

FEDERAL COURT OF APPEAL

BETWEEN:

The Minister of Citizenship and Immigration

(Appellant)

- and -

Benita Suarez

(Respondent)

APPELLANT'S / RESPONDENT'S FACTUM
(Select One)

NAME OF LAW FIRM
Address of law firm

Names of Counsel (Include First and Last Names)
Of Counsel for the Appellant / Respondent (select one)

Telephone:

Fax:

Email:

PART I: INTRODUCTION

1. This case is about the [insert a short summary of the main issue raised by this appeal].

PART II: SUMMARY OF THE FACTS

2. Espadrole is a totalitarian military state with a very poor human rights record. The citizens of the country are not permitted to travel outside its borders, and the government does not issue identification or travel documents to its citizens.
3. Benita's father was a prominent journalist in Espadrole and her mother was a community activist. In July of 2012, Benita's father published an article condemning the military leader of Espadrole for various human rights abuses, and calling for free and fair elections by 2013.
4. On August 5, 2012, soldiers arrived at Benita's home in the capital city of Espadrole, where they murdered her father and two younger brothers. Benita discovered their bodies when she returned home later that night. The family home had been ransacked, and her mother was missing. Neighbours recounted to Benita what had happened, indicating that the soldiers had declared before leaving the house that they were going to make "an example" of Benita's family, to warn others against speaking out against the government. Her neighbours did not know what had happened to her mother, but someone resembling her mother, was taken from the house in what appeared to be a dead or unconscious state. Fearing for her life, Benita fled the capital city with some money that her family kept hidden in the house.
5. Benita made her way, on foot, to a small coastal town in Espadrole, where she made contact with a man who planned to take a boat to Canada. The man agreed to take the money which Benita had salvaged from her house in exchange for passage on his vessel. Two days later, Benita boarded a fishing vessel with 38 others, all of whom

were Espadrolean nationals. Two of the passengers died en route. The boat landed in Vancouver, British Columbia, on September 16, 2012, and all passengers were detained by the port authority and interviewed by immigration officials.

6. Benita told the immigration officials that she could not return to Espadrole because she feared for her life. As her country issued neither identification nor travel documents, Benita had no way of proving to immigration officials her identity or nationality. She, along with all other passengers on the fishing boat were determined to be "designated foreign nationals" pursuant to the new *IRPA* amendments. Benita made a refugee claim on September 17, 2012, but was detained in custody, pursuant to the aforementioned *IRPA* amendments.
7. Not knowing what happened to her mother caused Benita particular strife. The pro bono lawyer who assisted her with her refugee claim offered to search online for any news about the current situation in Espadrole and reports about her family's death. On January 17, 2013, Benita's lawyer discovered a news story, published in the United States, about a middle-aged woman, believed to be a citizen of Espadrole, who fled the country after escaping captivity by the military government. The article went on to describe that she was a community activist and wife of a prominent journalist who was murdered for speaking out against the government. While held in captivity, the woman was tortured, but managed to escape; with the assistance of family friends, she fled to the United States hoping to claim refugee status. The article stated that not long after she arrived in the United States and before her refugee claim could be processed, the woman fell into a coma, which doctors believed stemmed from injuries sustained prior to her US arrival.
8. With the help of her lawyer, and the small but active Espadrolean community in Canada, Benita raised enough money to allow her to travel to the United States, provided that she could be released from detention and granted travel documents. Her lawyer sought an order from the Minister releasing her so that she could visit her mother before her death. Her request was denied on the basis that she was a designated foreign national and the Minister was concerned that she had not provided valid identification and was at risk of not returning to custody if her refugee claim was

denied.

9. Benita remained in custody for 18 months. Unfortunately, her mother passed away in the hospital on December 31, 2013. Benita was released on March 21, 2014, after her refugee claim was granted.
10. Benita brought an application for judicial review of the Minister's decision, seeking an order declaring that the new mandatory detention scheme for designated foreign nationals in *IRPA* violated sections 7, 9, and 15 of the *Canadian Charter of Rights and Freedoms* (the "Charter").

[This is where you will need to summarize the trial judge's decision, by explaining how Justice Anders decided on each of the four issues. All quotes should be indented and single-spaced (like this paragraph). They must be referenced immediately after the paragraph, noting the page or paragraph number of the quote.]

PART III GROUNDS OF APPEAL

ISSUE ONE: DOES THE LEGISLATIVE SCHEME VIOLATE BENITA'S S. 7 CHARTER RIGHT TO LIBERTY?

11. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE TWO: DOES THE LEGISLATIVE SCHEME VIOLATE BENITA'S S. 9 CHARTER RIGHT NOT TO BE ARBITRARILY DETAINED?

12. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE THREE: DOES THE LEGISLATIVE SCHEME VIOLATE BENITA'S S. 15 CHARTER RIGHT TO EQUALITY?

13. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

ISSUE FOUR: IF THE LEGISLATIVE SCHEME DOES VIOLATE ONE OR MORE OF BENITA'S CHARTER RIGHTS, IS THE INFRINGEMENT JUSTIFIED UNDER S. 1 OF THE CHARTER?

14. [Insert your firm's argument on this issue. Refer to the explanatory notes, How to Prepare a Factum, for information on how to refer to cases and how to structure your argument.]

APPLICATION TO THIS CASE

15. [Insert a concluding statement, summarizing how the preceding arguments support the order you have requested.]

**PART IV
ORDER REQUESTED**

16. It is respectfully requested that [Explain what it is that you are requesting – whether you are requesting that the appeal be granted or dismissed.]

ALL OF WHICH is respectfully submitted by

Name of all four counsel

Of Counsel for the Appellant/Respondent (**Select One**)

DATED AT (LOCATION) this ____th Day of **(month)**, **(year)**

APPENDIX A

AUTHORITIES TO BE CITED

[List all the cases and/or statutes that you have referred to in your factum using proper legal citation. Refer to the explanatory notes, *How to Prepare a Factum*, for formatting guidelines.]