



## HIGH COURT OF AUSTRALIA

12 June 2019

PLAINTIFF M47/2018 v MINISTER FOR HOME AFFAIRS & ANOR  
[2019] HCA 17

Today the High Court published its reasons for orders made on 13 February 2019 answering questions stated in a special case. The Court unanimously held that the special case raised no factual basis for consideration of the lawfulness of the plaintiff's detention under ss 189 and 196 of the *Migration Act 1958* (Cth).

Section 189 of the Act provides that an officer who knows or reasonably suspects that a person in the migration zone is an unlawful non-citizen must detain the person. Section 196 of the Act requires that an unlawful non-citizen who is detained under s 189 be kept in immigration detention until he or she is removed from Australia under s 198 or s 199, deported under s 200, or granted a visa.

The plaintiff is an unlawful non-citizen who has been in immigration detention since his arrival in the migration zone in 2010. When the plaintiff travelled to Australia, he did so using a Norwegian passport under a name that was different to at least three other names he had previously used in dealings with overseas authorities. The plaintiff destroyed that passport and presented himself to immigration officers in Australia under a different name, purporting to be a "citizen" of Western Sahara. In a number of visa applications between 2010 and 2017, the plaintiff admitted that he had in the past used false names, personal details and passports. In dealings with Australian immigration authorities, the plaintiff gave inconsistent accounts of his personal and family background. The plaintiff also adopted a posture of non-cooperation towards meetings arranged or proposed by those authorities between the plaintiff and the Moroccan and Algerian Embassies in Canberra aimed at establishing his identity and nationality.

The plaintiff commenced proceedings in the original jurisdiction of the High Court seeking a declaration that his detention is unlawful because it is not authorised by ss 189 and 196 of the Act. He argued that the mandate in ss 189 and 196 to keep an unlawful non-citizen in custodial detention suspends when removal is not practicable at all, or in the reasonably foreseeable future, so that those provisions have ceased to authorise the plaintiff's detention. Alternatively, the plaintiff claimed that the provisions, in their purported application to him, exceed the legislative power of the Commonwealth because his continued detention is not sufficiently connected to a constitutionally-permissible purpose of administrative detention. While the special case contained no agreement between the parties to the effect that there is no real prospect or likelihood that the plaintiff will be deported from Australia in the reasonably foreseeable future, the plaintiff submitted that the Court should draw inferences to that effect.

The Court unanimously held that the necessary inferences could not be drawn because it cannot be assumed that it is beyond the plaintiff's power to provide further information concerning his identity that may shed positive light on his prospects of removal. In particular, in the absence of the plaintiff's cooperation, it cannot be concluded that the options for his removal within a reasonable time have been exhausted. Accordingly, the Court concluded that no factual basis had been established to call into question the lawfulness of the plaintiff's 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.*