

WAR RESISTERS SUPPORT CAMPAIGN

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MEDIA RELEASE

For Immediate Release

Wednesday, August 12, 2009

Iraq War resister Kimberly Rivera wins in Federal Court

First female Iraq War resister to seek refuge in Canada gets another temporary stay

TORONTO—On Tuesday, the Federal Court of Canada granted Kimberly Rivera a new [Pre-Removal Risk Assessment \(PRRA\)](#). The judicial review hearing took place on July 8 before Federal Court Judge The Honourable James Russell.

Justice Russell found that the PRRA Officer did not deal properly with the risk that Kim Rivera would face differential prosecution on the basis of her opposition to the Iraq War.

There was evidence before the Officer indicating that individuals who are on record as critics of the Iraq War are targeted for prosecution and more severe punishment as opposed to being granted an administrative discharge from the military.

As a result of the ruling Rivera is entitled to a new decision in her PRRA, a process that may take up to four months.

Rivera, her lawyer Alyssa Manning, and a representative of the War Resisters Support Campaign will be available tomorrow morning to discuss the implications of this ruling.

EVENT: Media availability re: the decision in Kimberly Rivera's judicial review

DATE: Wednesday, August 12, 2009

TIME: 10:00 a.m. EDT

LOCATION: Steelworkers' Hall, 25 Cecil Street, Main Floor, Members' Lounge, Toronto, ON (south of College Street, west of Beverley Street)

Rivera was granted an eleventh-hour stay of removal in March following public outcry over the threat of her deportation. In January, Minister of Citizenship and Immigration Jason Kenney used the occasion of her original PRRA decision to claim that Iraq War resisters are "bogus refugee claimants". His comments brought rebuke from Amnesty International Canada and the Canadian Council for Refugees for prejudicing the chance of a fair hearing for Rivera and other war resisters.

The War Resisters Support Campaign is renewing its call on the minority Harper government to implement a [motion that was passed twice by the House of Commons](#) (on June 3, 2008 and again on March 30, 2009) and stop the impending deportation of Iraq War resisters. Two Iraq War resisters have already been deported by the Harper government and sentenced to jail terms in the U.S. for opposing the war. Rodney Watson, a war resister in Vancouver, is currently threatened with deportation.

"Today's court decision reflects the strong consensus in this country supporting people of conscience like Kim Rivera," said Michelle Robidoux, spokesperson for the War Resisters Support Campaign. "MPs have voted twice, directing this minority government to stop the deportations. No matter the personal opinions of Stephen Harper and Jason Kenney, Canadians expect them to respect the will of Parliament and implement the motion."

Kimberly Rivera, who served in Iraq in 2006, is the first female Iraq War resister to seek refuge in Canada. Rivera, along with her partner Mario, son Christian (7 years old) and daughter Rebecca (4 years old), fled to Canada in January 2007 when she refused redeployment. In late November 2008 Rivera gave birth to her Canadian daughter Katie (9 months old).

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"I'm so happy. Like the other war resisters, I just want to stay in Canada," said Kimberly Rivera. "Our families shouldn't be broken up, with a mother or father thrown in jail because they stood up for what's right."

A [public opinion poll](#) conducted by Angus Reid Strategies in June 2008 found widespread approval (64%) for the House of Commons' vote in support of war resisters.

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For further information, please contact:

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Excerpts from Justice James Russell's reasons

Court Number: IMM-215-09

Style of Cause: KIMBERLY ELAINE RIVERA ET AL v. MCI

[98] In the present application, the Minister says that the act of persecution itself was never clearly identified by the Applicants as a new risk and, if it was, the Decision addresses the whole court martial system and not just due process punishment. I agree with the Respondent that the distinction between prosecution *per se* and punishment for desertion is not as clearly delineated in the submissions as it might be. This gave me some initial concern that the Officer had not addressed the targeting issue because the written submissions appear to emphasize process and punishment. However it would appear that the Officer's own identification of the stated risks shows that he was fully aware that the Principal Applicant feared not only the trial process and punishment but also the act of being charged with desertion and subjection to court martial proceedings.

[99] In the end, there is no meaningful examination in the Decision of selected and targeted prosecution based upon political opinion of those deserters who have spoken out against the war in Iraq. The Principal Applicant provided ample evidence of the targeting of similarly situated individuals, but this evidence is never addressed from this perspective. In addition there was also evidence before the Officer of prosecutors seeking harsher treatment, and judges imposing harsher sentences, for deserters who have spoken out against the war. This again raises the issue of the exercise of prosecutorial and judicial discretion in a way that discriminates against those soldiers who have expressed public opposition to the war in Iraq. In turn, this calls into question the procedural and state protection safeguards available to targeted individuals who are prosecuted (instead of receiving an administrative discharge) and who are punished harshly for their political opinions, and whether this amounts to section 96 persecution or section 97 harm. In her written submission, the Principal Applicant raised the issue not only of disproportionate punishment, but of the improper exercise of prosecutorial discretion based upon and individual deserter's profile as an opponent of the U.S. war effort. In my view, the availability of the conscientious objector process, even if it were available to the Principal Applicant, which does not appear likely or the evidence, is irrelevant to the issue.

...

[102] In my view, the Officer's failure to fully address the targeting issue, and the evidence that supports the Applicant's position, renders the Decision unreasonable and it must be returned for reconsideration.