

**FEDERAL COURT OF CANADA**

B E T W E E N :

JEREMY HINZMAN  
(a.k.a. Jeremy Dean Hinzman)  
NGA THI NGUYEN  
LIAM LIEM NGUYEN HINZMAN  
(a.k.a. Liam Liem Nguye Hinzman)

Applicants

- and -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

- and -

THE INTERNATIONAL HUMAN RIGHTS CLINIC – UNIVERSITY OF TORONTO, FACULTY  
OF LAW and AMNESTY INTERNATIONAL (CANADA)

Proposed interveners

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**AFFIDAVIT OF GLORIA NAFZIGER  
(AFFIRMED FEBRUARY 1, 2006)**

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I, **GLORIA NAFZIGER**, of the City of Toronto, in the Province of Ontario, AFFIRM  
AND SAY AS FOLLOWS:

1. I am a Refugee Coordinator for Amnesty International (Canadian Section) (“AI”) and as such I have knowledge of the matters deposed to.

**II. BACKGROUND**

**A. Nature of Motion**

2. This affidavit is made in support of a motion by AI, together with the International Human Rights Clinic at the University of Toronto, Faculty of Law, for leave to intervene in this judicial review of a decision of the Immigration and Refugee Board (IRB).

**B. Background to Proceeding**

3. From my review of the Reasons for Decision of the Immigration and Refugee Board, I am aware that this judicial review arises out of the decision of Mr. Hinzman to desert from the 82<sup>nd</sup> Airborne division of the US Army.

4. On January 2, 2004, Mr. Hinzman and his wife tied up some loose ends, packed up their car, and left the US with their son, Liam. They arrived in Niagara Falls, Ontario on January 3, 2004.

5. On January 22, 2004, the Applicants made inland refugee claims. Mr. Hinzman fears that if he returns to the US he would be punished for deserting and persecuted for following his conscience.

6. The Applicants' case was heard by the IRB on December 6 to 8, 2004 to determine whether the claims for refugee protection of the applicants should be allowed.

7. The application for judicial review, brought by the Applicants, seeks to overturn the decision of the IRB to deny their claims for refugee status in Canada.

8. By this Motion, AI and the IHRC seek leave to intervene in this application. The ability of conscientious objectors to claim refugee status in Canada under the *Immigration and Refugee Protection Act (IRPA)* on the basis of their political opinion and their refusal to be associated with the commission of breaches of international humanitarian and human rights law is an issue of great importance to AI, and one in which it has particular experience and expertise.

**C. Description of AI**

9. AI is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights. AI's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights.

10. AI works to promote all the human rights enshrined in the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and other international human rights treaties and standards. AI also promotes the respect for, compliance with, and enforcement of international humanitarian law (IHL).

11. AI is impartial and independent of any government, political persuasion or religious creed. AI is financed by subscriptions and donations from its worldwide membership, and receives no government funding.

12. In 1977, AI won the Nobel Peace Prize for our work in promoting international human rights.

13. There are currently close to 2 million members of AI in over 162 countries. There are more than 7,500 AI groups, including local groups, youth or student groups and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories these groups are coordinated by national sections, like the Canadian section.

## II. MOTION TO INTERVENE

14. AI seeks leave to intervene in this application for judicial review.

### **(a) AI has a particular and pressing interest in this application**

15. AI has researched, reported and lobbied on Canada's laws, policies and procedures affecting refugee claimants for over 15 years. It has intervened in numerous cases involving refugee claimants, including the Supreme Court of Canada case of *Suresh*. AI has also advocated on behalf of refugee claimants to Prime Ministers, Ministers of Immigration, Cabinet Ministers and Members of Parliament. It also made submissions before the Parliamentary Standing Committees and Senate

Committees on the legislative changes that were made to the former *Immigration Act*, now the *IRPA*.

16. In this case, it is my understanding that the IRB ruled that the Applicants were not eligible for refugee status in Canada because, *inter alia*, Mr. Hinzman “failed to establish, that if deployed to Iraq, he would have engaged, been associated with, or been complicit in military action, condemned by the international community as contrary to the basic rules of human conduct” and moreover, that Mr. Hinzman did not show “that the US has, either as a matter of deliberate policy or official indifference, required or allowed its combatants to engage in widespread actions in violation of humanitarian law”.

17. AI is seriously concerned about the commission of war crimes and human rights violations – particularly the widespread use of torture and maltreatment of prisoners – in the U.S. war in Iraq. We support persons who stand up against such breaches anywhere, and who refuse to be associated with the commission of such violations.

18. We are of the view that there is a significant risk Mr. Hinzman would be imprisoned upon his return to his country of origin for refusing to put himself in a position where he would likely have been involved in committing grave breaches of the Geneva Conventions. If imprisoned, AI would consider him to be a prisoner of conscience. AI has therefore called on the Canadian government to refrain from returning Mr. Hinzman to the United States.

19. The purpose of this intervention is to offer the Court AI’s expertise in international law and human rights as an important contextual framework within which to carry out its review of the IRB’s decision.

**(b) AI will make useful submissions**

20. AI intends to make submissions that are different from and/or supplementary to those that will be made by the parties, relying upon AI’s unique experience and perspectives in this regard. We will focus our contribution on the interpretation of “persecution” and “political opinion” as they apply to the determination of a “refugee” under section 96 of the *IRPA*.

21. Under section 96 of the *IRPA* a person is a convention refugee if they are unable or unwilling to avail themselves of the protection of their country of citizenship because of a well-founded fear of *persecution* for reasons of race, religion, nationality, membership in a particular *social group* or *political opinion*.

22. AI is of the view that social group and political opinion includes someone like Mr. Hinzman, who has expressed a personal opposition to manner in which the war in Iraq is being waged and has self-identified as a “war resistor” or “conscientious objector”, an identifiable social group. We believe Mr. Hinzman would be persecuted for his membership in this group and for the views he holds if returned to his country of origin.

23. The right to refuse to perform military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as recognised in Article 18 of the *Universal Declaration of Human Rights* (UDHR) and Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR). In its general comment No. 22 on article 18 of the ICCPR, the Human Rights Committee of the United Nations has reaffirmed that the right to conscientious objection to military service is a legitimate exercise of the right to freedom of thought, conscience and religion.

24. AI is also of the view that that the right to refuse to perform military service for reasons of conscience is inherent in the equality provision of the *Canadian Charter of Rights and Freedoms* (“*Charter*”), which protects against discrimination on the basis of religion and political opinion.

25. Under section 96 of the *IRPA*, a person is a convention refugee if they are unable or unwilling to avail themselves of the protection of their country of citizenship because of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion.

26. AI will argue that the *IRPA* must be interpreted consistently with the human rights principles enshrined in the UDHR, ICCPR, the United Nations *Convention relating to the Status of Refugees*, other international human rights legal instruments, and the Canadian *Charter*.

27. AI considers a conscientious objector to be any person who, for reasons of conscience or profound conviction, refuses to perform service in the armed forces or any other direct or indirect participation in wars or armed conflicts. This can include refusal to participate in a war because one disagrees with its aims or the manner in which it was being waged, even if one does not oppose taking part in all wars.

28. AI considers a person to be a prisoner of conscience when they are detained or imprisoned solely because they have been denied or refused their right to register an objection or to perform a genuinely civilian alternative service. They would also be prisoners of conscience if they are imprisoned for leaving the armed forces without authorization for reasons of conscience, if they have taken reasonable steps to secure release from military obligations.

29. Following this, AI opposes the forcible return of a rejected asylum seeker if s/he is a conscientious objector and upon return would risk becoming a prisoner of conscience or would risk other serious human rights violations for reasons of his/her conscience.

30. AI has reviewed Mr. Hinzman's case extensively and is satisfied that he is a conscientious objector and that he took reasonable steps to obtain an exemption to his participation in the Iraqi war. He comprehensively described the process during which he came to the conclusion that he could not participate in offensive military operations as it would be contrary to his beliefs. He applied for non-combatant status as a conscientious objector well in advance of any specific assignment, and was deployed to Afghanistan on non-combatant duties before his claim was rejected. He has consistently asserted his reasons of conscience for refusing service in Iraq, notably his concern over being compelled to participate in the commission of war crimes and crimes against humanity.

31. AI believes there is a significant risk that Mr. Hinzman will be imprisoned for up to five years if forcibly returned to the US because of having left the armed forces without authorization for reasons of conscience. As such, AI would consider him to be a prisoner of conscience if imprisoned in the United States, as was Mr Camilo Mejia Castillo who was imprisoned in 2004 for reasons of objecting participation in the war in Iraq.

### III. PROPOSED SUBMISSIONS

32. If granted leave to intervene in this application, AI and the IHRC will submit that the IRB erred in its interpretation of “Convention refugee” as set out in section 171 of the UNCHR *Handbook* in the following respects:

- (i) It applied the wrong standard by failing to consider what constituted “exceptional circumstances” to the presumption against finding in favour of Mr. Hinzman. Specifically, it failed to interpret the *Handbook* in the context of compliance with international legal norms, such as those embodied in the *Geneva Conventions*;
- (ii) It failed to give due consideration to Mr. Hinzman’s refusal to be associated with the commission of war crimes, including torture, conduct which is condemned by the international community as contrary to the basic rules of human conduct;
- (iii) It failed to give adequate consideration to the fact that the U.S. has, either as a matter of deliberate policy or official indifference, required or allowed its combatants, and particularly those in the 82<sup>nd</sup> Airborne, to engage in widespread actions in violation of international humanitarian law, or at a minimum failed to investigate allegations of high-level responsibility.

### IV. SUMMARY

33. In summary, this application raises important issues relating to the interpretation of the *IRPA* and the Canadian *Charter*, and the application and implementation of Canada’s international human rights and humanitarian law obligations. AI, as an experienced and internationally-recognized leader in advocating for the protection and promotion of human rights and as an organization with experience in dealing with the issues raised by this case, has a particular and unique interest in the application, and will present arguments, together with the IHRC, which are different from those of the parties and which will be useful for this Honourable Court. For these reasons, submissions from AI should be heard in the Court’s assessment of this case.

34. AI respectfully requests that it be granted permission, jointly with the IHRC, to submit a memorandum of argument of no more than 15 pages and present oral submissions at the hearing of the appeal.

35. This affidavit is affirmed in support of AI's application for leave to intervene and for no improper purpose.

AFFIRMED BEFORE ME at the City of Toronto, in the Province of Ontario, this 1<sup>st</sup> day of February, 2006.

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Commissioner for Taking Affidavits

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**GLORIA NAFZIGER**

JEREMY HINZMAN *et al.*  
Applicants and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION  
Respondent

Court File No: IMM 216

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**IN THE FEDERAL COURT OF CANADA**

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**AFFIDAVIT OF GLORIA NAFZIGER  
(Affirmed February 1, 2006)**

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***BAKERLAW***

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