective measures at their disposal.

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[16] *Febles, v Canada (Minister of Citizenship and Immigration)*, 2014 SCC 68, paras 67-68

[17] *Febles*, *supra*, paras 67-68. See also, *R v Malmo-Levine*, 2003 SCC 74, [2003] 3 SCR 571, paras 84-87

[18] See, on this point, Lauterpacht, Elihu & Bethlehem, Daniel, "The Scope and Content of the Principle of Non-refoulement: Opinion", in Feller, Erika, Türk, Volker & Nicholson, Frances, *Refugee Protection in International Law:UNHCR's Global Consultations on International Protection*, Cambridge: Cambridge University Press, 2003, para. 244; *Ahmed v Austria*, ECHR, 25964/94, Judgment, December 17, 1996, paras 35 and 42-47

35. As was emphasized by the House of Lords in *R v. Secretary of State for the Home Department, Ex parte Thangarasa; Ex parte Yogathas,* "international protection is directed to the simple and practical end of preventing the return of people to places where they may face risk, and the focus should be on the end result rather than the precise procedures by which the result is achieved" and, in this regard, "legal niceties and refinements should not be allowed to obstruct that purpose."[19]

F. DEFENCES OF NECESSITY AND DURESS

36. Contrary to CARL's submissions, it is unnecessary in these appeals for the Court to engage in a comprehensive discussion of the defences of necessity or duress in the inadmissibility context. The Respondents do not disagree that the defences can be considered when raised.

37. The ID, who saw and heard the testimony of B306, made factual findings that he did not act out of necessity or duress. The findings are reasonable, and it is unnecessary to go beyond those findings in order to dispose of the appeals with respect to the defences.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 6th day of February 2015.

Marianne Zorić

for François Joyal

Of Counsel for the Respondents

[19] *R v Secretary of State for the Home Department, Ex parte Thangarasa; Ex parte Yogathas,* [2002] UKHL 36, paras 9, 47, and 66

II. TABLE OF AUTHORITIES

Authorities		Paragraph(s)
A. Jurisprudence		
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B. Other Secondary Sources		
"*Helping to Protect the World's Most Vulnerable - Canada announces next phase of response to crises in Syria, Iraq and the broader region*": http://www.international.gc.ca/media/dev/news-communiques/2015/01/07a.aspx?lang=eng. Accessed on February 2, 2015		4
Anne T Gallagher, Fiona David, *The International Law of Migrant Smuggling*, New York: Cambridge University Press, 2014		28
Lauterpacht, Elihu & Bethlehem, Daniel, "The Scope and Content of the Principle of Non-refoulement: Opinion", in Feller, Erika, Türk, Volker & Nicholson, Frances, *Refugee Protection in International Law:UNHCR's Global Consultations on International Protection*, Cambridge: Cambridge University Press, 2003		30

APPENDIX "A" – STATUTES RELIED ON

***Immigration and Refugee Protection Act*, S.C. 2001, c 27**

Rules of interpretation **33.** The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur		**Interprétation** **33.** Les faits — actes ou omissions — mentionnés aux articles 34 à 37 sont, sauf disposition contraire, appréciés sur la base de motifs raisonnables de croire qu'ils sont survenus, surviennent ou peuvent survenir.

Organized criminality **37.** (1) A permanent resident or a foreign national is inadmissible on grounds of organized criminality for […] (*b*) engaging, in the context of transnational crime, in activities such as people smuggling, trafficking in persons or money laundering.		**Activités de criminalité organisée** **37.** (1) Emportent interdiction de territoire pour criminalité organisée les faits suivants : […] *b*) se livrer, dans le cadre de la criminalité transnationale, à des activités telles le passage de clandestins, le trafic de personnes ou le recyclage des produits de la criminalité.
Application (2) Paragraph (1)(*a*) does not lead to a determination of inadmissibility by reason only of the fact that the permanent resident or foreign national entered Canada with the assistance of a person who is involved in organized criminal activity.		**Application** (2) Les faits visés à l'alinéa (1)a) n'emportent pas interdiction de territoire pour la seule raison que le résident permanent ou l'étranger est entré au Canada en ayant recours à une personne qui se livre aux activités qui y sont visées.

Exception — application to Minister **42.1** (1) The Minister may, on application by a foreign national, declare that the matters referred to in section 34, paragraphs 35(1)(*b*) and (*c*) and subsection 37(1) do not constitute inadmissibility in respect of the foreign national if they satisfy the Minister that it is not contrary to the national interest.		**Exception — demande au ministre** **42.1** (1) Le ministre peut, sur demande d'un étranger, déclarer que les faits visés à l'article 34, aux alinéas 35(1)*b*) ou *c*) ou au paragraphe 37(1) n'emportent pas interdiction de territoire à l'égard de l'étranger si celui-ci le convainc que cela ne serait pas contraire à l'intérêt national.

Ineligibility **101.** (1) A claim is ineligible to be referred to the Refugee Protection Division if [..] (*f*) the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality or organized criminality, except for persons who are inadmissible solely on the grounds of paragraph 35(1)(*c*).		**Irrecevabilité** **101.** (1) La demande est irrecevable dans les cas suivants : *[…]* *f*) prononcé d'interdiction de territoire pour raison de sécurité ou pour atteinte aux droits humains ou internationaux — exception faite des personnes interdites de territoire au seul titre de l'alinéa 35(1)*c*) — , grande criminalité ou criminalité organisée.
Serious criminality (2) A claim is not ineligible by reason of serious criminality under paragraph (1)(*f*) unless (*a*) in the case of inadmissibility by reason of a conviction in Canada, the conviction is for an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or (*b*) in the case of inadmissibility by reason of a conviction outside Canada, the conviction is for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years.		**Grande criminalité** (2) L'interdiction de territoire pour grande criminalité visée à l'alinéa (1)*f*) n'emporte irrecevabilité de la demande que si elle a pour objet : *a*) une déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans; *b*) une déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans.

Application for protection **112.** (1) A person in Canada, other than a person referred to in subsection 115(1), may, in accordance with the regulations, apply to the Minister for protection if they are subject to a removal order that is in force or are named in a certificate described in subsection 77(1).		**Demande de protection** **112.** (1) La personne se trouvant au Canada et qui n'est pas visée au paragraphe 115(1) peut, conformément aux règlements, demander la protection au ministre si elle est visée par une mesure de renvoi ayant pris effet ou nommée au certificat visé au paragraphe 77(1).

Consideration of application **113.** Consideration of an application for protection shall be as follows: […] (*d*) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (*e*)(i) or (ii) — consideration shall be on the basis of the factors set out in section 97 and (i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or (ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada; and […]		**Examen de la demande** **113.** Il est disposé de la demande comme il suit : *d*) s'agissant du demandeur visé au paragraphe 112(3) — sauf celui visé au sous-alinéa *e*)(i) ou (ii) —, sur la base des éléments mentionnés à l'article 97 et, d'autre part : (i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada, (ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu'il constitue pour la sécurité du Canada;

Organizing entry into Canada (before Dec. 15, 2012) **117.** (1) No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.		**Entrée illegale (avant le 15 décembre 2012)** **117.** (1) Commet une infraction quiconque sciemment organise l'entrée au Canada d'une ou plusieurs personnes non munies des documents — passeport, visa ou autre — requis par la présente loi ou incite, aide ou encourage une telle personne à entrer au Canada.

Canadian Charter of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.		**1.** La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.
7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.		**7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

IN THE SUPREME COURT OF CANADA
(On Appeal from the Federal Court of Appeal)

BETWEEN:

Court File No.: 35388

B010

Appellant

AND

THE MINISTER OF CITIZENSHIP & IMMIGRATION

Respondent

AND BETWEEN:

Court File No.: 35685

B306

Appellant

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

AND BETWEEN:

Court File No.: 35958

FRANCIS ANTHONIMUTHU APPULONAPPA AND OTHERS

Appellants

AND

HER MAJESTY THE QUEEN

Respondent

Publication Ban

Interdiction de publication

BETWEEN:

Court File No.: 35688

J.P. and G.J.

Appellants

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

AND BETWEEN:

Court File No.: 35677

JESUS RODRIGUEZ HERNANDEZ

Appellant

AND

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

RESPONDENT'S FACTUM IN REPLY TO THE INTERVENERS' FACTA

(Pursuant to the Order of the Honourable Justice Gascon dated November 27, 2014)

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