

# CLASS ACTION: FALSE IMPRISONMENT OF SOUTH SUDANESE REFUGEES



The Asylum Seeker Resource Centre (ASRC) represents LPSP, a refugee who has started a class action on behalf of South Sudanese people who are or were detained in immigration detention after being found to be owed protection, arguing:

- (a) Such detention is or was **unconstitutional** and constitutes false imprisonment, and
- (b) Affected people remaining in detention should be **released** and that monetary **damages** should be paid to compensate those unlawfully detained.

This class action follows from the High Court's decision in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37. In *NZYQ*, the High Court found that immigration detention is unconstitutional where a visa has been refused and there is no reasonable prospect of removal from Australia becoming reasonably practicable in the foreseeable future.

LPSP argues that as soon as protection obligations are recognised (i.e. the Australian government recognises it is not safe for someone to return to their country of origin), detention becomes unlawful. At present, refugees often remain for years in detention after such recognition. LPSP was detained for 1,192 days – more than 3 years – after the government determined he was owed protection.

If LPSP is successful, all people affected by the class action will be released (if they are in detention), will have formal recognition of the unlawfulness of their detention, and may be entitled to financial compensation. It will also prevent unlawful detention occurring in the future.

## WHAT IS A CLASS ACTION?

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A class action is a type of legal proceeding where one person brings a claim on behalf of a larger group of people who have been affected in a similar way or by the same conduct. By grouping claims together like this, a larger legal issue affecting many people can be resolved in a more efficient way, without each person needing to file their own case.

This class action will be run on an 'opt-out' basis. This means that all group members (see **'Who is affected?'**) will have their rights protected by the claim, regardless of whether they knew about the claim when it was started, unless they choose to 'opt-out'.

## WHO IS AFFECTED?

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The group members affected by this class action are all people with South Sudanese nationality who are or were detained under section 198 of the *Migration Act 1958* (Cth) for one or more days after the Minister for Immigration was satisfied that the person was owed protection or non-refoulement obligations.

South Sudanese nationality is complex. For this case, it includes:

- anyone born in what was then Sudan, but, after 2011, became South Sudan, *and*
- anyone who is or has been a national of South Sudan while not having nationality or citizenship of any other country.

It is hoped that this proceeding, if successful, will have a positive impact for refugees and people seeking asylum from other nationalities as well.

## **WHY IS THIS CLASS ACTION BEING TAKEN?**

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The suffering caused by Australia's unjust immigration detention practices is extreme and intolerable. Our clients have lost their health, their families, and even their lives. They have missed their children growing up, and their parents' funerals. They have been deprived of dignity. They have lived in fear and with hopelessness, experiencing cruelty, medical neglect and trauma which will have lasting impacts throughout their lives.

People who were detained unlawfully now and in the past deserve to have that grave injustice formally recognised, and receive compensation to allow them to rebuild their lives with dignity and safety.

## **WHAT STAGE IS THE CASE AT?**

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LPSP filed his case in December 2023, later converting his case to a class action in 2024.

He is now seeking, on behalf of the class, to intervene in High Court of Australia proceedings initiated in 2024 by others affected by immigration detention.

Courts can allow intervention in existing cases by other parties, particularly where the intervener's contribution may be useful for determination of legal questions, and if the intervener's interests are affected (for example, the decision may have consequences for their liberty).

The High Court of Australia will determine whether it will allow LPSP's application to intervene. If the intervention is allowed, a hearing of the parties' arguments is expected to take place on 14 November 2024.

## **WHAT DOES IT MEAN TO 'OPT OUT' OF A CLASS ACTION?**

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If you 'opt-out' of a class action, you remove yourself from the claim completely. This means you will not be affected by the outcome of the class action, and you are free to pursue your own individual claim for the same issues separately if you wish to do so.

By opting out, you will not be able to take advantage of any favourable findings or decisions made in the class action. For example, if the class action results in a payment of financial compensation to group members, anyone who has opted out will not have access to any share in that payment.

Before you decide to opt out, we strongly encourage you to seek legal advice about that decision.

## **WHAT DO I NEED TO DO IF I BELIEVE I AM AFFECTED?**

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At present, there is nothing you need to do.

There will be an opportunity to register your details if you believe you are affected by this class action. If we determine you are affected, we will offer advice and information, keep you informed about the progress

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and outcome of the case, and provide an opportunity to opt out. You will not need to pay any money to be part of the class action.

ASRC will continue to share information about the case's progress to ensure all people who may be affected have the opportunity to consider their options.

Registration and other information will be published at <https://asrc.org.au/get-help/legal-help/> and shared on social media.

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