# In the Court of Appeal of Alberta

**Citation: Canada (Attorney General) on behalf of the United States of America v Chapman, 2026 ABCA 384**

**Date:** 20261127
**Docket:** 2601-0237A
**Registry:** Calgary

**Between:**

**The Attorney General of Canada on Behalf of the United States of America**

Respondent

- and -

**Allistair Curtis Chapman**

Applicant

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**Reasons for Decision of**
**The Honourable Justice Joshua B. Hawkes**

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Application for Judicial Interim Release

**Reasons for Decision of**
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## Introduction

[1] Two separate orders resulting in Mr Chapman's detention pursuant to section 18(2) of the *Extradition Act*, SC 1999, c 18 are under review in this application. The first order issued on February 16, 2026, after a three-day hearing in the Court of King's Bench.[1] The second order issued following a hearing on May 8, 2026, and considered the applicant's claim of a material change in circumstance.[2] The applicant now applies to this Court for judicial interim release. The application is denied for the following reasons.

## Standard of Review

[2] The applicable standard of review was recently summarized in this Court in a related matter as follows:

> [22] Under s 18(2) of the *Extradition Act*, a reviewing judge may only vary an initial judicial interim release decision on the basis of an error in principle: *R v St-Cloud*, 2015 SCC 27, para 102, [2015] 2 SCR 328; *R v Nygard*, 2021 MBCA 27, para 17. A reviewing judge "cannot simply substitute his or her assessment of the evidence for that of the justice who rendered the impugned decision", as intervention is warranted only where the decision contains an error of law or is clearly inappropriate, where the judge "gave excessive weight to one relevant factor or insufficient weight to another": *St-Cloud*, para 6.
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> [23] A review under s 18(2) of the *Extradition Act* is not a hearing *de novo* where a court is free to substitute its own view for that of the chambers judge, and the judge's weighing of the evidence is entitled to significant deference on review: *Nygard*, paras 17, 24; *United States v Paradkar*, 2026 ONCA 392, para 83, aff'g *The Attorney General of Canada on behalf of the United States v Paradkar*, 2025 ONSC 7187; *United States of America v Chapman*, 2026 ABKB 376, paras 38, 39.[3]

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[1] *Canada (Attorney General) on behalf of the United States v Chapman*, 2026 ABKB 125 [*Chapman 1*].

[2] *United States of America v Chapman*, 2026 ABKB 376 [*Chapman 2*].

[3] *Canada (Attorney General) on behalf of the United States of America v Zitoun,* 2026 ABCA 351 at paras 22-23 [*Zitoun Appeal*].

[3] In relation to the weighing and balancing of factors required in the consideration of the tertiary ground, the Ontario Court of Appeal recently stated:

> [83] I do not understand *St-Cloud* to endorse a reweighing of factors relevant to the tertiary ground by the reviewing court. Rather, the review of the application judge's evaluation of the tertiary ground proceeds from a position of deference. The court observed, at para. 114, that the application judge, in addressing the tertiary ground under s. 515(10)(c), must "balance several factors, including the ones listed in that provision" and in so doing "must for the most part make findings of fact and assess the weight of those findings to determine whether detention is justified." The court noted that a decision made on the basis of s. 515(10)(c) "calls for the consideration of several factors that may be difficult to balance" and that "[t]his is a delicate exercise whose essence would be distorted if an open-ended discretion to review the initial release decision were to be conferred on the [reviewing] judge": at para. 117. Similarly, the court cautioned against a reviewing judge substituting his or her assessment of the evidence for that of the justice: at para. 6.
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> [85] The same approach is appropriate here. While errors in principle, for the purpose of an extradition bail review, include "failing to give sufficient weight to relevant factors [and] overemphasizing relevant factors" (*Baratov*, at para. 8), the reviewing court cannot intervene simply because it would have weighed the relevant factors differently. Moreover, an application judge's findings of fact on a bail application are entitled to deference, absent palpable and overriding error... [4]

**Analysis**

[4] The applicant advances two arguments in support of his release. First, he contends that the bail justice in *Chapman 1* erred in failing to consider the strength of his release plan when evaluating whether release should be granted pursuant to section 515(10)(c), commonly referred to as the tertiary ground. Second, he argues that the principle of parity should be considered in assessing the tertiary ground, and that when it is, maintaining confidence in the bail system favours his release.

*1. Release plan*

[5] The applicant relies on the decision of the Ontario Court of Appeal in *R v Silva-Stone*, 2022 ONCA 222 at paras 62-63. He finds further support in *R v Fasoranti,* 2021 ONCA 138 at para 35, and in the *Paradkar Appeal* at para 92, for the proposition that the strength of the release plan is a factor in balancing the public interest considerations on the tertiary ground.

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[4] *United States v. Paradkar*, 2026 ONCA 392 at paras 83, 85 [*Paradkar Appeal*].

[6] In *Chapman 1*, the strength of the proposed release plan was a central consideration in satisfying the court that Mr Chapman had discharged his onus for release under *Criminal Code* sections 515(10) (a) and (b), referred to as the primary and secondary grounds.[5]

[7] The bail justice indicated that he was required to consider all of the circumstances in consideration of the tertiary ground, with a particular focus on the factors enumerated in the *Criminal Code*.[6] He concluded that the apparent strength of the case against Mr Chapman on the conspiracy to murder a justice system participant was strong, consisting of direct evidence from a cooperating witness, confirmed by intercepted encrypted communications characterized by the prosecution as admissions.[7] He concluded that the gravity of the offence was magnified both by the motive for the killing, and the fact that it was carried out in furtherance of a sophisticated criminal enterprise operating in multiple jurisdictions. Further, he concluded that Mr Chapman knew the purpose of the work he had been assigned – to assist in locating and killing a confidential source to prevent him from testifying against the organization.[8] These factors put the offence at the highest level of severity and weighed strongly against release.[9] The bail justice concluded that if convicted Mr Chapman would face a lengthy term of imprisonment.

[8] One of the significant additional factors considered by the bail justice was the safety of Mr Chapman and his proposed sureties. He noted that Mr Chapman had received three previous specific warnings from police regarding his safety, the most recent just over a year prior to the bail hearing. He accepted the explanation from the police service that it was rare to receive one warning and concluded it must be "rarer still" to receive three.[10] The bail justice also noted that the proposed sureties received a similar warning from police. In that regard he concluded:

> [84] Releasing Chapman on very strict conditions would be to entrust him into the protection and oversight of his sureties. As careful, invested, responsible and caring as they appear to be, [they] are far less equipped or trained in ensuring Chapman's safety, not to mention their own, as are his jailors if he is detained in custody. To release him in these circumstances further risks losing the reasonable member of the public's confidence in the administration of justice.[11]

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[5] *Chapman 1*, *supra* note 1 at paras 16-19, 30, 42-47.

[6] *Chapman 1*, *supra* note 1 at paras 48, 50, 76-77.

[7] *Chapman 1*, *supra* note 1 at paras 59-61.

[8] *Chapman 1*, *supra* note 1 at paras 66, 69-70.

[9] *Chapman 1*, *supra* note 1 at paras 71-72.

[10] *Chapman 1*, *supra* note 1 at para 81.

[11] *Chapman 1*, *supra* note 1 at para 84.

[9] Other comments by the bail justice also illustrate that he was aware of and considered cumulative factors in assessing release on the tertiary ground.[12] Counsel for Mr Chapman raised the importance of the release plan even where all other factors on tertiary ground are satisfied. Read functionally and contextually, the reasons demonstrate the bail justice was aware of and considered the release plan in the context of the tertiary ground.[13]

*2. Parity in relation to the third ground*

[10] The applicant contends that others who were either more involved in the criminal organization or in the alleged conspiracy to murder the confidential source have been released, and that his detention would appear unjustified to reasonably informed members of the public as contemplated in the tertiary ground.

[11] There are three important legal issues to be addressed in relation to this argument. First, the contention that parity, a sentencing concept, is applicable in bail decisions is not without controversy. The applicant relies mainly on two decisions by a single justice of this Court in support of that proposition: *R v Hennessey*, 2008 ABCA 240 at para 10(f), and *R v Abdow*, 2010 ABCA 261 at para 3 [*Abdow*], along with the decision of the Ontario Superior Court in *R v Dang*, 2015 ONSC 4254 [*Dang*]. Other trial level decisions cited by the applicant rely primarily on those decisions.[14] It is important to note that the court in *Dang* did not decide that parity was a relevant consideration regarding the tertiary ground. That question was left open.[15]

[12] The context of both Alberta appellate cases is important. Both involved applications for a panel of the Court to review a bail decision pursuant to section 680 of the *Criminal Code*. In both cases, brief reference was made to the status of co-accused as one factor among several in considering whether leave should be granted. Neither case provided any analysis supporting the applicability of that concept in the bail context. The views of other appellate courts are mixed, with some rejecting the release status of co-accused or others as a material factor[16] while one considers it in a limited fashion only in relation to public confidence in the bail system and the administration of justice.[17]

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[12] *Chapman* 1, *supra* note 1 at paras 80, 86-88.

[13] *R v GF,* 2021 SCC 20 at para 69; *R v Pham,* 2024 BCCA 366 at para 37.

[14] *R v Budge***,** [2012] OJ No 2538, also cited by the applicant, does not provide authority for the proposition.

[15] *R v Dang* at para 59.

[16] *Matteo c R,* 2016 QCCA 2046 at para 4; *Forget c Canada (Attorney General) (United States of America)*, 2016 QCCA 1423 at paras 14-15; *R v Laffin,* 2025 ONCA 605 at para 15.

[17] *R v Tran*, 2021 ONCA 19 at para 28.

[13] One of the leading Canadian texts on bail states:

> Parity as a decision-making principle is not reflected in the bail provisions in Part XVI of the Criminal Code. Because of the nature of the bail decision, the principle of parity is inapplicable. This point is demonstrated in situations where more than one individual is charged with the same or related offences. In *R. v. E. (D.)* after noting that parity is not a principle applicable to bail, Lee J. said:
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> > There are unique considerations to undertake on an assessment of the appropriateness of judicial interim release … The considerations involved on each ground are factors which are specific to the individual accused and are often times not transferable between individuals. The fate of one accused cannot and should not be determinative of the fate of another in a bail hearing.[18]

[14] Second, I am constrained by the standard of review. My role is not to substitute my own views over that of the justices below, but rather to determine if there has been reviewable error as described above.

[15] Third, I take the view that as a single judge of the Court my views on a legal principle that has not been considered by a panel of the Court, bind neither my colleagues sitting on chambers matters nor a panel of the Court. I find support for that view both in the provisions of the *Court of Appeal Act,* RSA 2000, c C-30, s.7 and associated case law, as well as the analogous case law relating to permission to appeal.[19] As a result, I will only express my views on a legal principle that has not been considered by a panel of this Court only where required to do justice in the case at hand.

[16] In *Chapman 1*, the bail justice considered the conspiracy to commit murder and associated charges as the most significant in his decision. He described the evidence in support of those charges as of a higher quality, noting a combination of direct and confirmatory evidence. He characterized the strength of the drug related charges as "weak at best".[20] He reviewed the applicable statutory provisions and guidance from the Supreme Court of Canada in *R v Morales, MM v United States of America, R v Antic,* and *R v St. Cloud*.[21]

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[18] Gary T Trotter, *The Law of Bail in Canada,* 3rd Ed (Toronto: Carswell, 2010) § 3:1 [citations omitted].

[19] *Reference re Greenhouse Gas Pollution Pricing Act,* 2019 ABCA 349 at para 20; *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 122; *Kitov Resources Corp v Alpha Aviation Inc*, 2020 BCCA 388 at para 8.

[20] *Chapman 1*, *supra* note 1 at paras 58-59.

[21] *Chapman 1*, *supra* note 1 at paras 20-29; *R v Morales*, 1992 CanLII 53 (SCC), [1992] 3 SCR 711; *MM v United States of America*, 2015 SCC 62; *R v Antic*, 2017 SCC 27; *R v St-Cloud*, 2015 SCC 27.

[17] In relation to the tertiary ground, the bail justice concluded that the case for extradition regarding the conspiracy charge was strong, that the gravity of the offence – a conspiracy to silence a witness who could implicate the drug trafficking organization – was high, and that if convicted, the applicant faced a sentence of life in prison. While all of these statutory factors favoured detention, he recognized that this was not the automatic result and that other factors needed to be considered.[22] The bail justice noted that while the applicant had no criminal record, there was evidence of involvement in drug trafficking related activity over a long period of time that he was entitled to consider in this context.[23] He considered the safety concerns relating to the applicant and his sureties as noted above. He considered the impact that detention would have on Mr Chapman's relationship with his son as well as the difficulties that detention caused regarding the ability to communicate with and instruct counsel. The bail justice found that these latter two factors would favour release under the tertiary ground, but on balance found that detention was necessary to maintain public confidence in the administration of justice.[24]

[18] The bail justice considered the fact that one of the other individuals arrested in connection with the same conspiracy had been released. He noted the concession in the applicant's written brief to the effect that bail is an individualized process. In comparison with the *Paradkar Appeal*, he noted that health, safety, and the permanent severance of long-established family relationships were significant factors in the release of Mr Paradkar that distinguished his circumstances from those of Mr Chapman[25].

[19] Mr Chapman then sought a fresh bail application based on a material change in circumstances, namely, the release of another individual facing the same charge on extradition, Mr Zitoun, a reduction in the number of charges upon which extradition was sought, and the failure of the Revised Record of the Case to provide additional evidence or detail regarding Mr Chapman. That bail justice properly noted that on a review based on change in circumstances, he was to treat the prior order as correct and consider the impact of the new circumstance advanced as a material change on the initial decision.[26] He concluded that the only potential material change in circumstances was the subsequent release of Mr Zitoun.[27]

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[22] *Chapman 1, supra* note 1 at paras 61-77.

[23] *Chapman 1*, *supra* note 1 at paras 78-80.

[24] *Chapman 1*, *supra* note 1 at paras 87-92

[25] *Chapman 1*, *supra* note 1 at paras 93-95.

[26] *Chapman 2*, *supra* note 2 at paras 11-19, 39; *R v Ledesma,* 2019 ABCA 60, at para 20; *R v Nygard,* 2021 MBCA 27 at para 15.

[27] *Chapman 2*, *supra* note 2 at paras 23, 28, 31, 35, 37. That release has been confirmed after review by this Court: see *Zitoun Appeal*, *supra* note 3.

[20] In the bail justice's view, the fact that Mr Zitoun had been released would not have changed the initial bail decision. At the time of that initial decision the first bail justice was aware that other individuals facing extradition arising out of the same investigation had been released, and that the release of another "arguably [with] a comparable level of culpability", would not have changed that decision. He concluded that the release of Mr Zitoun was not therefore a material change in circumstances.[28]

*3. The Bail Decisions Regarding Mr Zitoun*

[21] The initial bail justice concluded that Mr Zitoun's proposed release plan satisfied her that he had met his onus on both the primary and secondary grounds.[29] With respect to the tertiary ground, she characterized the strength of the case as "arguable", and that the gravity of the offence undertaken in support of a criminal organization supported detention on the tertiary ground.[30] The bail justice noted that he had one prior dated conviction for breaching a court order and found that the other evidence presented by the Crown established only that police suspected him of involvement in gang activity and had him under close observation.[31] On the basis of the information provided regarding this offence she concluded that he was a "low -level" member of the organization, and was paid to find the location of an Airbnb which was not where the victim was found and murdered.[32] Balancing all of these factors she concluded that he had met his onus on the tertiary ground and that his detention was not required to maintain public confidence in the administration of justice.[33]

[22] The Crown sought a review of that decision in this Court, asserting that the bail justice failed to consider relevant evidence, drew unsupported conclusions, and erred in the weight given to required factors for consideration.[34] The Court rejected all three arguments advanced on the basis that they did not demonstrate any error of law and did not overcome the deferential standard of review.[35]

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[28] *Chapman 2*, *supra* note 2 at paras 37-39.

[29] *Canada (Attorney General) on behalf of the United States of America v Zitoun,* 2026 ABKB 166 at paras 34-5, 40-41 [*Zitoun 1*].

[30] *Ibid* at paras 47-8.

[31] *Ibid* at paras 38-9.

[32] *Ibid* at paras 49, 56.

[33] *Ibid* at paras 55-57.

[34] *Zitoun Appeal*, *supra* note 3 at para 21.

[35] *Zitoun Appeal, supra* note 3 at paras 37-39, 42-43.

*4. The Bail Decisions Regarding Mr Paradkar*

[23] Mr Paradkar was alleged to be an integral member of a drug trafficking operation (DTO). He exchanged messages with other members of the DTO relating to killing persons who cooperated with law enforcement and told one of the DTO members that if a certain informant was eliminated an indictment against members of the DTO would almost certainly be dismissed. He participated in a call with a person who provided the DTO with contact information for the informant, and the informant was subsequently killed. It was also alleged that he spoke with DTO members and associates, on the pretense of being their lawyer, to monitor whether they were cooperating with law enforcement and obtain disclosure that DTO leaders would otherwise not have access to.

[24] The application judge found that it was not realistic Mr Paradkar would flee, and his detention was not necessary to ensure his attendance in court. With respect to the secondary ground, the application judge found that detention was not necessary to protect the public given his confidence in the surety. Finally, with respect to the tertiary ground, he found that the case for extradition was strong, the offence was of the utmost gravity, and there was potential for a lengthy term of imprisonment, all of which favoured detention. However, Mr Paradkar was 62 years old, diabetic, with a history of heart problems. A prolonged period of detention would likely be harmful to his health. Moreover, the proposed surety was "excellent" and the application judge had a "high level of confidence in the proposed release plan". The application judge concluded that release would not cause a loss of confidence in the administration of justice.

[25] On review, the Ontario Court of Appeal concluded that the application judge gave serious attention to the flight risk, made no error in the particular circumstances of this case in evaluating the strength of the case, appropriately considered the suitability of the surety arriving at conclusions that were "available on the evidence", and made no error of law or principle in relation to the tertiary ground.[36]

*5. Application in this Case*

[26] Assuming without deciding that the applicant is correct and the principle of parity is engaged in the analysis of the tertiary ground, the narrow question I must resolve is whether either of the justices below committed reversible error in concluding that the respective releases of Mr Zitoun and Mr Paradkar should not also result in Mr Chapman's release. Adopting the formulation proposed in *Abdow,* that requires a determination of whether either bail justice erred in law or principle or otherwise made a decision that was "clearly inappropriate" in determining that Mr Chapman was not "similarly situated" to those released.

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[36] *Paradkar Appeal, supra* note 4 at paras 53, 61-63, 74-75, 82.

[27] As noted above, the circumstances of Mr Paradkar were distinguished from those of the applicant based on the strength of Mr Paradkar's ties to the community and his family, and that his health and safety would be at greater risk in custody than upon release. On appeal, Mr Chapman does not dispute those conclusions apart from contending that the safety warnings by police are now dated. Rather, he contends that the role of Mr Paradkar in the organization, and in the efforts to identify and silence those who might testify against it, were vastly more serious than his own involvement. The first bail justice considered the bail and safety risks of both and found that the decisions could appropriately be reconciled to the extent necessary on that basis. At first instance the bail justice in *Paradkar 1* noted that "[t]he most compelling reason to believe Mr Paradkar will attend court and comply with house arrest bail terms is that it may be the only way to survive".[37] After balancing statutory, safety and health related concerns the bail justice concluded that Mr Paradkar had "narrowly met his onus on the tertiary ground."[38] In contrast, the first bail justice in this matter concluded that the safety of both Mr Chapman and his sureties would be better protected if he remained in custody. In addition, the significant health concerns relating to Mr Paradkar do not apply to Mr Chapman.[39] I find no error in principle, nor any palpable and overriding error of fact in these conclusions. They were reasonably available on the evidence.

[28] The different safety concerns also distinguished the applicant's situation from that of Mr Zitoun. Further, the background of both men as described in their initial bail hearings differed. Mr Zitoun had one prior conviction for breach of a court order, and although suspected of gang involvement, no proof of that involvement was found.[40] In contrast, in this case, the initial bail justice found that although Mr Chapman had no criminal record there was evidence that he had been working in the organization since late 2021 or early 2022, and that he had a history consistent with someone involved in the drug trade. Detailed instances in support of that conclusion include events in 2011, 2017-2019, and 2024. While these events did not result in convictions, they were properly considered given the broader scope of evidence permitted at a bail hearing, and in light of the express acknowledgment of the bail justice that they were not convicted offences.[41]

[29] Finally, while both men acted in furtherance of the same alleged objective – locating a confidential human source so he could be murdered – their respective actions exposed that source to very different levels of risk. Mr Zitoun was tasked with attempting to locate the source in relation

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[37] *The Attorney General of Canada on behalf of the United States v. Paradkar*, 2025 ONSC 7187 at para 65 [*Paradkar 1*].

[38] *Ibid* at para 98.

[39] *Chapman 1*, *supra* note 1 at paras 81-84, 95.

[40] *Zitoun 1, supra* note 29 at paras 39-40.

[41] *Chapman 1*, *supra* note 1 at paras 78, 80; *Toronto Star Newspapers Ltd v Canada*, 2010 SCC 21 at para 28; *R v St-Cloud*, 2015 SCC 27 at paras 107-109; *R v Cheung,* 2016 BCCA 221 at paras 76-79.

to a particular Airbnb.[42] Conversely, Mr Chapman's actions resulted in a photograph and identifying information about the source labeling him as a "rat" posted on a website dedicated to posting updates about the Canadian criminal underworld.[43] That action exposed the source to a virtually unlimited audience.

**Conclusion**

[30] Even if the first bail justice was required to distinguish the circumstances of Mr Chapman from those of others facing extradition, he did so in a manner that revealed no error in principle or palpable and overriding error of fact. The findings of fact made by the bail justice regarding Mr Zitoun also support distinctions in their background and roles. For all of these reasons, I find no reviewable error in the detention of Mr Chapman pending an extradition hearing.

[31] The application is denied.

Appeal heard on October 22, 2026

Reasons filed at Calgary, Alberta
this 27th day of November, 2026

Hawkes J.A.

[42] *Zitoun 1*, *supra* note 29 at para 56.

[43] *Chapman 1*, *supra* note 1 at paras 12, 69-72.

**Appearances:**

A. Touchette
D. Young
C. Laroche
S.S. Nedoshytko (no appearance)
for the Respondent

N.C. O'Brien, KC (no appearance)
G. Wolch
C. Haggerty (no appearance)
for the Applicant