THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2020-03909

IN THE MATTER OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

AND

AND THE APPLICATION FOR REDRESS BY THE CLAIMANTS PURSUANT TO SECTION 14 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR THE CONTRAVENTION OF SECTIONS 4 AND 5 OF THE SAID CONSTITUTION IN RELATION TO THE APPLICATION

AND

IN THE MATTER OF THE DECISION AND/OR ACTION AND/OR CONDUCT OF THE MINISTER OF NATIONAL SECURITY TO ISSUE AN ORDER OF DEPORTATION AGAINST THE SECOND CLAIMANT WITHOUT ALLOWING FOR A FAIR HEARING AND WITHOUT HER LEGAL ADVISOR BEING PRESENT FOR ANY SPECIAL INQUIRY CONTRARY TO THE IMMIGRATION ACT OF TRINIDAD AND TOBAGO CHAP 18:01

BETWEEN

KERWYN ROOPCHAN

First Claimant

YORLENYS CRISTINA HERNANDEZ RODRIQGUEZ

Second Claimant

BJNH

(A Minor by her Next Friend and Mother Yorlenys Cristina Hernandez Rodriguez)

Third Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

First Defendant

THE CHIEF IMMIGRATION OFFICER

Second Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Date of Delivery: Wednesday 23 December 2020

Appearances:

Mr. Farai Hove Masaisai leading Ms. Antonya Pierre instructed by Ms. Jennifer Farah-Tull for the Claimants

Mr. Reginald T.A. Armour S.C. leading Ms. Linda Khan instructed by Ms. Ryanka Ragbir for the Defendants

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DECISION ON THE CLAIMANTS' NOTICE OF APPLICATION FILED ON 20 NOVEMBER 2020 FOR INTERIM RELIEF

I. Introduction

[1] The First Claimant is a citizen of Trinidad and Tobago. The Second and Third Claimants are Venezuelan nationals. The Third Claimant is the 4-year old daughter of the Second Claimant (the First Claimant is not the father). The First Claimant and the Second Claimant have been in an alleged relationship for over 1 year. A Deportation Order dated 13 November 2020 was served on the Second Claimant on 19 November 2020.

[2] The Claimants filed a Fixed Date Claim Form (Constitutional Motion) on 20 November 2020 seeking substantial constitutional relief as follows:

1) A declaration that the Defendants breached the Second and Third Claimants' fundamental right to life, liberty and security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law as enshrined by **Section 4(a) of the Republican Constitution** when the Second and Third Claimants were wrongfully and unlawfully detained from the 30 September 2020 to present and continuing at the Heliport Chaguaramas despite the Second Claimant being the holder of a migrant registration card and/or Minister's Permit.
2) A declaration that the Defendants breached the Second and Third Claimants' right to equality before the law and the protection of law as guaranteed to them by **section 4(b) of the Constitution of Trinidad and Tobago** when the Defendants failed to have any special inquiry hearing carried out in accordance with procedure of a special inquiry hearing set out under the **Immigrations Regulations 1974** and

further failed to carry out any special inquiry promptly or forthwith as expressed in the said regulation and the **Privy Council Authority of Naidike v The Attorney General of Trinidad and Tobago, Privy Council Appeal No. 10 of 2003**.

3) A declaration that the Claimants' rights to private and family life guaranteed to them by **section 4(c) of the Constitution of Trinidad and Tobago** was breached by the Defendants as a result of the initial detention of the Second and Third Claimants by the police on the 30 September 2020, continued detention by the Minister of Health from the 8 October 2020 and continued detention by the Chief Immigration Officer and the Minister of National Security to date without cause or lawful justification.
4) A declaration that the Claimants' rights to private and family life guaranteed to them by **section 4(c) of the Constitution of Trinidad and Tobago** was breached by the Defendants as a result of the issuance of a deportation order to the Second Claimant on the 19 November 2020 despite her being the mother of the Third Claimant and the common law wife of the First Claimant, a Trinidad and Tobago citizen.
5) A declaration that the Second and Third Claimants' right not to be arbitrarily detained as guaranteed by **section 5(2)(a) of the Constitution of the Republic of Trinidad and Tobago** was breached when the Defendants caused them to be detained from the 30 September 2020 without any charge until the 19 November 2020 when a deportation order was unlawfully issued to the Second Claimant without the conduct of a special enquiry and without adhering to the principles of natural justice.
6) A declaration that the Second and Third Claimants' right to be informed promptly and with sufficient particularity of the reason for their arrest and detention as guaranteed by **section 5(2)(c)(i) of the Constitution of the Republic of Trinidad and Tobago** was breached by the Defendants when the Defendants caused them to be detained on the 30 September 2020 without informing them of any charge until the 19 November 2020 when a deportation order was unlawfully issued as against the Second Claimant without the conduct of a special inquiry which still does not specify or provide sufficient particularity of any alleged offence committed.
7) A declaration that the Second and Third Claimants' right not to be deprived of the right to retain and instruct without delay a legal adviser of their own choice and hold communications with him as guaranteed by **section 5(2)(c)(ii) of the**

Constitution of the Republic of Trinidad and Tobago was breached by the Defendants when they were not allowed access to their attorney-at-law until 31 October 2020 when an interview was conducted by Immigration Officer, Mr. Fareed Abraham at the Chaguaramas Heliport. No special enquiry was ever conducted.

8) A declaration that the Second Claimant's right to a fair hearing in accordance with the principles of fundamental justice for the determination of their rights and freedoms as guaranteed to her by **section 5(2)(e) of the constitution of Trinidad and Tobago** was breached when the Defendants and/or their servants and/or agents failed to inform the Second Claimant of her right to an attorney-at-law when she was issued with the deportation order on the 19 November 2020.
9) A declaration that the Second Claimant's right to a fair hearing in accordance with the principles of fundamental justice for the determination of their rights and freedoms as guaranteed to her by **section 5(2)(e) of the constitution of Trinidad and Tobago** was breached when she was issued the deportation order on the 19 November 2020 without the conduct of a special inquiry with her attorney-at-law present.
10) A declaration that the Second Claimant was deprived of the right to such procedural provisions as was necessary for giving effect to the rights and freedoms enshrined by **sections 4 and 5 of the Constitution of Trinidad and Tobago** as guaranteed by **section 5(2)(e) of the Constitution** when she was deprived by the Defendants of the right to a special inquiry before being issued a deportation order.
11) A declaration that the deportation order issued on the 19 November 2020 but dated the 13 November 2020 is null void and of no effect.
12) An order that the deportation order dated 13 November 2020 which was unlawfully issued to the Second Claimant on 19 November 2020 without the conduct of a special inquiry be set aside.
13) An order for the immediate release of the Second and Third claimants on an order of supervision pending the conduct of a special inquiry.
14) An injunction preventing the deportation of the Second and Third Claimants to Venezuela.
15) An order that the Defendants do pay the Claimants such monetary compensation including aggravated, exemplary and punitive damages for infringement of the Claimants' fundamental rights guaranteed to them by the Constitution.

16) An order granting compensatory damages for breach of fundamental rights and freedoms of the Claimants as enshrined in the Constitution of the Republic of Trinidad and Tobago.
17) An order granting vindicatory damages to demonstrate the Court's distaste and to reflect the sense of public outrage and to deter future breaches by the Defendants of the fundamental rights and freedoms as enshrined in the Constitution.
18) Special damages.
19) That damages be assessed by Judge in chambers.
20) Further and other reliefs as may be deemed just and expedient in the circumstances.
21) Costs.

[3] On the said 20 November 2020, by way of an application for interim relief, the Claimants also sought the following reliefs:

1) An interim injunction restraining the Respondents/Defendants, whether by themselves, their servants and/or agents or otherwise, from enforcing the deportation order dated the 13th day of November 2020 but served on the 19th November, to have the 2nd and/or 3rd Applicant/Claimant deported until the determination of their Constitutional Motion filed on the 20th November 2020;
2) An interim injunction compelling the Respondents/Defendants to release the 2nd and 3rd Applicants/Claimants on an order of supervision until the determination of their Constitutional Motion.

II. Application for Interim Relief

[4] As part of their grounds in the application for interim relief, the Claimants set out their rights which have been breached and the circumstances surrounding same as stated in paragraph [2](1) – (10) above. The other grounds in the application for interim relief can be summarised as follows: On 30 September 2020, the Second Claimant, along with her daughter, decided to take food to her cousin, Raisyrys Josefina Cedeno. The First Claimant left the Second Claimant and her daughter on Erin Road where the Second Claimant's cousin would usually come to meet her since she lives in Barrackpore.

[5] When the First Claimant returned to pick up the Second Claimant and her daughter, he observed that she was being held by the TTPS with a group of other people who appeared to be Venezuelan nationals. The First Claimant spoke to the TTPS and explained that the

Second Claimant has a Migrant Registration Card and/or Minister's Permit which gives her permission to work and live in Trinidad and Tobago. The First Claimant retrieved the Card from the Second Claimant's purse which was in his car. He showed the Card to the police officer in charge but his response was that the Second Claimant's name was already sent to his seniors and that the issue will be rectified at the police station. The First Claimant spent the rest of that day and all of 1 October 2020 at the Penal Police Station trying to rectify the situation. However, he saw the Second and Third Claimants being taken away in a bus late that evening. The First Claimant was told that the Second and Third Claimants were being quarantined and taken to the Chaguaramas Heliport facility.

[6] Having received no response from his Member of Parliament, the First Claimant retained Hove and Associates, Attorneys-at-Law, to act on the Claimants' behalf. A letter was sent to the Ministry of National Security on 7 October 2020 seeking the reason for the Second and Third Claimants' detention, the results to prove that they were COVID positive as well as requesting their release to be quarantined at home if necessary. However, there was no response. On 12 October 2020, a similar letter was sent to the Solicitor General and Attorney General. The Ministry of National Security responded by letter dated 14 October 2020 indicating that the Second Claimant had tested positive for COVID-19 and that she was subjected to quarantine directions by the Minister of Health issued on 8 October 2020 to be quarantined at the Chaguaramas Heliport. A letter was sent in response on 15 October 2020 requesting copies of the COVID-19 test results and the quarantine order for the Second and Third Claimants as well as indicating that the Claimants' attorney would like to be informed of any interview before same is conducted to make representation for the Second and Third Claimants. The Ministry of National Security responded on 16 October 2020 disclosing the test results and the quarantine order. The Claimants' attorneys were also informed that they would be apprised of any future interview.

[7] On 20 October 2020, a letter was sent in response to the Ministry of National Security requesting copies of all COVID-19 test results for the Second Claimant. A letter was also sent on 20 October 2020 to the Senior Superintendent of the Siparia Divisional Headquarters requesting disclosure of all pocket and station diaries relevant to the detention of the Second and Third Claimants. The Ministry of National Security

responded by letter dated 21 October 2020 disclosing the further test results of the Second Claimant.

[8] On 29 October 2020, the attorneys-at-law for the Claimants were contacted by Mr Gewan Harricoo, Immigration Officer, who informed them that an interview would be conducted with the Second Claimant on 31 October 2020. On this date, a letter was sent to the Ministry of National Security requesting the Second Claimant's negative test result. On 31 October 2020, the Claimants' attorney-at-law, Antonya Pierre was present at the Chaguaramas Heliport where an interview was conducted with the Second Claimant by Mr. Fareed Abraham, Immigration Officer, in the presence of Mr. Videsh Nagassar of the Enforcement Unit Immigration Division and an Interpreter, Mr. Jonathan Alexander. Ms. Pierre was informed and assured by Mr. Abraham that he was conducting an interview and not a special inquiry as the initial interview which ought to have been previously conducted at the time of the Second Claimants' initial arrest was not carried out due to her alleged COVID-19 status.

[9] At the conclusion of the interview, the minutes taken by Mr. Abraham were read over to the Second Claimant by the Interpreter. As well, Miss Pierre was able to read over the said minutes before the Second Claimant signed them as being correct. No special inquiry form or deportation order was presented at this time as Mr. Abraham indicated he would need to compile a report and interview the First Claimant before the special inquiry is conducted or any other step is taken.

[10] The office of the attorneys-at-law, Hove & Associates, followed up with both Immigration Officers, Mr. Haricoo and Mr. Abraham, via telephone on various occasions for an update on the next step. However, the attorneys were told that a report was being completed to be submitted to the Chief Immigration Officer and that the attorneys will be informed of the date, time and place for the special inquiry to be held. On 13 November 2020, a letter was sent to the Ministry of National Security requesting the Second Claimant's last COVID-19 test results and an explanation as to why she continued to be unlawfully detained.

[11] On 19 November 2020, the First Claimant was informed that the Second Claimant had been served with a deportation order despite no special inquiry being conducted.

Counsel for the Claimants submitted that the Claimants have acted promptly in approaching the Court and if the interim reliefs are granted the Defendants will suffer no prejudice as the enforcement of the order only affects the Claimants and that the First Claimant has the means and is willing to provide for the Second and Third Claimants. Counsel argued that to deport the Second Claimant would be wholly unreasonable, inconsistent and contrary to the discretion exercised by the Minister to allow Venezuelan nationals to remain as the Second Claimant is the holder of a Migrant Registration Card. Moreover, the deportation order is made only in the name of the Second Claimant; the Claimants are unaware as to what arrangements will be made for the Third Claimant who is only four years old. In addition, the Claimants undertake to compensate the Defendants for any loss they may wrongfully suffer as a result of the interim reliefs sought being granted.

Affidavits in support of Interim Relief

[12] The application for interim relief was supported by the affidavits of Kerwyn Roopchan, Yorlenys Cristina Hernandez Rodriguez, Gillian Kallicharan and Victor Gopie. The grounds set out in the application and the contents of the affidavits were very similar if not identical. I will briefly condense the relevant parts of the evidence for the purposes of determining this application. The Second Claimant in her affidavit stated that she illegally entered Trinidad and Tobago in April 2019 through Icacos on a boat. She is the holder of a Migrant Registration Card also called a Minister's Permit MRF08147/2019 which was issued on 16 October 2019. According to the Second Claimant, her cousin illegally brought her daughter, the Third Claimant, to Trinidad and Tobago sometime in December 2019. The First and Second Claimants have been in a relationship for 1 year and live together in Arouca along with the Third Claimant.

[13] Both the First and Second Claimants, in their affidavits, stated that on 30 September 2020, the Second Claimant decided to take food for her cousin, Raisyrys Josefina Cedeno ("Raisyrys"). The First Claimant dropped off the Second Claimant and her daughter on Erin Road where they waited for Raisyrys. However, whilst the Second Claimant was standing on the road, she saw a group of Venezuelans with some police officers in the same vicinity. She recognized one of the women in the group who called out to her for help; the Second Claimant went over to the group. One of the police officers asked the Second Claimant whether she and her daughter had any

documentation. The Second Claimant informed him that she had a Minister's Permit but she had forgotten it in her husband's car. The police officer took her name and told her she had to go to the police station. Before they left for the police station, the First Claimant returned and showed the police officer the Second Claimant's Minister's Permit. However, since the Second Claimant's name was already on the list, she had to be taken to the police station. Both the Second and Third Claimants were taken to the Penal Police Station until the evening of 1 October 2020 when they were taken to the Chaguaramas Heliport Facility. The Second Claimant admitted that she was tested for COVID-19 and it returned a positive result.

[14] On 31 October 2020, the Second Claimant's attorney-at-law, Miss Pierre, was present at the Chaguaramas Heliport where an interview was to be conducted by Immigration Officers. The Second Claimant was able to speak with Miss Pierre for the first time for a few minutes before the interview began. The interview of the Second Claimant was conducted by Mr. Fareed Abraham, Immigration Officer III, in the presence of the Second Claimant's attorney, as well as, Mr. Videsh Nagassar, Immigration Officer II, and an Interpreter, Mr. Jonathan Alexander. During the interview, the Second Claimant told the Immigration Officers what transpired on 30 September 2020. At the end of the interview, the minutes taken by Mr. Abraham were read over to her by the interpreter and Ms. Pierre had the opportunity to read same before the Second Claimant signed the minutes. The Immigration Officers also took pictures of the Second Claimant and her daughter.

[15] On 5 November 2020, the Second Claimant observed the same Immigration Officers from her interview speaking to persons who were in the group of Venezuelans arrested on 30 September 2020. The Second Claimant's friend, Eliana Caroline Vicent Levys, told her that the officers were showing them a picture of both her and her daughter and asking if they came on the boat with them. On 6 November 2020, one of the immigration officers from the interview returned and told her to sign a document. She was not asked if she wanted her attorney present neither was she advised that she could have her attorney read the document over before it was signed.

[16] On 19 November 2020, the Second Claimant was served with a Deportation Order by one of the Immigration Officers. She was told that she had to sign the order because she

would be deported whether or not she signed. The Second Claimant said that she never left Trinidad and Tobago since her arrival in or about April 2019 so she does not know why she's being accused of leaving this year to go to Venezuela and return.

[17] Victor Gopie, the Managing Director of Unique Pharmacy in Arouca, stated in his affidavit that he knows the Claimants since they usually frequent his establishment. He added that he knew the Third Claimant since the First and Second Claimants would usually carry her to the pharmacy if she needed medication for minor occurrences like a rash or cold. Mr. Gopie added that the first time he saw the Third Claimant was in or about December 2019 or early January 2019 and the last visit that the Third Claimant made was in or about September 2020 along with the First and Second Claimants.

[18] Gillian Kallicharan, a bartender at the In Between Bar located at Cocorite in Arima, also swore an affidavit on behalf of the Claimants. She deposed that the Second Claimant also works as a bartender at the same bar. In her affidavit, Ms. Kallicharan stated that she and the Second Claimant have been working together for a little over a year. She is not aware of the Second Claimant ever leaving Trinidad and Tobago as she always turns up for her shift before she was detained. She added that during the months August to September 2020, the Second Claimant was still working from 8am to 10pm as the bar also sells food.

III. Defendants' Opposition

[19] The Defendants opposed the granting of the interim reliefs on the following bases: (a) that there is no serious issue to be tried since on the face of the pleadings, the deportation order itself has not been challenged and therefore remains valid; (b) the **Immigration Act, Chap 18:01** is saved by virtue of **section 6(1) of the Constitution of Trinidad and Tobago**; therefore the deportation order made by the Minister under **section 11 of the Immigration Act** cannot be the subject of a declaration of unconstitutionality; and (c) the language of **section 11 of the Immigration Act** does not require a special inquiry as a prerequisite for the exercise of the Minister's discretion under the Act.

Affidavits in response

[20] The Defendants, in support of their position, relied on the affidavits of Mr. Gewan Harricoo, Immigration Officer IV, Mr. Fareed Abraham, Immigration Officer III, Mr. Videsh Nagassar, Immigration Officer II and Captain Wayne Armour of the Trinidad and Tobago Defence Force COVID-19 Response Coordination Centre. I will briefly set out the contents of the affidavits hereunder.

[21] On 30 September 2020, Mr. Gewan Harricoo was contacted by Captain Wayne Armour, Head of the Trinidad and Tobago Defence Force COVID-19 response team. Captain Amour informed Mr. Harricoo that police officers of the South Western Division intercepted some Venezuelan migrants who disembarked from a white pirogue at Erin, South Trinidad. A police report dated 30 September 2020 from the Senior Superintendent of the South Western Division of the police service was submitted to the Immigration Division stating that 21 Venezuelan migrants disembarked from a vessel on 30 September 2020 and only one migrant had valid documents. The Second and Third Claimants were named and listed at numbers 14 and 15, respectively, on the list of migrants who disembarked from the vessel.

[22] The 21 Venezuelan migrants detained on 30 September 2020, including the Second and Third Claimants, were tested for COVID-19 prior to going to the Chaguaramas Heliport. The Second Claimant tested positive for COVID-19. Based on the quarantine direction dated 8 October 2020 and signed by the Minister of Health, the Minister designated the Chaguaramas Heliport as the place for her quarantine for a period of 28 days starting from 30 September 2020. The Third Claimant was tested for COVID-19, however, the results of her test are unknown. Nonetheless, since the Third Claimant was a primary contact of the Second Claimant, they were quarantined together. They completed their period of quarantine on or about 27 or 28 October 2020.

[23] On 28 October 2020, Mr. Harricoo informed Mr. Fareed Abraham that the Second Claimant was detained at the Chaguaramas Heliport who was not yet interviewed since she had tested positive for COVID-19 on her entry into Trinidad and had to be quarantined. Mr. Abraham was also informed that the Second Claimant was a holder of a Migrant Card and was suspected of leaving the country and re-entering illegally. On

29 October 2020, Mr. Harricoo contacted the Claimants' attorney at law, Mr. Masaisai, and informed him that an interview would be conducted with the Second Claimant on 31 October 2020 at 10am. Mr. Masaisai indicated that Ms. Pierre would be present.

[24] On 31 October 2020, Mr. Abraham along with Mr. Videsh Nagassar and Mr. Jonathan Alexander met Miss Pierre at the Chaguaramas Heliport to conduct the interview with the Second Claimant. Upon arrival at the Heliport, Ms. Pierre asked Mr. Abraham to allow her to speak in private with the Second Claimant before the interview started. He granted her request after he got clearance from Mr Harricoo. Mr. Abraham explained to Ms. Pierre that the interview was not a special inquiry; it was a simple preliminary interview which is usually conducted with all persons who are detained. Since the Second Claimant was tested positive for COVID-19 and had to undergo 28 days quarantine, the preliminary interview had to be conducted on the next available occasion.

[25] After Ms. Pierre concluded the conversation in private with the Second Claimant, Mr. Abraham, Mr. Nagassar and Mr. Alexander entered the room and conducted the interview with the Second Claimant in the presence of Ms. Pierre. Mr. Abraham took basic information from the Second Claimant as well as inquired of what transpired on 30 September 2020. After recording the notes of the interview, Mr. Abraham allowed the Second Claimant to read the notes with the assistance of Mr. Alexander and he also gave Ms. Pierre the notes to read over. After reading the notes, the Second Claimant, Mr. Alexander and Mr. Abraham all signed the interview notes.

[26] On 31 October 2020, Ms. Pierre informed Mr. Abraham and Mr. Nagassar that the Second Claimant was in possession of a Migrant Card No. MRF08147/2019 which was issued on 16 October 2019. This card was issued pursuant to **section 10(1) of the Immigration Act** granting her permission to enter, remain and work in Trinidad and Tobago for a period of six months. Another term and condition of the Migrant Card was for the Second Claimant to adhere to the laws of Trinidad and Tobago.

[27] On 31 October 2020, Mr. Nagassar also interviewed three other persons who came on the vessel with the Second and Third Claimants on 30 September 2020. These persons were also found to be COVID-19 positive when they were tested upon their entry; their

interviews, therefore, had to be delayed. Mr. Nagassar stated that these three persons indicated that the Second and Third Claimants came on the vessel together with them on 30 September 2020. Mr. Nagassar consulted with Mr. Harricoo who gave instructions to re-interview the other Venezuelan migrants who came on the vessel with the Second and Third Claimants on 30 September 2020. According to Mr. Harricoo, based on the discrepancies between the contents of the police report and the contents of the interview with the Second Claimant on 31 October 2020, it was necessary for the Immigration Division to conduct further investigations into the matter.

[28] On 4 November 2020, Mr. Harricoo instructed Mr. Abraham that it was necessary to have Immigration Officers interview the other Venezuelan migrants who came on the vessel on 30 September 2020. On 5 November 2020, Mr. Ravi Sirjue, Immigration Officer II and Ms. Resa Phillip-Baptiste, Immigration Officer II, together with Mr. Alexander, Interpreter, interviewed 14 Venezuelan migrants who came on 30 September 2020 on the same vessel as the Second and Third Claimants. All 14 persons were shown a photo of the Second and Third Claimants and confirmed that both the Second and Third Claimants came to Trinidad with them on board the same vessel that was intercepted by the police at Erin on 30 September 2020. On 5 November 2020, Mr. Haricoo instructed Mr. Abraham to have Reasons for Arrest and Detention issued to the Second Claimant. However, since Mr. Abraham was based in South Trinidad and Mr. Nagassar was attending a court hearing at the Chaguaramas heliport on 6 November 2020, Mr. Nagassar volunteered to serve same on the Second Claimant.

[29] On 6 November 2020, Mr. Riyad Mohammed, Interpreter, and Mr. Nagassar went to the Chaguaramas heliport and served the Second Claimant with the Reasons for Arrest and Detention. The Reasons for Arrest and Detention were read out to the Second Claimant and she said that she had no issues with the contents of same. The Second Claimant was informed that pursuant to the Notice stated thereunder, she was not obliged to sign the documents without her attorney present. However, she willingly signed same.

[30] After the Second Claimant signed the Reasons for Arrest and Detention, she requested to speak to Mr. Nagassar. The Second Claimant informed him that she entered Trinidad illegally on 30 September 2020 with her daughter, the Third Claimant. Mr. Nagassar

asked if the information she gave on 31 October 2020 at the interview with Mr. Abraham was incorrect to which she confirmed that it was incorrect and she apologized for lying. The Second Claimant stated that her attorney advised her not to admit that she departed the country on 26 August 2020 and re-entered on 30 September 2020. Mr. Nagassar asked the Second Claimant whether she was willing to put what she said to him in writing and she indicated that she had no problem in doing so. The statement was thereafter recorded by Mr. Nagassar in Spanish and translated into English by Mr. Mohammed.

[31] Mr. Nagassar compiled a file containing all the information regarding the Second Claimant and sent the file to the Chief Immigration Officer. The Chief Immigration Officer signed the file and Mr. Nagassar took the file to the Permanent Secretary who then submitted same to the Minister.

[32] On 13 November 2020, the Minister made the decision pursuant to **section 10(5) and 10(6) of the Immigration Act** to cancel the Second Claimant's Minister's Permit and deport her. The Deportation Order was signed on 13 November 2020 and served on the Second Claimant on 19 November 2020. Since the Third Claimant is a minor, she will be repatriated with her mother. According to Mr. Harricoo, the Deportation Order was issued to the Second Claimant because she breached the terms and conditions of the Minister's Permit issued to her. She did not remain in Trinidad and Tobago. Instead, she departed the country and unlawfully re-entered the country in contravention of **sections 18(1) and 40(a) of the Immigration Act** and in breach of the **Regulations 13(1) and 13(5) of the Immigration Regulations**. Furthermore, the Second Claimant was declared a member of the prohibited class pursuant to **section 8(1)(p) and (q) of the Immigration Act**. The Second Claimant was also in breach of **Regulations 6(1) and 6(2) of the Public Health [2019 Novel Coronavirus (2019-nCov)] (No. 14) Regulations issued by Legal Notice, No. 93 of the Public Health Ordinance**.

[33] After the filing of affidavits in support of both the Constitutional Motion and the Application for Interim Relief by the Claimants and the affidavits in response to the Application for Interim Relief by the Defendants, on 3 December 2020, the Claimants filed a Notice of Application to cross-examine Mr. Gewan Harricoo, Mr. Fareed Abraham and Mr. Videsh Nagassar on their affidavits filed into Court.

[34] At the hearing of the application for interim relief on 8 December 2020 via the Microsoft Teams Virtual Platform, the Court considered the Claimants' application for cross-examination of the three deponents. Both Counsel for the Claimants and Defendants made brief submissions in relation to the Application to cross-examine. The Court resolved that it was not appropriate on an interim application for interim injunctive relief for the Court to resolve any dispute of facts. Counsel for the Claimants conceded that it was wise to withdraw the application to cross-examine the deponents but gave notice that he will give consideration to filing a similar application at the appropriate stage of the proceedings. The Court, therefore, granted the Claimants permission to withdraw the Application to cross-examine filed on 3 December 2020.

[35] Moreover, before the hearing of the Application for Interim Relief on 8 December 2020, Counsel for the Claimants had filed Speaking Notes on 21 November 2020. On 10 December 2020, Counsel for the Defendants, by email to the Court's Judicial Support Officer, sought permission from the Court to file Speaking Notes in support of the submissions made at the hearing on 8 December 2020. By response email, Counsel for the Claimants objected to the filing of any Speaking Note by the Defendants on the basis that the Defendants had adequate time to prepare to file same prior to the hearing on 8 December 2020. He stated his concern that to now seek to file submissions would delay the matter.

[36] The Court considered the request made by the Defendants and the objections made by the Claimants. The Court permitted the Defendants to file their Speaking Notes on 11 December on or before 4:00pm. The Claimants were allowed to file a Reply on 14 December 2020 on or before 4:00pm. The Defendants filed their Speaking Notes on 11 December 2020. However, the Claimants did not file any Reply to the Speaking Notes.

IV. Law on Injunction

[37] As correctly stated by Madam Justice M. Mohammed in **O'Neil Williams v The Attorney General of Trinidad and Tobago and The Chief Immigration Officer**[1], the granting of an interlocutory injunction is a matter of discretion and depends on the facts of the case which consist of the untested affidavit evidence presented. In

[1] CV2019-03304

determining the application, the Court addressed its mind to the principles that ought to be considered when it has to determine whether or not interim injunctive relief should be granted. The Court noted the law as outlined in **Basdeo Panday v Narad Sohan, Christopher Ramlal and Reiza Mohamdally**[2] at paragraphs 35 to 40, 44 and 52 to 53 where this Court stated as follows:

"[35] The approach to be adopted by the Court in hearing an application for the grant or discharge of an interim injunction was given by Lord Diplock in the House of Lords decision in **American Cyanamid Co v Ethicon Ltd [1975] A.C. 396** as follows:

"The court no doubt must be satisfied that the claim is not frivolous or vexatious, in other words, ***that there is a serious question to be tried****. It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial…****So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.****"*

As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing a permanent injunction, ***he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at the common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory application should be granted, however strong the plaintiff's claim appeared to be at that stage.****" [Emphasis added].*

[2] CV2019-01314

[36] The Court must determine where the greater risk of injustice would lie, in granting or withholding the injunction and regard must be had to the relative strength of the parties' case in determining this question: **Jet Pak Services Ltd v BWIA International Airport Ltd (1988) 55 WIR 362** and **East Coast Drilling & Workover Services Ltd v Petroleum Company of Trinidad and Tobago (2000) 58 WIR 351.**

[37] Archie J (as he then was) in **Venture Production [Trinidad] Limited v Atlantic LNG Company of Trinidad and Tobago H.C. 1947 of 2003** stated as follows:

"The law in Trinidad and Tobago has been established by the decisions of the Court of Appeal in Jetpak Services Limited v. BWIA International Airways Limited (1998) 55 WIR 362 and East Coast Drilling v. Petroleum (2000) 58 WIR 351. The plaintiff must first establish that there is a serious issue to be tried. It used to be thought that the inquiry then proceeded sequentially through a consideration of whether the plaintiff could be adequately compensated by an award of damages; whether the defendant would be able to pay; whether, if the plaintiff ultimately fails, the defendant would be adequately compensated under the plaintiff's undertaking; whether the plaintiff would be in a position to pay and finally an assessment of the balance of convenience.

The new approach requires a simultaneous consideration of all relevant factors and a degree of interplay between various factors. The plaintiff is not necessarily denied relief by the consideration of any single factor in isolation. ***The question, which must be posed, is where does the balance of justice lie? An assessment of the balance of justice requires a comparative assessment of (i) the quantum of the risk involved in granting or refusing the injunction and (ii) the severity of the consequences that will flow from following either course.****" [Emphasis mine]*

[38] In **National Commercial Bank Jamaica Ltd v Olint Corp. Ltd (Jamaica) [2009] 1 WLR 1405**, the Board of the Privy Council was of the view that it was wrong to approach requests for interlocutory injunctions with a box-ticking approach. Lord Hoffman stated thus-

"The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. ***At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result.*** *As the House of Lords pointed out in American Cyanamid Co. v. Ethicon Ltd. [1975] AC 396, that means, that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts of omissions of the defendant pending trial and the cross-undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted.*

In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. ***The basic principle is that the court should take which course seems likely to cause the least irremediable prejudice to one party or the other****. This is an assessment in which, as Lord Diplock said in the American Cyanamid case [1975] AC 396, 408:* ***'It would be unwise to attempt to even list all the various matters which may need to be taken into consideration in deciding where the balance, lies, let alone to suggest the relative weight to be attached to them'****." [Emphasis mine]*

[39] Consequently, it is apparent that there are three questions to ask when an application for an interlocutory injunction is made: (i) whether there is a serious issue to be tried; (ii) if the answer to that question is yes, then would damages be an adequate remedy for the party injured by the Court's grant or failure to grant the injunction; and (iii) if there is doubt as to whether damages would be adequate, where does the balance of convenience lie?

Serious issue to be tried

[40] In deciding whether there is a serious issue to be tried, the Court must consider the following principles derived from the learning in **American Cyanamid (supra)**:

(i) There are no fixed rules as to when an interlocutory injunction should not be granted and/or continued;

(ii) The evidence available to the Court at the hearing of the application for an interlocutory application is incomplete. It is given on affidavit and has not been tested by cross-examination;

(iii)It is no part of the Court's function at this stage to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed and mature considerations. These are matters to be dealt with at the trial.

Damages as an adequate remedy

[44] At page 408 of **American Cyanamid (supra)**, guidance was given on the process the Court should adopt in determining whether damages are an adequate remedy:

"As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. ***If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted****, however strong the plaintiff's claim appeared to be at that stage.* ***If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being***

prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction*." [Emphasis mine]*

Balance of Convenience

[52] It has been suggested that it is unwise to attempt to list the factors that fall for consideration under this issue. However, Lord Diplock noted in **American Cyanamid (supra)** that-

"If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial."

[53] Further, in a more recent exposition of the relevant principles to be applied in granting interim injunctive relief, Lord Hoffman stated in the Privy Council decision of **National Commercial Bank Jamaica Ltd v Olint Corporation Ltd (supra)** that -

"In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether the granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. ***The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other…****"*

"…Among the matters which the court may take into account are the prejudice which the plaintiff may suffer if no injunction is granted or the defendant may suffer if it is; the likelihood of such prejudice actually occurring; the extent to which it may be compensated by an award of damages or enforcement of the cross-undertaking; the likelihood of either party being able to satisfy such an

award; ***and the likelihood that the injunction will turn out to have been wrongly granted or withheld, that is to say, the court's opinion of the relative strength of the parties' cases."*** *[Emphasis mine]*"

[38] The object of the injunction requested by Claimants is to prevent the Second Defendant from deporting the Second Claimant and by extension, the Third Claimant pursuant to the Deportation Order dated 13 November 2020 and for the Second and Third Claimants to be released on an Order of Supervision pending the determination of the Constitutional Motion filed on 20 November 2020. I shall therefore apply the tests derived from the leading authorities to be considered in ascertaining whether or not the instant application for interim injunctive relief should be granted.

Is there a serious issue to be tried?

[39] Counsel for the Claimants, Mr. Masaisai, submitted that there is a serious issue to be tried in the Constitutional Motion and informed Court that he would be relying on his submissions in his Speaking Note filed on 21 November 2020 as well as his oral submissions. Counsel argued that the issues to be tried are issues which revolve around the Republican Constitution. Counsel, in his oral submissions to the Court on 8 December 2020, contested the manner in which the deportation order was issued. He argued that the failure to hold a special inquiry prior to the issuance of the deportation order resulted in a breach of the Claimants' constitutional rights. Mr. Masaisai submitted that if placed under an order of supervision, the Immigration Department can facilitate a special inquiry concerning any breaches of the Immigration Act. Counsel added that the special inquiry is important as it is a quasi-judicial tribunal which determines one's rights, and whether or not one should remain in Trinidad and Tobago or be deported. Counsel further submitted that on the prescribed form in terms of the deportation order before the Court, there is no section that deals with the right of an appeal.

[40] Counsel for the Defendants, Mr. Armour SC, contended that on the face of the pleadings, the deportation order itself has not been challenged; thus it remains valid. Therefore, in the absence of such a challenge, there is no serious issue to be tried before the Court. Mr. Armour argued that the relief claimed at number 11 of the Fixed Date Claim Form does not amount to any or any sufficient challenge to the deportation order as it failed

to identify with any degree of particularity the issues taken with the deportation order itself. Counsel, therefore, submitted that failure of the Claimants to mount any or any sufficient challenge to the deportation order should be a complete answer to the application for interim relief as it makes the short point that there is no serious issue to be tried. Counsel contended that there is a valid and enforceable deportation order before the Court which is entirely within the province of the Minister of National Security as well as within the legislative scheme of the laws of Trinidad and Tobago, in particular, the Immigration Act.

[41] The Deportation Order dated 13 November 2020 and served on the Second Claimant on 19 November 2020 stated two reasons for the Second Claimant to be detained and deported to Venezuela, namely: (i) the Second Claimant is neither a citizen nor resident of Trinidad and Tobago; and (ii) the Second Claimant is a person described in **section 8(1)(p) and (q) of the Immigration Act**.

[42] In determining this issue, the Court finds it necessary to highlight the relevant sections of the **Immigration Act** for the purposes of this decision. **Section 8 (1) (a) – (q) of the Immigration Act** set out the several classes of person who are prohibited from entering Trinidad and Tobago. Two of those prohibited classes relevant to this decision are: (i) persons who cannot or do not fulfil or comply with any of the conditions or requirements of this Act or the Regulations or any orders lawfully made or given under this Act or the Regulations **[section 8(1)(p)]**; and (ii) any person who from information or advice which in the opinion of the Minister is reliable information or advice is likely to be an undesirable inhabitant of, or visitor to, Trinidad and Tobago **[section 8(1)(q)]**.

[43] This Court in **Jose Machado v The Chief Immigration Officer and The Attorney General of Trinidad and Tobago**[3] referred to the relevant provisions at paragraphs 30 to 36 as follows:

> *"[30]* ***Section 10(1) of the Immigration Act*** *makes provision for the Minister to issue a permit for a person to enter and remain in Trinidad and Tobago. The permit shall be expressed to be in force for a specified period not exceeding 12 months. During the time that the permit is in force such permit stays the*

[3] CV2020-0118

execution of any deportation order that may have been made against the person concerned ***[section 10(2)]****. The Minister may extend, vary or cancel a permit in writing at any time* ***[section 10(5)]****. The Minister, upon the cancellation or expiration of a permit, may make a deportation order with respect to the person concerned and such person shall have no right of appeal from the deportation order and shall be deported as soon as practicable* ***[section 10(6)]****.*

[31] ***Part II of the Immigration Act*** *concerns administration by Immigration Officers.* ***Section 13 of the Immigration Act*** *specifies that Immigration Officers in charge of a port of entry are Special Inquiry Officers who have the authority to inquire into and determine whether any person shall be admitted into Trinidad and Tobago or allowed to remain in Trinidad and Tobago or shall be deported. Both* ***sections 14 and 15 of the Immigration Act*** *confer, on the Minister, Chief Immigration Officer and Special Inquiry Officers, the authority to detain.* ***Section 14*** *provides the mechanism to do so with a warrant and* ***section 15*** *without a warrant or direction. Nonetheless, whether the power that is being exercised is under* ***section 14 or 15****, importantly,* ***the purpose of exercising the power to detain is to hold an inquiry or for deportation*** *[Emphasis mine]. An inquiry is the commencement of deportation proceedings and the relevant process is set out in* ***sections 21 to 27 of the Immigration Act*** *and* ***Regulation 25 of the Immigration Regulations****.*

[32] ***Section 16 of the Immigration Act*** *makes provision for detention of a person pending inquiry, examination, appeal or a deportation or rejection order at an immigration station or other place satisfactory to the Minister.* ***Section 17 of the Immigration Act****, on the other hand, makes provision for conditional release or an order of supervision for a person taken into custody or detained under such conditions, respecting the time and place at which he will report for examination, inquiry, deportation or rejection on payment of a security deposit or other conditions.* ***Section 18 of the Immigration Act*** *provides for examination by an Immigration Officer of persons seeking admission or entry into Trinidad and Tobago as to whether he is or is not admissible.*

*[33] Under **section 21(1) of the Immigration Act**, after examination of a person seeking to enter into Trinidad and Tobago, where an Immigration Officer is of the opinion that it would or may be contrary to a provision in the Act or the Regulations to grant admission to such a person, he may either (i) make an order for the rejection of such person; or (ii) cause such person to be detained pending the submission of a report to a Special Inquiry.*

*[34] **Section 22 of the Immigration Act** makes provision for written reports on persons in Trinidad and Tobago to be sent to the Minister and to the Chief Immigration Officer. A written report is to be submitted to the Minister in respect of (a) any person, other than a citizen of Trinidad and Tobago, who engages in, advocates or is a member of, or associated with any organisation, group or body of any kind that engages in or advocates subversion by force or other means of democratic Government, institutions or processes; (b) any person, other than a citizen of Trinidad and Tobago, who, if in Trinidad and Tobago has, by a Court of competent jurisdiction, been convicted of any offence involving disaffection or disloyalty to the State; and (c) any person, other than a citizen of Trinidad and Tobago, who, if out of Trinidad and Tobago, engages in espionage, sabotage or any activity detrimental to the security of Trinidad and Tobago.*

[35] Another written report is to be submitted to the Chief Immigration Officer in respect to (d) any person, other than a citizen of Trinidad and Tobago, who is convicted of an offence for the violation of section 5 of the Dangerous Drugs Act; (e) any person who being a resident is alleged to have lost that status by reason of section 7(2)(b) or (4); (f) any person, who, being a permitted entrant, has been declared by the Minister to have ceased to be such a permitted entrant under section 9(4); (g) any person other than a citizen or resident of Trinidad and Tobago who has become a charge on public funds; (h) any person, other than a citizen of Trinidad and Tobago, who counsels, aids, or abets others to remain in the country illegally; and (i) any person other than a citizen of Trinidad and Tobago who either before or after the commencement of this Act came into Trinidad and Tobago at any place other than a port of entry or has

eluded examination or inquiry under this Act. The section, however, is silent on whether the written report has to be sent to the Applicant.

[36] ***The Immigration Act*** *contemplates the holding of a Special Inquiry by an Immigration Officer who is designated a Special Inquiry Officer. The manner in which the hearing is to be conducted is provided for by* ***sections 24 and 25 of the Immigration Act****. At the hearing, the Special Inquiry Officer may (i) admit into or allow the person the subject of the inquiry to remain in Trinidad and Tobago [****section 25(2)****]; (ii) if the person admits the factual allegations and is willing to leave Trinidad and Tobago voluntarily and at no expense to the Government and the Special Inquiry Officer is satisfied that the case is genuine, the Special Inquiry Officer may issue the prescribed form for his voluntary departure [****section 24(5)****]; or (iii) make an order for deportation.* ***Section 25(4) of the Immigration Act*** *provides that upon making an adverse decision, the Special Inquiry Officer is mandated to make a deportation order."*

[44] Another section in the Immigration Act which is relevant is **section 11 of the Immigration Act** where persons who enter this country not in accordance with the **Immigration Act** are subject to deportation. It reads as follows:

*"**11.** Nothing in this Part shall be construed as conferring any right to be or to remain in Trinidad and Tobago on any person who—*

(a) either before or after the commencement of this Act has come into Trinidad and Tobago otherwise than in accordance with the former Ordinance or this Act, as the case may be; or

(b) is at the commencement of this Act a prohibited immigrant within the meaning of the former Ordinance,

and the Minister may make a deportation order against such person and such person shall have no right of appeal therefrom and shall be deported as soon as possible."

[45] On a closer examination of **section 10 of the Immigration Act** as it concerns entry under permits to Trinidad and Tobago, it does not provide for the conduct of any special inquiry before the issuance of a deportation order by the Minister. At **section 10(4) of the Immigration Act**, the Minister has a discretion to attach terms and conditions to the

permit and if any person contravenes any such term or condition, the Minister may cancel such permit. On a literal interpretation of **section 10(6) of the Immigration Act**, upon the cancellation of a permit, the Minister may make a deportation order against the person concerned and that person has no right of appeal from the deportation order. There is no requirement that a special inquiry ought to be conducted if the holder of a permit contravenes the terms and conditions attached thereto. Further, there is no mention that a special inquiry ought to be conducted before the Minister makes a deportation order.

[46] Kokaram J (as he then was) in **Hafiz Rashid and Inayat Fatima v The Chief Immigration Officer and The Minister of National Security**[4], stated as follows:

> *"If indeed the First Defendant intends to deport the couple, absent any deportation order issued by the Minister, then fundamental fairness requires that the Defendants comport with the requirements of the legislation and convene a Special Inquiry to determine properly the immigrant status of the couple. At the appropriate stage the Defendants will take into account, of course, all the circumstances of their residency in this country, their contributions and support from the community."*

[47] It appears, therefore, that a special inquiry ought to be conducted in the absence of a deportation order to determine the status of an immigrant. Special Inquiries are governed by **sections 21-27 of the Immigration Act**. These Inquiries are a specific process to enquire into the issue of whether a person is to be deported or granted admission. **Sections 18 and 22(1) of the Immigration Act** ought to be also considered since these provisions concern examination of persons seeking admission or entry and provide for when an Immigration Officer should submit a report to a Special Inquiry Officer. The sections read as follows:

> *"**18.** (1) Every person seeking admission shall first appear before an immigration officer at a port of entry or at such other place as may be designated by an immigration officer in charge of the port of entry for examination as to whether he is or is not admissible."*

[4] CV2017-01513

(2) Every person shall answer truthfully all questions put to him by an immigration officer at an examination and his failure to do so shall be forthwith reported by the immigration officer to a Special Inquiry Officer and shall be sufficient ground for deportation where so ordered by the Special Inquiry Officer.

(3) Unless the examining immigration officer is of the opinion that it would or may be contrary to a provision of this Act or the Regulations to admit a person examined by him, he shall, after such examination, immediately grant admission to such person.

***21.** (1) Where an immigration officer, after examination of a person seeking to enter into Trinidad and Tobago, is of opinion that it would or may be contrary to a provision of this Act or the Regulations to grant admission to such person into Trinidad and Tobago, he may either—*

(a) make an order for the rejection of such person; or

(b) cause such person to be detained pending the submission of a report to a Special Inquiry Officer."

[48] **Section 23 of the Immigration Act** provides for the powers of a Special Inquiry Officer as follows:

*"**23.** (1) Where a Special Inquiry Officer receives a report under section 18 he may admit such person into Trinidad and Tobago or may cause such person to be detained for immediate inquiry under this Act.*

(2) Subject to any Order or direction by the Minister, the Chief Immigration Officer shall, upon receiving a written report under section 22 and where he considers that an inquiry is warranted, cause an inquiry to be held concerning the person respecting whom the report was made.

(3) Where a Special Inquiry Officer receives a report under section 21 with respect to a person seeking admission into Trinidad and Tobago who has been detained he shall hold an inquiry concerning such person."

[49] On a literal construction of the above sections of the Immigration Act, it appears that a special inquiry would only be conducted if an Immigration Officer is under the opinion that a person is in contravention of the **Immigration Act** or the **Immigration**

Regulations. The Immigration Officer would submit a report to a Special Inquiry Officer to conduct a further examination of this person.

[50] The Court takes judicial notice that as a result of the influx of Venezuelan nationals to the shores of Trinidad and Tobago, the Government of Trinidad and Tobago attempted to register all Venezuelan nationals in Trinidad and Tobago whether legally or illegally during the period 31 May 2019 to 14 June 2019. Furthermore, Venezuelans wishing to enter Trinidad and Tobago legally must apply for a Visa to do so. The implementation of visa requirement for Venezuelan nationals travelling to Trinidad and Tobago came into effect on 17 June 2019 after the amnesty period for registration of Venezuelan nationals in Trinidad and Tobago ended on 14 June 2019.

[51] From the affidavit evidence of the Immigration Officers involved in this matter, the Deportation Order was issued to the Second Claimant on the basis that her Minister's Permit was cancelled due to her breaching the terms and conditions attached thereto; she departed the country on 26 August 2020 and unlawfully re-entered on 30 September 2020 along with her daughter at Erin, South Trinidad. She did not have any valid documents on her person. The Deportation Order was issued pursuant to **section 10(6) of the Immigration Act**.

[52] In the matter at bar, the Second Claimant admitted to an Immigration Officer and signed a sworn statement stating that she departed the country on 26 August 2020 and re-entered illegally on 30 September 2020 with her daughter. In this regard, the Immigration Officer had all the relevant information (police report, interview notes of the Second Claimant on 31 October 2020, signed statements of Venezuelan nationals and the signed statement of the Second Claimant on 6 November 2020) required in making a decision. The Immigration Officer caused the file to be sent to the Chief Immigration Officer which was then forwarded to the Minister. From the admission made by the Second Claimant, and all the supporting evidence presented to the Minister, it would have been clear to the Minister that the Second Claimant had breached the terms and conditions of the Minister's Permit. The Permit issued to the Second Claimant clearly stated the terms and conditions attached to it. The Permit also stated that it may be cancelled if the holder contravenes the conditions stated therein. This was in fact done on 13 November 2020; the Minister caused the Permit to be cancelled. As a result,

it was under the discretion of the Minister to make a deportation order against the Second Claimant pursuant to **section 10(6) of the Immigration Act**. In such a circumstance, there is no requirement for the conduct of a special inquiry.

[53] Having regard to the law as set out above, the Court is of the view that the Claimants' submission that there ought to have been a special inquiry before the deportation order was issued is without merit. Pursuant to the provisions of the **Immigration Act**, the Court feels with a high degree of assurance that the Defendants may be able to establish at the trial that the process under **sections 10 and 11 of the Immigration Act** do not involve the holding of a special inquiry before the issuance of a deportation order. The argument that a migrant who breaches the terms and conditions of a permit and who departs and unlawfully re-enters the jurisdiction infringes upon **sections 18(1) and 40(a) of the Immigration Act** is not one that is devoid of merit and the argument that such a person pursuant to the provisions of the **Immigration Act** should be subjected to deportation as soon as possible, is one which has a reasonable prospect of success.

[54] I will now turn to the merits of the claims that the Deportation Order breaches the Claimants' constitutional rights under **sections 4(a), 4(b), 4(c), 5(2)(a), 5(2)(c)(i), 5(2)(c)(ii), 5(2)(e) and 5(2)(h) of the Constitution**. These sections read as follows:

> *"***4***. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:*
>
> *(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;*
>
> *(b) the right of the individual to equality before the law and the protection of the law;*
>
> *(c) the right of the individual to respect for his private and family life;*
>
> ***5****. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.*

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

(c) deprive a person who has been arrested or detained—

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

[55] On the affidavit evidence before the Court, the Court is not satisfied that it is likely that it will be established at the trial of the constitutional motion that the Claimants' constitutional rights have been breached for the following reasons:

1. The Second Claimant and Third Claimants were not deprived of their liberty without due process by the failure of conducting a special inquiry. **Section 10(6) of the Immigration Act** permitted the Minister to cancel the Permit and make a deportation order as a consequence of the Second Claimant's contravention of the terms and conditions of the Minister's Permit. Though **section 10(6) and section 11 of the Immigration Act** contravene **section 4 of the Constitution** which states that a person is not to be deprived of his liberty without due process; since it was existing law at the time of the proclamation of the Constitution of the Republic of Trinidad and Tobago, it was validated as a pre-existing law by virtue of **section 6 of the Constitution**. See **Francisco Javier Polanco Valerio and Johan Rodolfo Custodio Santana v The Attorney General of Trinidad And Tobago**[5]. Additionally, the Second and Third Claimants had to be detained

[5] CV2017-01766

and quarantined as a result of the Second Claimant's positive COVID-19 test result.

2. There is no evidence that the Second and Third Claimants' rights to equality before the law and the protection of the law were breached. At this stage of the proceedings, there was no evidence to establish that they have been or would be treated differently from some other similarly circumstanced person or persons. Additionally, as stated above, **section 6 of the Constitution** validates **sections 10(6) and 11 of the Immigration Act** as pre-existing law.
3. There is no evidence before the Court that the Claimants' rights to private and family life have been breached. The First and Second Claimant stated that they are the common law spouse of each other. However, they have only been together for 1 year. The **Cohabitational Relationships Act, Chap 45:55** provides that "cohabitational relationship" means the relationship between cohabitants, who not being married to each other are living or have lived together as husband and wife on a bona fide domestic basis. There is no evidence on the living conditions and/or arrangements between the First and Second Claimants. Furthermore, a cohabitational relationship is established by cogent evidence showing cohabitation for a period of at least 5 years: **section 7 of the Cohabitational Relationships Act**. Additionally, the Second and Third Claimants had to be detained and quarantined as a result of the Second Claimant's positive COVID-19 test results.
4. There is no evidence at this stage of the proceedings that the Second and Third Claimants' rights not to be arbitrarily detained were breached. They had to be detained and quarantined as a result of the Second Claimant's positive COVID-19 test results. Being subjected to quarantine is currently the law when a person is tested positive for COVID-19 as provided for in the **Public Health [2019 Novel Coronavirus (2019-nCoV)] Regulations 2020**.
5. There is no evidence that the Second and Third Claimants were deprived of the right to be informed promptly and with sufficient clarity of the reason for their arrest and detention. The duty to inform an arrestee of the reason for his arrest is a constitutional right. The right to be informed promptly of the reason for his arrest is also a common law right: **Christie v Leachinsky**[6]. However, where the

[6] [1947] 1 All ER 567

circumstances are such that the arrested person must know the general nature of the alleged offence, the duty does not exist: **Christie v Leachinsky (supra)**. The Second Claimants' evidence is that she saw a group of Venezuelan nationals with police officers and she went over to one of the women in the group. She also stated that one of the police officers asked her for documentation. In this regard, the Second Claimant ought to have known the general nature of the offence for which she was arrested and detained; illegal entry into Trinidad and Tobago.

6. There is no evidence that the Second and Third Claimants were deprived of the right to retain and instruct without delay a legal adviser of their own choice and hold communication with their legal adviser. In fact, the Second Claimant admitted that she was tested positive for COVID-19 and had to be detained. The Quarantine direction dated 8 October 2020 stated that she had to be detained for a period of 28 days from 30 September 2020; the quarantine period ended on or about 27 or 28 October. Therefore, the Second Claimant could not have communicated with a legal adviser during the time that she was quarantined. Nevertheless, the First Claimant did retain an attorney at law for himself and on behalf of the Second and Third Claimants; he was communicating with the attorney-at-law since 7 October 2020 on behalf of all 3 Claimants. It is also admitted that the Second Claimant was allowed to be advised by her attorney at law before any interview was conducted.
7. As stated in (1) above, there is no prerequisite for a special inquiry to be conducted when the Minister cancels a permit and makes a deportation order. Though this may be considered unconstitutional, it is a pre-existing law and is saved by **section 6 of the Constitution**. Accordingly, the Second Claimant was not denied the right to a fair hearing in accordance with the principles of fundamental justice for the determination of her rights and freedoms. Moreover, in the Court's view, there was no need to inform the Second Claimant of her right to an attorney at law when she was issued the deportation order since an attorney was already retained for her by the First Claimant.
8. There is no evidence that the Second Claimant was deprived of the right to such procedural provisions as are necessary for giving effect to the rights and freedoms enshrined in **sections 4 and 5 of the Constitution**. As stated above, a

special inquiry is not required when the Minister makes a deportation order pursuant to **section 10(6) of the Immigration Act**.

[56] In the above regard, the Court concludes that there is no serious issue to be tried in the constitutional motion since the Claimants have failed to provide at this stage of the proceedings satisfactory evidence to support a likelihood of success on their Claim. In examining the strength of the parties' evidence, the Court is of the view that the Claimants' constitutional claim is relatively weak when compared to the Defendants' position. The Defendants are likely to have a stronger case at trial and have a reasonable prospect of success. As stated by the House of Lords decision in **American Cyanamid**, *"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial…"*

Are damages an adequate remedy?

[57] The Claimants submitted that based on the reliefs sought, damages would not be an adequate remedy for the Claimants given the evidence in support of the Application. Nonetheless, the First Claimant gave an undertaking in damages in his affidavit in support of the application for any loss that the Defendants are likely to suffer if the application was wrongly granted.

[58] However, there is no evidence in the Claimants' affidavit indicating how damages would not be an adequate remedy if the Claimants are successful in pursuing the breaches of their constitutional rights. Nevertheless, in addition to the declarations which the Claimants seek for the breaches of their constitutional rights, the Claimants also seek monetary compensation including aggravated, exemplary and punitive damages for the infringement of their fundamental rights. In this Court's view, if damages were not an adequate remedy for the alleged breaches, the Claimants would not be seeking to pursue damages as a relief.

[59] The Claimants have not stated whether they are in a financial position to satisfy an award of damages in the event of any interim relief being wrongly granted. On the other hand,

however, considering that the First Defendant is the Attorney General sued pursuant to the **State Liability and Proceedings Act**, it is likely that the First Defendant is in a financial position to satisfy an award of damages should the Defendants be entitled to such.

[60] In this regard, the Court is of the opinion that damages would be an adequate form of compensation should the Court not grant the injunction. However, there is no general rule that if damages are an adequate remedy, an injunction should not be granted. All the circumstances must be taken into account.

Where does the greater risk of injustice lie?

[61] The Court must also take into account the purpose of the interim relief sought and as Lord Diplock stated at page 406 in **American Cyanamid (supra)**:

> *"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies."*

[62] In **R v Secretary of State for Transport ex parte Factortame Ltd. and Others (No. 2)**[7], Lord Bridge at 858-B-D stated as follows:

> *"A decision to grant or withhold interim relief in the protection of disputed rights at a time when the merits of the dispute cannot be finally resolved must always involve an element of risk. If, in the end, the claimant succeeds in a case where interim relief has been refused, he will have suffered an injustice. If, in the end, he fails in a case where interim relief has been granted, injustice will have been done to the other party. The objective which underlies the principles*

[7] [1990] 3 WLR 818

by which the discretion is to be guided must always be to ensure that the court shall choose the course which, in all the circumstances, appears to offer the best prospect that eventual injustice will be avoided or minimised. Questions as to the adequacy of an alternative remedy in damages to the party claiming injunctive relief and of a cross-undertaking in damages to the party against whom the relief is sought play a primary role in assisting the court to determine which course offers the best prospect that injustice may be avoided or minimised."

[63] In **Factortame**, at page 870 G – page 871 A, Lord Goff stated that where a party is a public authority performing duties to the public,

"... particular stress should be placed upon the importance of upholding the law of the land, in the public interest, bearing in mind the need for stability in our society, and the duty placed upon certain authorities to enforce the law in the public interest. This is of itself an important factor to be weighed in the balance when assessing the balance of convenience. So if a public authority seeks to enforce what is on its face the law of the land, and the person against whom such action is taken challenges the validity of that law, matters of considerable weight have to be put into the balance to outweigh the desirability of enforcing, in the public interest, what is on the face of it the law, and so justify the refusal of an interim injunction in favour of the authority, or to render it just or convenient to restrain the authority for the time being from enforcing the law."

[64] Lord Goff further stated at page 871 E-H in **Factortame**:

"I myself am of the opinion that in these cases, as in others, the discretion conferred upon the court cannot be fettered by a rule; I respectively doubt that there is any rule that, in cases such as these, a party challenging the validity of a law must – to resist an application for an interim injunction against him or to obtain an interim injunction restraining the enforcement of the law- show a strong prima facie case that the law is invalid. It is impossible to foresee what cases may yet come before the courts; I cannot dismiss from my mind the possibility (no doubt remote) that such a party may suffer such serious and irreparable harm in the event of the law being enforced against him that it may be just or convenient to restrain its enforcement by an interim injunction even

though so heavy a burden has not been discharged by him. In the end it is one for the discretion of the court, taking into account all the circumstances of the case. Even so, the court should not restrain a public authority by interim injunction from enforcing an apparently authentic law unless it is satisfied, having regard to all the circumstances that the challenge to validity of the law is, prima facie, so firmly based as to justify so exceptional a course being taken."

[65] Madam Justice M. Mohammed in **O'Neil Williams (supra)** in considering where the greater risk of injustice lies, stated as follows:

"110. In the text **Judicial Remedies in Public Law** at paragraph 8-032 under the heading "Balance of Convenience: the wider public interest" the authors stated that:

"More significantly the public interest frequently cannot be measured in terms of financial consequences. The public body will have taken the decision or adopted the measure in the exercise of powers which it is meant to use for the public good. The courts must take into account that wider public interest in deciding whether to grant interim relief. The courts will be placed in the difficult position of trying to place a value on the public interest and balancing that against the financial or other consequences suffered by the individual."

111. Similar sentiments were echoed by the authors in **De Smith's Judicial Review** at paragraph 18-015 where it is stated:

"Other factors that may be taken into account in determining the balance of convenience include the importance of upholding the law of the land and the duty placed on certain authorities to enforce the law in the public interest."

[66] As stated by Seepersad J in **VDL v The Attorney General of Trinidad and Tobago (supra)**,

"It is a fact that due to the Covid-19 pandemic, regulations have been made and executive decisions have been taken and our borders are currently closed to both nationals abroad and non-nationals. Persons wishing to enter this jurisdiction have to apply for exemptions and the Court takes judicial notice of

the fact that thousands of nationals and residents currently have exemption applications pending before the Ministry of National Security. Consequently any entry by migrants through illegal points of entry and without the requisite exemption certificate infringes the law."

[67] As stated by this Court in **Jose Machado (supra)** and equally applicable in this case, "*The Immigration Act, as far as this Court is concerned, is part of the immune system of this country. At a time when this country and the world at large are facing a pandemic, inflicted by the novel coronavirus now known as Covid-19, strict adherence to the provisions and intention of the Act creates the proverbial vaccine which inoculates the citizenry of this country from the fatal consequences of the pandemic. Control, therefore, by the Immigration Department of those who can enter and remain in this country, becomes extremely vital*."

[68] Having regard to the above, in this Court's view, the greater risk of injustice lies with granting the interim relief sought. It is not in the public interest to grant the interim reliefs. The public interest in the context of the matter at bar means the Second Defendant's ability to comply and enforce the law in the public interest. In the case at bar, the Second Claimant illegally entered this jurisdiction initially sometime in April 2019 through an illegal point of entry. However, she was issued a Minister's Permit on 16 October 2019. In a signed sworn statement dated 6 November 2020, she admitted to an Immigration Officer that she departed the country on 26 August 2020 and re-entered illegally for a second time on 30 September 2020. As a result of her second entry, she breached the terms and conditions attached to her Minister's Permit. This led to the Minister cancelling same and issuing a deportation order against her. Furthermore, on the detention of the Second Claimant, she was tested positive for COVID-19.

[69] In this Court's view, the facts as set out, if true, point to a blatant disregard for the local laws of this country and highly irresponsible behaviour in this current state of a pandemic. While the dispute of the facts is to be tested at trial to ascertain the truth, the signed admission by the Second Claimant provides prima facie evidence that adds weight to the Defendants' case. There is therefore an uphill challenge by the Second Claimant to negate the strong evidence presented thus far by the Defendants. A crucial

question to be determined would be whether the 3 named Immigration Officers as well as the 2 named Interpreters have all conspired to perpetrate an injustice to the Second and Third Claimants.

[70] The Court notes that it is the obligation of the Government to secure the borders and the public interest of its citizenry. In the case at bar, this public interest element is the Second Defendant's ability to protect our borders and by extension the citizenry of this Republic from harm or threat of harm, which is now further compounded by the Pandemic. Based on facts put forward in this matter, the Second Claimant tested positive for COVID-19 – which is the very reason why our own nationals cannot return home without exemptions and why the entire world is in its current state of crisis.

[71] The Court is therefore of the view that it would not be just or convenient to grant the interim reliefs sought so as to restrain the State from enforcing the existing domestic laws of the country. Additionally, the Court is not satisfied that the matters raised in the constitutional motion have a likelihood of success for the Court to adopt the exceptional course of restraining the Second Defendant from enforcing the applicable domestic law.

[72] Furthermore, no prejudice will be suffered by the Second and Third Claimants in the constitutional motion if they are deported. The substantive constitutional matter can proceed without the Second and Third Claimants' physical presence. As Madam Justice M. Mohammed stated in **O'Neil Williams (supra)**, if cross-examination is permitted (which is only in exceptional circumstances), such cross-examination can be conducted via videoconferencing pursuant to **Part 25.1(1)(k) of the Civil Proceedings Rules**. In fact, during this pandemic, the Courts in this jurisdiction and indeed throughout the world are currently utilizing several virtual platforms including Skype, Zoom, Google Meet and Microsoft Teams to conduct hearings so as to comply with health protocols, particularly, social distancing, with the aim of preventing the spread of COVID-19. Indeed, all hearings thus far in this matter have been on the Virtual Platform of Microsoft Teams. Furthermore, if any further affidavits are needed, same can be scanned and emailed to the Claimants who can have them notarized and transmitted by registered post or even electronically now to their attorneys-at-law. Moreover, if the Claimants are found to be successful at trial, they can apply to the Minister pursuant to **section 10(1) of the Immigration Act** for permission to re-enter Trinidad and Tobago.

V. Disposition

[73] Having considered the Claimant's Application filed on 20 November 2020 for interim injunctive relief, the attendant affidavits in support and the Defendants' affidavits in response, the parties' speaking notes filed on 26 November 2020 and 11 December 2020 respectively and oral submissions heard on 8 December 2020, the Order of the Court is as follows:

ORDER:

1. **The Claimants' Notice of Application for Interim Relief filed on 20 November 2020 be and is hereby dismissed.**

2. **The entitlement and quantum of costs attendant on the application for injunctive relief are hereby reserved until the determination of the substantive Constitutional Motion.**

Robin N Mohammed
Judge