



HIGH COURT OF AUSTRALIA

3 May 2017

PLAINTIFF M96A/2016 & ANOR v COMMONWEALTH OF AUSTRALIA & ANOR
[2017] HCA 16

Today the High Court unanimously held that ss 189 and 196 of the *Migration Act* 1958 (Cth) ("the Act") validly authorised the detention of unlawful non-citizens who were brought to Australia from a regional processing country for a temporary purpose.

In August 2013, the plaintiffs, a mother and her daughter, arrived in Australia at Christmas Island. As "unauthorised maritime arrivals", they were taken to the Republic of Nauru in February 2014. They claimed to be owed refugee protection. In November 2014, the plaintiffs were brought to Australia for the temporary purpose of medical treatment. They were detained in Darwin and at the Melbourne Immigration Transit Accommodation. In December 2016, they were released after the Minister for Immigration and Border Protection made a residence determination permitting them to reside at a specified place subject to conditions. At all material times, the plaintiffs needed to be in Australia for medical treatment, and had no right to apply for a visa whilst in Australia.

By an application for an order to show cause, the plaintiffs challenged the validity of ss 189 and 196 of the Act insofar as those provisions purported to authorise their detention in Australia. The plaintiffs submitted that their detention was unlawful because it was not necessary for a legitimate, non-punitive purpose, and because the duration of their detention was not reasonably capable of objective determination as it was governed only by the question whether and when they no longer needed to be in Australia. The plaintiffs did not challenge the lawfulness of the Commonwealth's act of bringing them to Australia, or the lawfulness of their eventual removal from Australia.

The defendants demurred to the whole of the plaintiffs' amended statement of claim, submitting that the detention was authorised by the Act. By an order of a single Justice of the High Court, the demurrer was referred to the Full Court.

The Court unanimously allowed the defendants' demurrer on the basis that ss 189 and 196 of the Act validly authorised the plaintiffs' detention whilst they were in Australia. The Court held that the plaintiffs' detention was for a lawful purpose, namely the purpose of removal from Australia. The Court also held that the duration of the plaintiffs' detention was able to be objectively determined at any time and from time to time by reference to various preconditions provided for in the Act, and that the temporal limits of their detention were connected with the purpose of their detention.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*