SUPREME COURT OF CANADA

disponible en français

Case in Brief: *Dorsey v. Canada (Attorney General)*

Judgment of November 21, 2025 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2025 SCC 38

The Supreme Court of Canada rules that inmates can challenge a refusal to transfer them to a lower security prison.

In this case, the Supreme Court was asked whether a judge can review a refusal to move someone to a lower security prison because they are deprived of their liberty. Prisoners retain *residual liberty*, which is the level of freedom they have inside the institution. Security classification affects residual liberty because a higher security level means more supervision, limits on movement, and stricter daily routines. The law says that prisoners must be held in conditions that restrict their residual liberty as little as possible, in the circumstances.

Messrs. Dorsey and Salah were both serving their sentences in medium-security federal institutions. Their case management teams recommended that each be transferred to a minimum-security prison. Senior correctional officials rejected those recommendations, keeping the inmates in more restrictive conditions than their case management teams thought appropriate.

Messrs. Dorsey and Salah sought to reverse this decision in the Ontario Superior Court of Justice using *habeas corpus*. They argued that refusing to transfer them was an unlawful restriction on their liberty. *Habeas corpus* is a legal concept that requires a person under arrest to be brought before a judge to determine whether their detention is lawful. It allows a judge to review whether a person is being kept in more restrictive conditions than they should be in. The judge dismissed both applications, saying that *habeas corpus* could not be used to review this type of decision. The Court of Appeal agreed.

The Supreme Court allowed the appeal.

Denying a transfer to a lower security institution can be a deprivation of liberty.

Writing the reasons of the majority of the Supreme Court, Justice Moreau said that *habeas corpus* is meant to be a broad and accessible remedy that protects against unlawful restraints on liberty. In the prison context, an inmate's security classification directly affects their residual liberty. Keeping an inmate in a higher security facility after wrongly denying their request for reclassification is an unlawful restriction on the inmate's residual liberty.

Justice Moreau also explained that an inmate seeking *habeas corpus* must show a deprivation of liberty and raise a legitimate reason to question whether that restriction is lawful. If they show both elements, a judge must review the decision.

Breakdown of the decision: ***Majority***: Justice Moreau allowed the appeal (Chief Justice Wagner and Justices Karakatsanis, Martin, Kasirer and O'Bonsawin agreed) | ***Dissenting***: Justices Côté and Rowe would have dismissed the appeal (Justice Jamal agreed).

More information: Decision | Case information

Lower court rulings: Applications (Ontario Superior Court of Justice) | Appeal (Court of Appeal for Ontario)
