HIGH COURT OF AUSTRALIA

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Details of Filing

File Number:	P21/2024
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Important Information

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IN THE HIGH COURT OF AUSTRALIA

PERTH REGISTRY

BETWEEN: **MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS**

First Appellant

SECRETARY, DEPARTMENT OF HOME AFFAIRS

Second Appellant

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THE RELEVANT OFFICERS ACTING UNDER SECTION 198 OF THE *MIGRATION ACT 1958*

Third Appellant

and

MZAPC

Respondent

OUTLINE OF ORAL SUBMISSIONS OF THE RESPONDENT

PART I INTERNET PUBLICATION

20 This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

1. The respondent had a special interest in obtaining the relief sought such as to have had standing to bring the proceeding.

   - *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 97 ALJR 214 at [62], [66], [144], [171], [289] (**JBA Vol 7, Tab 39**).

2. That interest would be rendered nugatory if the respondent were to have been removed without an injunction being made requiring him to be kept in Australia: see **RS [21]**.

3. It is well established that a superior court can issue interlocutory relief to preserve the utility of the relief claimed in the proceeding: see **RS [7]**. This does not depend upon the
30 protection of any legal or equitable right: see **RS [8]-[9], [23]-[26]**. It also does not depend on the respondent having a legal right to be in Australia (or a claim to have such a right).

- *Re Minister for Immigration and Multicultural Affairs; Ex parte Fejzullahu* (2000) 84 ALJR 830 at [7] (**JBA Vol 7, Tab 49**)
- *Patrick Stevedores Operations No 2 Pty Ltd v Maritime Union of Australia* (1998) 195 CLR 1 at [35] (**JBA Vol 5, Tab 25**)
- *Tait v The Queen* (1962) 108 CLR 620 at 624 (**JBA Vol 6, Tab 33**)
- *Cardile v LED Builders Pty Ltd* (1999) 198 CLR 380 at [26], [31], [35]-[42] (**JBA Vol 3, Tab 11**).

4. Section 198(6) was engaged because paragraphs (a)-(d) were satisfied. But the interlocutory order did not require an officer not to do that which the officer was compelled by law to do, because there was no finding that it was reasonably practicable to remove the respondent at the time of the orders at first instance. See **RS [11]-[16]**.

- *M38/2002 v Minister for Immigration and Multicultural and Indigenous Affairs* (2003) 131 FCR 146 at [64], [65], [68], [69] (**JBA Vol 7, Tab 40**)
- *Al-Kateb v Godwin* (2004) 219 CLR 562 at [121] (**JBA Vol 3, Tab 8**)
- *Snedden v Minister for Justice* (2014) 230 FCR 82 at [116] (**JBA Vol 8, Tab 51**)
- *Mastipour v Secretary, Department of Immigration and Multicultural and Indigenous Affairs* (2004) 140 FCR 137 at [32]-[33] (**JBA Vol 7, Tab 41**)

5. Clear words would be needed before s 198(6) would be interpreted to exclude the Federal Court's power to make an interlocutory order necessary to protect its own processes.

- See *PT Bayan Resources TBK v BCBC Singapore Pte Ltd* (2015) 258 CLR 1 at [29] (**JBA Vol 5, Tab 28**)

6. Section 198(6) could not validly prevent the Federal Court from making an interlocutory order necessary to protect its own processes. See **RS [37]-[49]**.

- *Dupas v The Queen* (2010) 241 CLR 237 at [15] (**JBA Vol 4, Tab 17**)
- *Hogan v Hinch* (2011) 243 CLR 506 at [85]-[91] (**JBA Vol 4, Tab 21**)
- *Condon v Pompano Pty Ltd* (2013) 252 CLR 38 [187] (**JBA Vol 3, Tab 14**)
- *Dietrich v The Queen* (1992) 177 CLR 292 at 326, 327 (**JBA Vol 4, Tab 16**)

- *Moana v Minister for Immigration and Border Protection* (2019) 265 FCR 337 at [47] (**JBA Vol 7, Tab 43**)
- *South Australia v Totani* (2010) 242 CLR 1 at [1] (**JBA Vol 6, Tab 32**)
- *SDCV v Director-General of Security* (2022) 96 ALJR 1002 at [138], [237] (**JBA Vol 7, Tab 50**)

Dated: 13 August 2024

Craig Lenehan	**Anthony Krohn**	**Christopher Tran**	**Amanda Sapienza**
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